

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

**AMENDMENT NO. 1  
FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**FlexShopper, Inc.**  
(Exact name of registrant as specified in its charter)

Delaware	6153	20-5456087
<b>(State or other jurisdiction of incorporation or organization)</b>	<b>(Primary Standard Industrial Classification Code Number)</b>	<b>(I.R.S. Employer Identification No.)</b>
<b>901 Yamato Road, Suite 260 Boca Raton, FL 33431 Telephone: (855) 353-9289</b>		
<b>(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)</b>		

**H. Russell Heiser Jr.  
Chief Executive Officer  
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**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

*With a copy to:*

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**Approximate date of commencement of proposed sale to the public:  
As soon as practicable after this Registration Statement is declared effective.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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 type="checkbox"/>
Non-accelerated filer <input checked="" type="checkbox"/>	Smaller reporting company <input checked="" type="checkbox"/>
	Emerging growth company <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 7(a)(2)(B) of the Securities Act.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**



**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Preliminary Prospectus**

**Subject to Completion, dated November 20, 2024**



**Non-Transferable Subscription Rights to Purchase Up to 35,000,000 Units  
Each Unit Consisting of One Share of Common Stock,  
One Series A Right, One Series B Right and One Series C Right,  
and shares of Common Stock**

**Issuable Upon Exercise of the Series A Rights, Series B Rights and Series C Rights**

We are distributing, at no charge, non-transferable subscription rights (the "Subscription Rights") entitling holders of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock as of the record date of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, to purchase units at a subscription price equal to \$ \_\_\_\_\_ per unit (the "Unit Subscription Price"). Each unit will consist of one share of common stock, one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights"), with each of the Series Rights entitling the holder to purchase one share of our common stock. Shares of our common stock and the Series Rights comprising the units may only be purchased as a unit but will be issued separately. We refer to the offering of the Subscription Rights and the Series Rights as the "offering."

Holders will receive two Subscription Rights for each share of our common stock beneficially owned, or issuable upon conversion of our preferred stock, as of the record date. Pursuant to each Subscription Right, you will have the right, which we refer to as your basic subscription right, to purchase one unit. If you exercise your basic subscription right in full, you will also have the right, or over-subscription privilege, to purchase additional units for which other rights holders do not subscribe. Once made, all exercises of the Subscription Rights and the Series Rights are irrevocable.

The Subscription Rights will expire if not exercised by 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, the date that is 30 days following the date of this prospectus, unless we extend or terminate this offering. We may extend the offering of the Subscription Rights for one or more additional periods in our sole discretion not to exceed 30 days from the expiration date, in which case all basic subscription rights and over-subscription privileges exercised during the extension period will be filled on a first-come, first-serve basis. We will announce any extension in a press release issued no later than 9:00 a.m., Eastern time, on the business day after the most recently announced expiration date. If and to the extent there are unsubscribed units upon the expiration of the offering of the Subscription Rights, NRNS Capital Holdings LLC ("NRNS"), the manager of which is Howard S. Dvorkin, our Chairman, has indicated to us that it may purchase up to approximately \$10.6 million of units through the conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS. These notes have been issued to NRNS to supplement our credit facilities. All units sold to NRNS will be at the same price and on the same terms as this offering.

The Series Rights are exercisable commencing on their date of issuance at an exercise price equal to the *higher* of (x) the Unit Subscription Price or (y)(i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent. If at the expiration date of each of the Series Rights, the exercise price as determined above, is lower than the initial maximum amount paid, any excess subscription amount paid by a holder will be promptly returned to the holder, without interest or penalty.

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The maximum number of shares of our common stock available for issuance in this offering is 70,000,000 shares. If at any time the issuance of shares pursuant to the exercise of the Subscription Rights or the Series Rights exceeds such share limitation, no additional shares will be issued, this offering will be terminated and any outstanding rights will immediately expire and the amount subscribed for by each holder will be proportionally reduced.

Our common stock is traded on The Nasdaq Capital Market under the symbol “FPAY.” The closing price of the common stock on November 19, 2024 was \$1.62 per share. None of the Subscription Rights, units, or Series Rights are transferable.

**Investing in our securities involves risks. See “Risk Factors” beginning on page 10 of this prospectus. We and our board of directors are not making any recommendation regarding the exercise of your rights.**

We have engaged Moody Capital Solutions, Inc. (“Moody Capital”) to act as dealer-manager for this offering. This offering is being conducted on a best-efforts basis, and we do not need to receive any minimum amount of proceeds in order to complete this offering. We have currently not entered into any standby purchase agreement, backstop commitment or similar arrangement in connection with this offering other than the arrangement with NRNS as described herein.

Continental Stock Transfer & Trust Company will serve as the subscription agent for this offering and will retain an escrow agent to hold in escrow funds received from holders until we complete or terminate this offering.

	Per Unit	Total
Unit Subscription Price <sup>(1)</sup>	\$	\$
Dealer-manager fees and expenses <sup>(2)</sup>	\$	\$
Proceeds to us, before expenses <sup>(3)</sup>	\$	\$

- (1) Assumes the sale of all offered units and no exercise of the Series Rights included in the units.
- (2) We have agreed to pay Moody Capital, as dealer-manager, a cash fee equal to 6.0% of the proceeds of the offering from the exercise of the Subscription Rights and the Series Rights, a non-accountable expense fee equal to 1.0% of the proceeds of the offering from the exercise of the Subscription Rights and the Series Rights and an out-of-pocket accountable expense allowance of \$35,000, except that we will pay Moody Capital a cash fee of 3.0% on the aggregate proceeds from the proceeds of Subscription Rights and Series Rights exercised by our executive officers and directors and their respective investment vehicles. However, no dealer-manager fee will be paid to Moody Capital for sales of units in the rights offering to NRNS in respect of its note conversion. If the Series Rights are exercised at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), the dealer-manager will receive additional fees in the aggregate amount of up to \$\_\_\_\_.
- (3) If the Series Rights are exercised at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), we will receive additional gross proceeds from this offering of approximately up to \$\_\_\_ million from the sale of the remaining 35,000,000 shares available.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

If you have any questions or need further information about this offering, please call MacKenzie Partners, Inc., the information agent for this offering, at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com).



C A P I T A L

Dealer-Manager

The date of this prospectus is \_\_\_\_\_, 2024

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**You should rely only on the information contained in this prospectus and any free writing prospectus we may authorize to be delivered to you. We have not, and Moody Capital has not, authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus and any related free writing prospectus. We and Moody Capital take no responsibility for, and can provide no assurances as to the reliability of, any information that others may give you. This prospectus is not an offer to sell, nor is it seeking an offer to buy, these securities in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus is only accurate as of the date of this prospectus, regardless of the time of delivery of this prospectus and any sale of units.**

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The information contained in this prospectus includes information incorporated by reference in this prospectus from our filings with the Securities and Exchange Commission, or SEC, listed under “Where You Can Find Additional Information” below, including:

- our Annual Report on [Form 10-K](#) for the year ended December 31, 2023 (filed with the SEC on April 1, 2024), as amended by [Form 10-K/A](#) (filed with the SEC on April 3, 2024), which we refer to as our 2023 Annual Report;
- our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2024 (filed with the SEC on [May 13, 2024](#)), our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2024 (filed with the SEC on [August 6, 2024](#)) and our most recent Quarterly Report on Form 10-Q filed with the SEC from time to time, which as of the date of this prospectus is our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2024 (filed with the SEC on [November 19, 2024](#)), which we refer to as our Latest Form 10-Q; and
- our Current Reports on Form 8-K (filed with the SEC on [March 28, 2024](#), [October 8, 2024](#) and [October 28, 2024](#)).

In addition to the filings listed above, any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, after (i) the date of this registration statement and prior to effectiveness of this registration statement and (ii) the date of this prospectus and before the completion of the offering of the securities included in this prospectus, however, we will not incorporate by reference any document or portions thereof that are not deemed “filed” with the SEC, or any information furnished pursuant to Item 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K.

**Any reference in this prospectus to information that is “contained,” “referred to” or “included” in this prospectus, or any similar expression, includes not only the information expressly set forth in this prospectus but also the information incorporated by reference in this prospectus.**

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Unless the context requires otherwise, references in this prospectus to “FlexShopper,” “our company,” “we,” “our” “us” and similar terms refer to FlexShopper, Inc., a Delaware corporation, and its subsidiaries, unless the context otherwise requires.

## PROSPECTUS SUMMARY

*The following summary highlights selected information contained in this prospectus. Because the following is only a summary, it does not contain all of the information you should consider before investing in our securities. Before making an investment decision, you should carefully read all of the information contained in this prospectus, including the risks described under “Risk Factors” and our consolidated financial statements and the related notes incorporated by reference from our 2023 Annual Report and Latest Form 10-Q.*

### Our Company

#### Overview

We are a financial technology company providing transparent and competitive payment options primarily to credit constrained, near and subprime consumers. These consumers may not have the financial liquidity to purchase products and services from traditional retailers via cash or traditional funding sources. We have a single operating segment that provides a variety of consumer funding options. Our lease-to-own (“LTO”) programs are designed to improve the quality of life of our customers by providing them with the ability to obtain ownership of high-quality durable products under an affordable payment arrangement. We believe our value supports broad untapped expansion opportunities for FlexShopper within the U.S. consumer retail and e-commerce marketplaces. Our flexible payment terms always offer the consumers a “same as cash” option for the first 90 days and early buyout options for early payments. At September 30, 2024, approximately 42% of our originations were made to repeat customers, which we believe reflects the value of our payment options.

We generate payment options for customers through several market channels. We enable consumers utilizing our e-commerce marketplace to shop for brand name electronics, home furnishings and other durable goods on a LTO basis at FlexShopper.com and other corporate owned sites. After receiving a signed consumer lease, we purchase the item and lease it to our customer. Some of these goods are purchased from retailers while others are sourced from distributors or directly from manufacturers and, as such, we collect a “retail” margin for every transaction originated on our websites. In addition, we partner with leading traditional and e-commerce retailers (who we refer to as our point-of-sale partners, “POS partners” or “retail partners”). In these instances, through a variety of methods, we interact with our retailer partners to provide flexible payment terms that are designed to help customers achieve merchandise ownership. We have numerous patents and continue to submit additional patent applications on critical aspects of our payment options and business processes.

Central to our business model is our proprietary LTO Engine. We utilize our technology and LTO Engine to automate the online process for consumers allowing them to receive payment terms, spending limits and enter into leases for durable goods, all within minutes. The LTO Engine allows us to operate through three strategic sales channels: (i) selling directly to consumers via our online FlexShopper.com Marketplace featuring thousands of durable goods, (ii) utilizing our LTO payment method at check-out on our retail partners’ e-commerce sites and (iii) facilitating LTO transactions with retailers in their physical locations both through their in-store terminals and our applications accessed via the Internet. We conduct these transactions by approving consumers through our proprietary, risk analytics-powered underwriting model. For the year ended December 31, 2023, we generated approximately \$132 million in gross lease revenues and fees.

Throughout 2023 and to date in 2024, we have made significant changes to our marketplace business model. First, we started to source goods from distributors and manufacturers at discounts to traditional retail prices. This strategy significantly increased the number of items available on our site. It also enabled us to achieve a “retail” margin on the products and goods originated on the website, which allows us to significantly offset the online acquisition cost of new customers. Second, we began to offer financing options on our marketplace websites in addition to our own FlexShopper payment options. Historically, our website converted less than 1% of visitors into sales. We believe we can increase our conversion rate by offering customers more products and additional financing options. As our number of financing options expands, other providers of payment options that we have already implemented on our marketplace have increased our dollar conversion rate by almost 50% since the first quarter of this year.

## **Recent Developments**

### ***Option Agreement to Repurchase Outstanding Series 2 Preferred Stock Below Liquidation Value***

On October 25, 2024, we entered into a Preferred Stock Purchase Option Agreement granting us the right at any time through October 25, 2025 to repurchase and cancel 20,000 shares of our series 2 convertible preferred stock, representing approximately 91% of the shares in such series, at varying purchase prices below the then-current liquidation value of the series 2 convertible preferred stock, ranging from \$20,250,000 to \$22,500,000, depending on when we exercise the option, from B2 FIE V LLC, which acquired the preferred stock in a private placement in June 2016. Each share of series 2 convertible preferred stock is convertible into 266.2942 shares of our common stock or an aggregate of 5,325,888 shares of our common stock, based on the series 2 convertible preferred stock issue price of \$1,000 per share and conversion rate of \$3.76 per share, and accrues dividends through an increase in its liquidation preference at an annual rate equal to 10% of the original series 2 convertible preferred stock issue price per share. The purchase price of the series 2 convertible preferred stock, which was negotiated between the parties, represents approximately 50% of the current liquidation preference of the preferred stock, which was approximately \$44.2 million as of September 30, 2024. The terms of the preferred stock repurchase provide that if we exercise the option and within 12 months following the date of the Preferred Stock Purchase Option Agreement we complete a liquidity event or a change of control occurs, we would be required to make an incremental “true-up” payment to B2 FIE V LLC. This payment would be in an amount equal to the difference between our share price before the announcement of the liquidity event or change of control and the increased value of our share price, if any, after announcing the transaction, applied to the number of repurchased preferred shares on an as-if-converted to common stock basis. A discount of 8.3% is applied to this payment every 30-day period following the closing of the preferred stock repurchase. Additionally, assuming the shares of series 2 preferred stock are repurchased, and we are awarded monetary damages or a settlement award in connection with our patent infringement lawsuits, we would be required to pay a portion of those proceeds to B2 FIE V LLC. That portion would be determined by the increase in the value of our share price, if any, after announcing the award as applied to the number of repurchased preferred shares on an as-if-converted to common stock basis, provided that we are not required to pay B2 FIE V LLC more than \$4.00 per share on any share increase in value or 18% of the award. We intend to use a substantial portion of the net proceeds of this offering to repurchase the shares of series 2 convertible preferred stock from B2 FIE V LLC.

### ***Patent Infringement Lawsuit Filed Against Competitors***

On September 30, 2024, we filed patent infringement lawsuits against Upbound Group, Inc. (Nasdaq: UPBD) (including its Acima subsidiaries) (“Upbound Group”) and Katapult Holdings, Inc. (Nasdaq: KPLT) (“Katapult”), which are competitors of our company, alleging unauthorized use of our patented technologies. These cases were filed in the U.S. District Court for the Eastern District of Texas. The lawsuits revolve around five key patents, granted between 2018 and the present, which protect our computer-implemented LTO technology. These patents cover our innovative systems and methods for enabling retailers to partner with third-party LTO providers, facilitating seamless LTO transactions for consumers. The lawsuits accuse Upbound Group and Katapult of multiple forms of infringement, including direct infringement, contributory infringement, and inducement of others to infringe. We are seeking both injunctive relief to prevent further infringement and monetary damages. There can be no assurance that we will prevail in the lawsuits against Upbound Group or Katapult or in any other patent infringement lawsuits that we may commence or that there will not be any counterclaims asserted against us. An unfavorable outcome or settlement in these patent infringement lawsuits could have a material adverse effect on our financial position, liquidity or results of operations.

## **Our Market Opportunity and Lease and Loan Transactions**

The non-prime consumer lease and finance industry offers consumers an alternative to traditional methods of obtaining both durable goods via the LTO platform in a lease purchase transaction and provides consumers cash for discretionary purchases via the storefront direct origination model in a state-licensed loan. Our customers typically do not have sufficient cash or credit for these purchases, so they find the short-term nature and affordable payments of our products attractive.

**The Lease-Purchase Transaction.** A lease-purchase transaction is a flexible alternative for consumers to obtain merchandise with no long-term obligation. Key features of our lease-purchase transactions include:

**Brand name merchandise.** We offer well-known brands such as LG, Samsung, Sony and TCL home electronics; Frigidaire, General Electric, LG, Samsung and Whirlpool appliances; Apple, Asus, Dell, Hewlett Packard, Samsung and Toshiba computers and/or tablets; Samsung and Apple smartphones; Resident and Sealy Mattresses and Ashley furniture, among other brands.

**Convenient payment options.** Our customers make payments primarily on a weekly or bi-weekly basis. Payments are automatically deducted from the customer's authorized checking account or debit card. Additionally, customers may make additional payments or exercise early payment options, which enable them to save money.

**No long-term commitment.** A customer may terminate a lease-purchase agreement at any time with no long-term obligation by becoming current on amounts due under the lease-purchase agreement and returning the leased item to us.

**Applying has no impact on credit or FICO score.** We do not use FICO scores to determine customers' spending limits, so our underwriting does not impact consumers' credit with the three main credit bureaus.

**Flexible options to obtain ownership.** Ownership of the merchandise generally transfers to the customer if the customer makes all payments during the lease term, which is 52 weeks, or exercises the early payment options.

**The Loan Transaction.** A loan transaction facilitates consumers purchases of goods and services. A key feature of our loan transactions includes:

**Flexible APRs.** We offer loan products with a range of annual percentage rates ("APRs"). The weekly payments for the customers, on average, are in-line with the lease purchase transaction.

## **Key Trends Driving the Industry**

Over 50% of U.S. households with income between \$50,000 and \$100,000 with a credit card were also carrying a card balance, according to a May 2023 Federal Reserve report. Recently, demographic and socioeconomic trends have driven demand from these consumers, including a decline of purchasing power as inflation surpassed wage growth and with credit card balances reaching record highs. As of the third quarter of 2023, unsecured personal loan balances have reached a record high of \$241 billion. Technology advances have enabled "instant" underwriting both in-store and online. Non-prime consumers recognize that they have more convenient options to acquire both secured and unsecured liquidity for goods and services. In addition, leading retailers are continuing to embrace "save the sale" financing.



## Our Growth and Expansion Strategies

Like many industries, the internet and other technology is transforming the sub-prime leasing and finance industry. We have positioned ourselves to take advantage of this transformation by focusing on the expansion online and into mainstream retail and e-tail. Through its strategic sales channels, we believe we can expand our originations. Our proprietary technology automates the process of consumers receiving spending limits and originating leases or loans within minutes. Our primary sales channels, which include B2C and B2B channels are illustrated below:



We believe we have created a unique platform in which our B2B and B2C sales channels complement each other. For our B2C channels, we directly market to our consumers LTO opportunities at FlexShopper.com, where they can choose from more than 100,000 of the latest products shipped directly to them by some of the nation's largest retailers, distributors, and manufacturers. This generates sales for our retail partners, which encourages them to incorporate our B2B solutions into their online and in-store sales channels. The lease originations by our retail partners using our B2B channels, which have low customer acquisition cost to us, subsidize our B2C customer acquisition costs. Meanwhile, our B2C marketing promotes FlexShopper.com, which provides incremental sales for our retail partners, as well as benefiting our FlexShopper.com business.

To achieve our goal of being the preeminent "pure play" virtual LTO leader, we are executing the following growth strategies:

**Continue to grow FlexShopper into a dominant brand.** Given strong consumer demand and organic growth potential for our liquidity solutions, we believe that significant opportunities exist to expand our presence within current markets via existing marketing channels. As non-prime consumers become increasingly familiar and comfortable with our retail partnerships, online marketplace and mobile solutions, we plan to capture the new business generated as they migrate away from less convenient, legacy options.

**Expand the range of customers served.** We continue to evaluate new product and market opportunities that fit into our overall strategic objective of delivering next-generation retail, online and mobile platforms that span the non-prime/near-prime credit spectrum. For example, we are evaluating risk-based pricing products to expand our approval rates. By improving our analytics to effectively underwrite and serve consumers within those segments of the non-prime credit spectrum that we do not currently reach, we lower our acquisition cost while maintaining asset quality. We believe the current generation of our underwriting model is performing well and will continue to improve over time as its data set expands.

**Pursue additional strategic retail partnerships.** We intend to continue targeting regional and national retailers to expand our B2B sales channels. As illustrated in the diagram above, we believe we have the best omnichannel solution for retailers to "save the sale". In retail, the phrase "save the sale" means offering consumers other liquidity options when they do not qualify for traditional credit. We expect these partnerships to provide us with access to a broad range of potential new customers, with low customer acquisition costs.

***Pursue additional liquidity partnerships.*** We have partnered with other providers of consumer liquidity both through direct integrations and through other technology partners to increase approval rates and conversion rates. These partners have an appetite for providing consumers with purchasing power based on different product types, amounts and consumer risk at different price points. By providing our applicants with access to these other payment options, we increase the total conversion rate while also providing our retail partners with increased sales.

***Expand our relationships with existing customers and retail partners.*** Customer acquisition costs represent one of the most significant expenses for us due to our high percentage of online customers. In comparison, much lower acquisition costs are incurred for customers acquired through our retail partnerships. We will seek to expand our strong relationships with existing customers by providing qualified customers with increased spending limits or offering other products and services to them, as well as seek to grow our retail partnerships to reduce our overall acquisition cost. In addition, by encouraging additional repeat customers, we lower our acquisition cost for each new lease or loan and increase our lifetime value of each customer.

***Continue to optimize marketing across all channels.*** Since we began marketing our services to consumers in 2014, we have made significant progress in targeting our customers and lowering our digital customer acquisition costs. Our efforts have been across different media including direct response television and digital channels such as social media, email and search engines.

### **Competition and our Competitive Strengths**

Providing liquidity to the non-prime consumer industry is highly competitive. Our operation competes with other national, regional and local LTO and consumer finance businesses, as well as with rental stores that do not offer their customers a purchase option. Some of these companies have, or may develop, systems that enable consumers to obtain through online facilities both leases and loans, in a manner similar to that provided by our proprietary technology. We believe the following competitive strengths differentiate us:

***Underwriting and Risk Management.*** We have made substantial investments in our underwriting technology and analytics platforms to support rapid scaling, innovation and regulatory compliance. Our team of data scientists and risk analysts uses our risk infrastructure to build and test strategies across the entire underwriting process, using alternative credit data, device authentication, identity verification and many more data elements. We believe our real-time proprietary technology and risk analytics platform is better than those of our competitors in underwriting online consumers and consumer electronics because of the significant historical data we have acquired since 2014. Most of our peers focus on in-store consumers that acquire furniture and appliances, which we believe are easier to underwrite, based on our own experience. Additionally, all of our applications are processed instantly with approvals and spending limits provided within seconds of submission.

***LTO Products for Consumers and Retailers.*** We have made substantial investments in our custom e-commerce platform to provide consumers with the greatest selection of popular brands delivered by many of the nation's largest retailers, including Best Buy, Amazon and Walmart. Our platform is custom-built for online LTO transactions, which include underwriting our consumers, serving them LTO leases, syncing and communicating with our partners to fulfill orders and all front- and back-end customer relationship management functions, including collections and billing. The result is a comprehensive technology platform that manages all facets of our business and enables us to scale with hundreds of thousands of visitors and products.

We have made substantial inroads creating relationships with distributors and manufacturers to increase the amount of retail margin on our marketplace while still maintaining drop-ship capabilities and maintaining our zero-inventory policy. Offering brand name goods that provide us with both the lease economics as well as the retailer economics should increase gross profit margins.

In retail, the phrase "save the sale" means offering consumers other finance options when they do not qualify for traditional credit. We believe that we have the best omnichannel solution for retailers to "save the sale" with LTO options. We believe no competitor has a LTO marketplace that provides retailers incremental sales with no acquisition cost. Additionally, compared to our peers, our product for consumers requires fewer application fields. We believe this leads to more in-store and online sales. Further, by partnering with other liquidity providers, we are creating more sales and a greater conversion rate for our retail partners.

**Scalable Model.** Our online presence and our instant underwriting process for all consumer channels allows us to scale easily. We can onboard new retailers and our retail partners can onboard new locations without meaningful additional resources.

**Sales and Marketing.** In our B2C channels, we use a multi-channel, analytics-powered approach to marketing our products and services, with both broad-reach and highly targeted channels, including television, digital, and marketing affiliates. The goal of our marketing is to promote our brand and primarily to directly acquire new customers at a targeted acquisition cost. We use television advertising supported by our internal analytics and media buys from a key agency to drive and optimize website traffic and lease originations. Our online marketing efforts include pay-per-click, keyword advertising, search engine optimization, marketing affiliate partnerships, social media programs and mobile advertising integrated with our operating systems and technology from vendors that allow us to optimize customer acquisition tactics within the daily operations cycle. We measure and monitor website visitor usage metrics and regularly test website design strategies to improve customer experience and conversion rates. In our B2B channels, we use internal business development personnel and technology partners that focus on engaging retailers and e-retailers to use our services. This includes promoting FlexShopper at key trade shows and conferences.

**Information Systems.** We use computer-based management information systems to facilitate our entire business model, including underwriting, processing transactions through our sales channels, managing collections and monitoring leased inventory and loan portfolio. In addition, we have a customer service and call center to facilitate inbound and outbound calls. Through the use of our proprietary software developed in-house, each of our retail partners uses our online merchant portal that automates the process of consumers receiving spending limits and entering into leases for durable goods or loans within minutes. The management information system generates reports that enable us to meet our financial reporting requirements.

### **Risks of Investing**

Investing in our securities involves substantial risks. Potential investors are urged to read and consider the risk factors relating to an investment in the common stock set forth under “*Risk Factors*” beginning on page 10 of this prospectus and those incorporated by reference from our 2023 Annual Report, our Latest Form 10-Q and our other filings with the SEC, before making an investment decision with respect to our securities.

### **Corporate Information**

FlexShopper was incorporated under the laws of the State of Delaware in 2006. FlexShopper is a holding corporation that conducts its LTO business through its wholly-owned subsidiary, FlexShopper, LLC, a limited liability company organized under the laws of North Carolina in 2013 and conducts its lending business through its wholly-owned subsidiary Flex Revolution, LLC, a limited liability company organized under the laws of Delaware in October 2022. FlexShopper, LLC wholly owns, directly or indirectly, two Delaware subsidiaries, FlexShopper 1, LLC and FlexShopper 2, LLC.

Our executive offices are located at 901 Yamato Road, Suite 260, Boca Raton, Florida 33431, and our telephone number is (855) 353-9289. We maintain a corporate website at <https://www.flexshopper.com>. The information contained in, or accessible through, our corporate website does not constitute part of this prospectus.

For a complete description of our business, financial condition, results of operations and other important information, please read our filings with the SEC that are incorporated by reference in this prospectus, including our 2023 Annual Report and Latest Quarterly Report on Form 10-Q. For instructions on how to find copies of these documents, please read “Where You Can Find Additional Information.”

Investors and others should also note that we use social media to communicate with our customers, retailer network and the public about our company, our services, new product developments and other matters. Any information that we consider to be material to an investor’s evaluation of our company will be included in filings accessible through the SEC website and may also be disseminated using our investor relations website (<https://flexshopper.com>) and press releases. However, we encourage investors, the media and others interested in our company to also review our social media channels @flexshopper on Twitter and FlexShopper on Facebook, YouTube and Instagram. The information contained in these social media channels is not part of and is not incorporated herein.

## The Rights Offering

### Subscription Rights

We are distributing, at no charge, non-transferable subscription rights (the “Subscription Rights”) entitling holders of our common stock and holders of our series 1 convertible preferred stock and series 2 convertible preferred stock as of the record date of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, to purchase units at a subscription price equal to \$ \_\_\_\_ per unit (the “Unit Subscription Price”).

Holders will receive two Subscription Rights for each share of our common stock beneficially owned or issuable upon conversion of our preferred stock as of the record date. Your Subscription Rights will consist of:

- your basic subscription right, which will entitle you to purchase one unit for each Subscription Right; and
- your over-subscription privilege, which will be exercisable only if you exercise your basic subscription right in full and will entitle you to purchase additional units for which other rights holders do not subscribe, subject to pro rata allocation of those additional units to participating rights holders in proportion to the number of over-subscription units for which they subscribed.

### Units

Each unit will consist of:

- one share of common stock;
- one series A common stock purchase right (“Series A Right”), exercisable for one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price;
- one series B common stock purchase right (“Series B Right”), exercisable for one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price; and
- one series C common stock purchase right (“Series C Right”), exercisable for one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price.

Shares of our common stock and the Series Rights comprising the units may only be purchased as a unit but will be issued separately. The Subscription Rights and the Series Rights will be exercisable commencing on their date of issuance and are exercisable for cash only in U.S. dollars. If at the expiration date of each of the Series Rights, the exercise price as determined above is lower than the initial maximum amount paid (e.g., 150%, 200% or 250% of the Unit Subscription Price for the Series A Rights, Series B Rights and Series C Rights, respectively), any excess subscription amount paid by a holder will be promptly returned to the holder, without interest or penalty.

### Exercise of Subscription Rights

The Subscription Rights, consisting of basic subscription rights and over-subscription privileges, may be exercised at any time during the subscription period, which commences on \_\_\_\_\_, 2024 and expires at 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, the date that is 30 days following the date of this prospectus, unless we extend or terminate this offering. Once made, all exercises of Subscription Rights are irrevocable. If and to the extent there are unsubscribed units upon the expiration of the offering of the Subscription Rights, NRNS Capital Holdings LLC (“NRS”), the manager of which is Howard S. Dvorkin, our Chairman, has indicated to us that it may purchase up to approximately \$10.6 million of units through the conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS. These notes have been issued to NRNS to supplement our credit facilities. All units sold to NRNS will be at the same price and on the same terms as this offering.

We may extend the offering for the Subscription Rights for one or more additional periods in our sole discretion not to exceed 30 days from the expiration date. We will announce any extension in a press release issued no later than 9:00 a.m., Eastern time, on the business day after the most recently announced expiration date. If we extend the offering, all basic subscription rights and over-subscription privileges exercised during the extension period will be filled on a first-come, first-serve basis.

Subscription Rights may only be exercised in aggregate for whole numbers of units. Only whole numbers of shares of common stock and Series Rights exercisable for whole numbers of shares will be issuable to you in this offering; any right to a fractional share to which you would otherwise be entitled will be terminated, without consideration to you.

Series A Rights, Series B Rights and Series C Rights may be exercised commencing on their date of issuance and continuing, respectively, 30, 60 and 90 days following the closing date of the Subscription Rights offering.

#### **Transferability**

**Subscription Rights.** The Subscription Rights are evidenced by a subscription certificate and are non-transferable. The Subscription Rights will not be listed for trading on The Nasdaq Capital Market or any other securities exchange or trading market.

**Units.** Shares of our common stock and the Series Rights comprising the units may only be purchased as a unit but will be issued separately. Units will not be issued as a separate security and will be non-transferable.

**Common Stock.** Shares of common stock included in units will be separately transferable following their issuance. All of the shares of common stock issued in this offering upon exercise of the Subscription Rights and the Series Rights are expected to be listed on The Nasdaq Capital Market under the symbol "FPAY."

**Series Rights.** The Series Rights are evidenced by a subscription certificate for each such right and are non-transferable. The Series Rights will not be listed for trading on The Nasdaq Capital Market or any other securities exchange or trading market.

#### **Use of Proceeds**

Assuming the sale of all offered units and no exercise of the Series Rights, we estimate our net proceeds from this offering will total approximately \$\_\_ million, after deducting fees and expenses of Moody Capital, as dealer-manager, and our other estimated offering expenses. If the Series Rights are exercised at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), we will receive additional gross proceeds from this offering of approximately \$\_\_ million from the sale of the remaining 35,000,000 shares available. We intend to use the net proceeds from this offering to (i) provide funding for the repurchase of our series 2 convertible preferred stock from B2 FIE V LLC, (ii) reduce a portion of the outstanding balance under our credit facility with Waterfall Asset Management, LLC ("Waterfall"), (iii) finance the costs of potential acquisitions or investments in competitive and complementary payment solution businesses, and (iv) apply the balance for working capital and general corporate purposes. In the event we raise less than approximately \$20.0 million in gross cash proceeds in this offering, we expect to prioritize the use of the net proceeds of this offering for funding the repurchase of our series 2 convertible preferred stock and reducing the outstanding balance under our credit agreement. Any additional net proceeds will be used for further reducing the outstanding balance under our credit agreement, as well as financing potential business acquisitions and for general corporate purposes. See "*Use of Proceeds*" for a more detailed description of the intended uses of the net proceeds from this offering.

#### **Subscription Information**

In order to obtain subscription information, you should contact:

- MacKenzie Partners, Inc., which will act as the information agent in connection with this offering, by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com); or
- your broker-dealer, trust company or other nominee (including any mobile investment platform) where your Subscription Rights are held.

**Subscription Procedures**

In order to exercise your Subscription Rights, including your over-subscription privilege, and your Series Rights, you should deliver a completed subscription certificate and/or Series Rights certificate and the required payments in U.S. dollars to Continental Stock Transfer & Trust Company, the subscription agent for this offering by the applicable expiration date.

**Important Dates**

Set forth below are important dates for this offering:

	<b>Dates*</b>
Record date	
Commencement date	
<b>SUBSCRIPTION RIGHTS</b>	
Deadline for delivery of subscription certificates and payment of unit subscription price	
Expiration date for Subscription Rights	
Extension period	
<b>SERIES A RIGHTS</b>	
Deadline for delivery of subscription certificates and payment of exercise price	
Expiration date for Series A Rights	
<b>SERIES B RIGHTS</b>	
Deadline for delivery of subscription certificates and payment of exercise price	
Expiration date for Series B Rights	
<b>SERIES C RIGHTS</b>	
Deadline for delivery of subscription certificates and payment of exercise price	
Expiration date for Series C Rights	

\* This time schedule assumes that the subscription offering will be completed by its original expiration date. To the extent the subscription period for the Subscription Rights is extended, all following dates will be adjusted accordingly. However, the pricing period of the Subscription Right prior to the original expiration date will not be extended. See “The Rights Offering — Expiration of Offer.”

## RISK FACTORS

*Investing in our securities involves a high degree of risk. You should consider and read carefully all of the risks and uncertainties described below, as well as other information contained in this prospectus, before making an investment decision with respect to our securities. The occurrence of any of the following risks or those incorporated by reference, or additional risks and uncertainties not presently known to us or that we currently believe to be immaterial could materially and adversely affect our business, financial condition, results of operations or cash flows. In any such case, the trading price of common stock could decline, and you may lose all or part of your investment. This prospectus also contains forward-looking statements and estimates that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of specific factors, including the risks and uncertainties described below and those incorporated by reference.*

### **Risks Related to the Rights Offering**

***This offering may cause the price of common stock to decline, and the price may not recover for a substantial period of time, or at all.***

The Unit Subscription Price of units in this offering, together with the number of shares of common stock we propose to issue and ultimately will issue in the offering (including the number of additional shares of common stock we propose to issue and ultimately will issue upon exercise of the Series Rights), may result in an immediate decrease in the market value of our common stock. We cannot predict the effect, if any, that the availability of shares for future sale will have on the market price of common stock from time to time. General market price declines or market volatility in the future as a result of the offering could adversely affect the price of our common stock, causing the price of our common stock to fluctuate significantly and making it difficult for you to resell your shares of common stock when you want or at a price you find attractive. If the market price of common stock falls, you may have irrevocably committed to buy shares of common stock in this offering at an effective price per share greater than the prevailing market price. Further, if a substantial number of Subscription Rights are exercised and the exercising rights holders choose to sell some or all of the shares purchased either directly or upon the exercise of their Series Rights, the resulting sales could depress the market price of common stock. We cannot assure you that the market price of common stock will not decline prior to the expiration of this offering or that, after shares of common stock are issued upon exercise of the Subscription Rights, you will be able to sell shares of common stock purchased in the offering at a price greater than or equal to the effective price paid in the offering. The Unit Subscription Price determined for the subscription offering may not be indicative of the fair value of common stock.

***The Unit Subscription Price determined for this offering may not be indicative of the fair value of common stock.***

The Unit Subscription Price was set by our board of directors, and you should not consider the Unit Subscription Price as an indication of the fair value of our common stock. The Unit Subscription Price does not necessarily bear any relationship to the book value of our assets, net worth, past operations, cash flows, earnings/losses, financial condition or any other established criteria for fair value. The market price of our common stock could decline during or after this offering, and you may not be able to sell shares of common stock purchased in the offering, including shares of common stock issuable upon the exercise of the Series Rights, at a price equal to or greater than the effective price paid in the offering, or at all.

***Your interest in our company may be diluted as a result of the offering.***

If you do not fully exercise your basic subscription rights or some or all of your Series Rights, you will, at the completion of this offering, own a smaller proportional interest in our company on a fully diluted basis than would have been the case if you had fully exercised your basic subscription rights or such Series Rights. The magnitude of the reduction of your percentage ownership will depend upon the extent to which you and others subscribe in the offering. Based on shares outstanding as of November 19, 2024, after giving effect to this offering (assuming the sale of all offered units and no exercise of the Series Rights included in the units), we would have up to 56,461,489 shares of common stock outstanding, representing an increase in outstanding shares by approximately 163%.

***The Subscription Rights, Units and Series Rights are non-transferable and thus there will be no market for them.***

You cannot transfer or sell your Subscription Rights, units or Series Rights to anyone else. We do not intend to list such securities for trading on any securities exchange or trading market.

***Holder of the Series Rights issued in this offering will have no rights as holder of common stock until they exercise their Series Rights and acquire the common stock.***

Until holders of the Series Rights issued in this offering acquire the shares of common stock upon exercise of such Series Rights, they will have no rights with respect to the shares of common stock issuable upon the exercise of such Series Rights. Upon exercise of the Series Rights, the holders thereof will be entitled to exercise the rights of the holders of our common stock only as to matters for which the record date occurs after the exercise date of the Series Rights.

***The market price of common stock may never exceed the exercise price of the Series Rights.***

The Series Rights will be exercisable commencing on their date of issuance and expire on their respective expiration date. The market price of common stock may never exceed the exercise price of the Series Rights prior to their date of expiration. Any Series Rights not exercised by their date of expiration will expire without residual value to holders.

***During the period immediately following the expiration of this offering, you may not be able to resell any shares of common stock that you purchase in the offering or upon exercise of your Series Rights.***

If you exercise your Subscription Rights, you may not be able to resell shares of common stock purchased by exercising your Subscription Rights, or shares of common stock issued to you upon the exercise of your Series Rights, until you (or your broker or other nominee) have received a book-entry representing the underlying shares. Although we will endeavor to issue the book entries promptly, there may be some delay between the expiration date of this offering, or the exercise date of your Series Rights and the time that we issue the book-entry statements.

In addition, to the extent you are an affiliate, as defined in Rule 144 under the Securities Act, the resale of shares of common stock by you will be subject to certain restrictions, including volume limitations, under Rule 144.

***We may have broad discretion in the use of a portion of the net proceeds from this offering and may not use those net proceeds effectively.***

Assuming the sale of all offered units and no exercise of the Series Rights, we estimate our net proceeds from this offering will total approximately \$\_\_ million, after deducting fees and expenses of Moody Capital, as dealer-manager, and our other estimated offering expenses. If the Series Rights are exercised at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), we will receive additional gross proceeds from this offering of approximately \$\_\_ million from the sale of the remaining 35,000,000 shares available. We intend to use the net proceeds from this offering to (i) provide funding for the repurchase of our series 2 convertible preferred stock from B2 FIE V LLC, (ii) reduce a portion of the outstanding balance under our credit facility with Waterfall, (iii) finance the costs of potential acquisitions or investments in competitive and complementary payment solution businesses, and (iv) apply the balance for working capital and general corporate purposes. In the event we raise less than approximately \$20.0 million in gross cash proceeds in this offering, we expect to prioritize the use of the net proceeds of this offering for funding the repurchase of our series 2 convertible preferred stock and reducing the outstanding balance under our credit agreement. Any additional net proceeds received from the exercise of the Series Rights will be used for further reducing the outstanding balance under our credit agreement, as well as financing potential business acquisitions and for general corporate purposes. However, our management will have broad discretion in the application of the net proceeds, and we may spend or invest the net proceeds in a way with which stockholders disagree. The failure by management to apply these funds effectively could harm our business and financial condition. Pending their use, we may invest the net proceeds in a manner that does not produce income or that loses value.



***If we terminate this offering, neither we nor the subscription agent for the offering will have any obligation to you except to promptly return your subscription payments.***

We may terminate this offering at any time. If we do, neither we nor the subscription agent for the offering will have any obligation to you with respect to Subscription Rights or the Series Rights that you have exercised, other than to promptly return, without interest or deduction, the subscription payment you delivered to the subscription agent.

***If you do not act on a timely basis and follow subscription instructions, your exercise of Subscription Rights or the Series Right may be rejected.***

Holders of common stock who desire to purchase units in this offering or exercise their Series Rights to purchase shares of common stock must act on a timely basis to ensure that all required forms and payments are actually received by the subscription agent for the offering prior to 5:00 p.m., Eastern time, on the applicable expiration date, unless this offering is extended. If you are a beneficial owner of shares of common stock and you wish to exercise your Subscription Rights or Series Rights, you must act promptly to ensure that your broker, custodian bank or other nominee (including any mobile investment platform) acts for you and that all required forms and payments are actually received by your broker, custodian bank or other nominee (including any mobile investment platform) in sufficient time to deliver such forms and payments to the subscription agent in order to exercise your Subscription Rights or Series Rights by 5:00 p.m., Eastern time, on the applicable expiration date, unless extended. We will not be responsible if your broker, custodian or nominee (including any mobile investment platform) fails to ensure that all required forms and payments are actually received by the subscription agent in a timely manner.

If you fail to complete and sign the required subscription forms, send an incorrect payment amount, or otherwise fail to follow the subscription procedures that apply to your exercise of the Subscription Rights and Series Rights, the subscription agent for the offering may, depending on the circumstances, reject your subscription or accept it only to the extent of the payment received. Neither we nor the subscription agent undertakes to contact you concerning an incomplete or incorrect subscription form or payment, nor are we or the subscription agent under any obligation to correct such forms or payment. We have the sole discretion to determine whether a subscription exercise properly follows the subscription procedures.

***You may not receive all of the units for which you subscribe under the over-subscription privilege.***

Holders who fully exercise their basic subscription rights will have the right, pursuant to their over-subscription privileges, to purchase additional units to the extent other rights holders do not exercise their basic subscription rights in full. Over-subscription privileges will be allocated pro rata among rights holders who over-subscribe, based on the number of over-subscription units for which the holders have subscribed. We cannot guarantee that you will receive all, or a significant portion, of the units for which you subscribe pursuant to your over-subscription privilege as all basic subscription rights exercised will be honored first and all over-subscription privileges will be honored second. Over-subscription privileges are subject to pro rata allocation of those additional units to participating rights holders in proportion to the number of over-subscription units for which they subscribed.

If the number of units allocated to you is less than your subscription request, the excess funds held by the subscription agent on your behalf will be promptly returned to you, without interest or penalty, after this offering has expired, and we will have no further obligations to you.

***Your receipt of Subscription Rights may be treated as a taxable dividend to you.***

The U.S. federal income tax law governing transactions such as this offering is complex and does not speak directly to the consequences of certain aspects of the offering. Although we do not believe a stockholder's receipt of Subscription Rights pursuant to the offering should be treated as a taxable distribution for U.S. federal income tax purposes, our position is not binding on the IRS or the courts. If this position were finally determined by the IRS or a court to be incorrect, your receipt of Subscription Rights may be treated as the receipt of a distribution equal to the fair market value of the rights, and may result in taxable dividend income to the extent of our current and accumulated earnings and profits, with any excess being treated as a return of basis to the extent thereof and then as capital gain. See "Material U.S. Federal Income Tax Considerations."

***Our ability to use net operating loss carryforwards to offset future taxable income may be subject to certain limitations.***

As of December 31, 2023, we had federal and state net operating loss (“NOL”) carryforwards of \$72,697,376 and \$21,800,909, respectively, available to offset future income. Our federal loss carryforwards do not expire. However, these NOL carryforwards may be subject to annual limitations under Section 382 of the Internal Revenue Code of 1986, as amended (the “Code”) due to ownership changes that could impact future realization.

In general, if an ownership change occurs for the purpose of Section 382 of the Code, our ability to use NOL carryforwards and certain credits to reduce tax payments will be generally limited to an annual amount based on the fair market value of our stock immediately prior to the ownership change multiplied by the long-term tax-exempt rate. The determination of whether an ownership change has occurred for the purpose of Section 382 of the Code is complex. Generally, a corporation will have undergone an ownership change if shareholders owning at least 5% of the stock have increased their collective holdings by more than 50% during the prior three-year period. The rights offering is not currently expected to result in an ownership change, but it may increase the likelihood that we undergo an ownership change for purposes of Section 382 of the Code in the future, which would limit our ability to use any NOL carryforwards as described above. Moreover, no assurances can be given that an ownership change under Section 382 of the Code has not occurred prior to the rights offering or will not occur as a result of the rights offering. If all stockholders do not exercise in full their Subscription Rights, Series A Rights, Series B Rights or Series C Rights, the purchase of shares of our common stock may result in a shift in this beneficial ownership that would trigger an ownership change with respect to our stock. See “*The Rights Offering — Limitation on the Purchase of Units*” for a description of certain limitations on purchase.

***Moody Capital, as dealer-manager, is not acting as an underwriter.***

Moody Capital will act as dealer-manager for this offering and, in that capacity, will provide marketing assistance in connection with this offering. Moody Capital is not underwriting this offering. Moody is not making any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), shares of common stock or Series Rights. Moody Capital will not be subject to any liability to us in rendering services to us except for an act involving bad faith, willful misconduct or gross negligence.

***Because we do not have a standby purchase agreement, backstop commitment or similar arrangement in connection with this offering, the net proceeds we receive from the offering may be less than we intend.***

We have currently not entered into any standby purchase agreement, backstop commitment or similar arrangement in connection with this offering, other than NRNS’s indication to purchase up to approximately \$10.6 million of units through the conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS, if and to the extent there are unsubscribed units upon the expiration of the offering of the Subscription Rights. We therefore cannot assure you that any of our stockholders will exercise all or any part of their Subscription Rights. If rights holders subscribe for fewer units than anticipated, the net proceeds we receive from this offering could be significantly reduced. Regardless of whether this offering is fully subscribed or we do enter into a standby purchase agreement, backstop commitment or similar arrangement, we may need to raise additional capital in the future.

We may in the future enter into a standby purchase agreement, backstop commitment or similar arrangement in connection with this offering if we are able to negotiate commercially reasonable terms with a standby purchaser or backstop purchaser. We cannot assure you that such an arrangement will be available on commercially reasonable terms and if we are unable to negotiate commercially reasonable terms for a standby purchase agreement, backstop commitment or similar arrangement in connection with this offering we would not enter into such an arrangement. In the event we enter into a standby purchase agreement, backstop commitment or similar arrangement in connection with this offering we will file a Current Report on Form 8-K with a summary of the terms of such arrangement.

***We have not paid dividends and do not expect to pay dividends in the future. Any return on investment may be limited to the value of our common stock.***

We have not paid cash dividends on our common stock and do not anticipate doing so in the foreseeable future. The payment of dividends on our common stock will depend on earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay

dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates. We are additionally restricted under our Credit Agreement from declaring or making any dividends in cash or stock, subject to certain limited permitted dividend payments assuming we have positive net income and there is no existing default or event of default thereunder.

***Because you may not revoke or change your exercise of the Series Rights, you could be committed to buying shares above the prevailing market price at the time this offering is completed.***

Once you exercise your Series Rights, you may not revoke or change the exercise. The market price of our common stock may decline before the Series Rights expire. If you exercise your Series Rights, and, afterwards, the market price of our common stock decreases below the Unit Subscription Price, you will have committed to buying shares of our common stock at a price above the prevailing market price and could have an immediate unrealized loss.

Our common stock is traded on The Nasdaq Capital Market under the symbol “FPAY.” The closing price of the common stock on November 19, 2024 was \$1.62 per share. There can be no assurances that the market price of our common stock will equal or exceed the Unit Subscription Price at the time of exercise or at the expiration of this offering.

***Because the Series Rights are executory contracts, they may have no value in a bankruptcy or reorganization proceeding.***

In the event a bankruptcy or reorganization proceeding is commenced by or against us, a bankruptcy court may hold that any then-unexercised Series Rights are executory contracts subject to rejection by us with the approval of a bankruptcy court. As a result, even if we have sufficient funds, holders may not be entitled to receive any consideration for their Series Rights or may receive an amount less than they would be entitled to if they had exercised their Series Rights prior to the commencement of any such bankruptcy or reorganization proceeding.

***Our executive officers may face clawback and compliance obligations, including insider trading restrictions, which could impact our business, financial position and reputation.***

Our executive officers may be subject to repayment obligations if we are required to restate our financials due to material noncompliance with financial reporting requirements. In compliance with the Dodd-Frank Act, FlexShopper has adopted a clawback policy that allows us to recover certain incentive-based compensation from executive officers in the event of such a restatement, which could affect executive compensation and impact our financial position. The enforcement of this policy may also affect our ability to attract and retain qualified executives, and any required restatement could harm our business, reputation and stock price.

In addition, FlexShopper is committed to preventing unlawful trading through its Insider Trading Policy, which applies to all directors, officers, employees and consultants. This policy prohibits transactions based on material nonpublic information, includes mandatory blackout periods, and requires pre-clearance for senior personnel. Any violation of this policy could result in legal and reputational harm, including potential fines and penalties, and negatively impact our business and shareholder value.

#### **Risks Related to our Business**

Investors should carefully consider the risks and uncertainties and all other information contained or incorporated by reference in this prospectus, including the risks and uncertainties discussed under “*Risk Factors*” in our 2023 Annual Report, as may be amended from time to time, and in subsequent filings that are incorporated herein by reference. All these risk factors are incorporated by reference herein in their entirety. These risks and uncertainties are not the only ones facing us. Our business, financial condition or results of operations could be materially adversely affected by any of these risks. The trading price of our common stock could decline due to any of these risks, and you may lose all or part of your investment. This prospectus and the incorporated documents also contain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks mentioned in this prospectus

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 or the Securities Act, Section 21E of the Securities Exchange Act of 1934 or the Exchange Act, and the Private Securities Litigation Reform Act of 1995. Forward-looking statements are those that reflect our current views with respect to future events and financial performance, and all statements other than statements of historical fact are statements that are, or could be, deemed forward-looking statements. In some cases, you can identify forward-looking statements by terms such as “may,” “might,” “will,” “intend,” “should,” “could,” “can,” “would,” “believe,” “expect,” “seek,” “anticipate,” “intend,” “estimate,” “plan,” “target,” “project,” “forecast,” “envision” or the negative of these terms, and other similar phrases. All statements contained in this prospectus and any prospectus supplement regarding future financial position, sales, costs, earnings, losses, cash flows, other measures of results of operations, capital expenditures or debt levels and plans, objectives, outlook, targets, guidance or goals are forward-looking statements.

You should not place undue reliance on our forward-looking statements because they are not guarantees of future performance or expectations, and involve risks and uncertainties. Our forward-looking statements are based on the information currently available to us and speak only as of the date on the cover of this prospectus, the date of any prospectus supplement, or, in the case of forward-looking statements incorporated by reference, the date of the filing that includes the statement. Although we believe that the expectations reflected in these forward-looking statements are reasonable, these statements relate to future events or our future operational or financial performance, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements. Except as required by applicable law, we assume no obligation, and disclaim any obligation, to update forward-looking statements whether as a result of new information, events or otherwise.

The forward-looking statements contained in this prospectus are set forth principally in “Risk Factors” above, and in “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Business” and other sections in our 2023 Annual Report and in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Risk Factors” and other sections in our Latest Form 10-Q. In addition, there may be events in the future that we are not able to predict accurately or control which may cause actual results to differ materially from expectations expressed or implied by forward-looking statements. Please consider our forward-looking statements in light of these risks as you read this prospectus and any prospectus supplement.

## QUESTIONS AND ANSWERS RELATING TO THIS OFFERING

*The following are examples of what we anticipate will be common questions about this offering. The answers are based on selected information included elsewhere in this prospectus. The following questions and answers do not contain all of the information that may be important to you and may not address all of the questions that you may have about this offering. This prospectus, including the documents we incorporate by reference, contains more detailed descriptions of the terms and conditions of this offering and provides additional information about our company and our business, including potential risks related to our business, the offering and common stock.*

### **What is the offering?**

We are distributing, at no charge, non-transferable subscription rights (the “Subscription Rights”) entitling holders of our common stock and holders of our series 1 convertible preferred stock and series 2 convertible preferred stock as of the record date of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, to purchase units at a subscription price equal to \$ \_\_\_\_ per unit (the “Unit Subscription Price”).

### **What securities comprise the units?**

Each unit consists of one share of common stock, one series A common stock purchase right (the “Series A Right”), one series B common stock purchase right (the “Series B Right”), and one series C common stock purchase right (the “Series C Right”) and, collectively with the Series A Right and Series B Right, the “Series Rights”), with each of the Series Rights entitling the holder to purchase one share of our common stock commencing upon the date of issuance. Shares of common stock and Series Rights comprising a unit may only be purchased as a unit but will be issued separately. The Subscription Rights, units, and Series Rights are non-transferable. We refer to the offering of the Subscription Rights and the Series Rights as the “offering.”

### **What are the terms of the Series Rights included in the units?**

Each of the Series Rights is exercisable commencing on their date of issuance at an exercise price equal to the *higher* of (x) the Unit Subscription Price or (y) (i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent. The Series Rights will be exercisable for cash only in U.S. dollars. If at the expiration date of the Series Rights, the exercise price as determined above is lower than the initial maximum amount paid, any excess subscription amount paid by a holder will be promptly returned to the holder, without interest or penalty.

### **Will the Series Rights be listed?**

No. The Series Rights will not be listed for trading on any securities exchange or trading market.

### **What are the basic subscription rights?**

For each basic subscription right held, each rights holder has the opportunity to purchase one unit at the Unit Subscription Price, provided that (a) basic subscription rights may be exercised in aggregate only to purchase whole numbers of units, (b) the total Unit Subscription Price payable upon any exercise of Subscription Rights will be rounded to the nearest whole cent and (c) only whole numbers of shares of common stock, Series Rights exercisable for whole numbers of shares will be issued to a holder in this offering, with any right to fractional share to which a holder would otherwise be entitled being terminated without consideration to the holder. We have granted to you,

as a holder of common stock as of the record date, two basic subscription rights for each whole share of common stock you beneficially owned or issuable upon the conversion of a preferred stock owned. For example, if you owned 100 shares of common stock as of the record date, you would receive 200 basic Subscription Rights and would have the right to purchase 200 units, comprising 200 shares of common stock, Series A Rights to purchase 200 shares of common stock, Series B Rights to purchase 200 shares of common stock and Series C Rights to purchase 200 shares of common. If all of the Series Rights are exercised in full, you would receive a total of an additional 600 shares of common stock. You may exercise all, a portion or none, of your basic subscription rights. If you exercise fewer than all of your basic subscription rights, however, you will not be entitled to purchase any additional units pursuant to the over-subscription privilege. See “*The Rights Offering — Limitation on the Purchase of Units*” for a description of certain limitations on purchase and “— What is the over-subscription privilege?” below.

#### **What is the over-subscription privilege?**

If you exercise all of your basic subscription rights in the subscription offering, you will have the right, which we refer to as the over-subscription privilege, to purchase additional units that remain unsubscribed as a result of any unexercised basic subscription rights. We refer to the basic subscription rights and over-subscription privilege together as Subscription Rights. You should indicate on your subscription certificate, or the form provided by your nominee if your shares are held in the name of a nominee, how many additional units you would like to purchase pursuant to your over-subscription privilege. You are entitled to exercise your over-subscription privilege only if you exercise your basic subscription rights in full. If over-subscription requests exceed the number of units available, however, we will allocate the available units pro rata among rights holders who over-subscribed based on the number of over-subscription units for which they have subscribed. See “*The Rights Offering — Limitation on the Purchase of Units*” for a description of certain limitations on purchase and “*The Rights Offering — Over-Subscription Privilege.*”

To properly exercise your over-subscription privilege, you must deliver the subscription payment related to your over-subscription privilege before the Subscription Rights offering expires. Because we will not know the total number of unsubscribed units before the subscription offering expires, if you wish to maximize the number of units you purchase pursuant to your over-subscription privilege, you will need to deliver payment in an amount equal to the aggregate Unit Subscription Price for the maximum number of units available, assuming that no stockholder other than you has purchased any units pursuant to such stockholder’s basic subscription right and over-subscription privilege. Any excess subscription payments received by the subscription agent will be promptly returned without interest or penalty.

We do not intend to extend the subscription period for the subscription offering. If the subscription period is extended (the “extension period”), (i) all basic subscription rights exercised prior to the beginning of the extension period will be honored first, (ii) all over-subscription privileges exercised prior to the beginning of the extension period will be honored second, and (iii) all basic subscription rights and over-subscription privileges exercised during the extension period will be filled on a first-come, first-serve basis. Any subscription received during the extension period but after the date on which the Subscription Rights issued in the Subscription Rights are fully subscribed will not be allocated any units. The subscription agent will notify rights holder of the number of units, if any, allocated to each promptly after the completion of allocation process.

There is no over-subscription privilege applicable to the Series Rights.

#### **May the Subscription Rights or Series Rights that I exercise be reduced for any reason?**

We expect that there will be a sufficient number of units available to honor your basic subscription rights in full. As a result, if the subscription offering is completed, you will receive whole units to the full extent you have properly exercised your basic subscription rights in whole or in part for such whole units. Sufficient units may not be available to honor your request for additional units pursuant to the over-subscription privilege. If exercises of over-subscription privileges exceed the number of units available, we will allocate the available units pro-rata among rights holders who over-subscribed based on the number of over-subscription units for which the holders have subscribed.

The maximum number of shares of our common stock available for issuance in this offering is 70,000,000 shares. If at any time the issuance of shares pursuant to the exercise of the Subscription Rights or the Series Rights exceeds such share limitation, no additional shares will be issued, the offering will be terminated, and any outstanding rights will immediately expire and the amount subscribed for by each holder will be proportionally reduced.

In the event that the exercise by a holder of the basic subscription right or the over-subscription privilege could, as determined by us in our sole discretion, potentially result in a limitation on our ability to use net operating losses, tax credits and other tax attributes, which we refer to as the “Tax Attributes,” under the Internal Revenue Code of 1986, as amended, and rules promulgated by the Internal Revenue Service, we may, but are under no obligation to, reduce the exercise by such stockholder of the basic subscription right or the over-subscription privilege to such number of shares of common stock as we, in our sole discretion, shall determine to be advisable in order to preserve its ability to use the Tax Attributes.

**Why are we conducting this offering?**

We are conducting this offering as part of our strategic plan to raise funds aimed at accelerating our capital structure initiatives. By repurchasing preferred stock at a discount and reducing our outstanding debt, we will lower our preferred stock PIK (payment in kind) dividend accrued and debt interest expense and the offering will provide additional liquidity for addressing other general corporate needs. Our board of directors has approved this offering and has evaluated and determined the pricing and financial terms of the securities offered.

After careful review and analysis by our board of directors, we believe this offering is in the best interests of our company and its stockholders. However, the board is not making any recommendation regarding your exercise of the Subscription Rights and Series Rights.

The board considered and evaluated several factors related to this offering, including:

- our current capital resources and indebtedness, and our future need for additional liquidity and capital;
- our need for increased financial flexibility in order to enable us to achieve our business plan;
- the size and timing of the offering and alternative securities to be offered;
- the most effective use of proceeds to decrease dividends and interest expense;
- the potential dilution to our current shareholders if they choose not to participate in the offering;
- the impact on our cumulative net operating losses and their potential limitation;
- the non-transferability of the Subscription Rights; and
- alternatives available for raising capital.

**Am I required to exercise the Subscription Rights or Series Rights that I receive in this offering?**

No. You may exercise any number of your Subscription Rights or Series Rights, or you may choose not to exercise any of your Subscription Rights or Series Rights. If, however, you choose not to exercise your Subscription Rights or Series Rights or you exercise less than your full amount of Subscription Rights or Series Rights and other stockholders fully exercise their Subscription Rights and Series Rights, the percentage of common stock owned by other stockholders will increase relative to your ownership percentage and your voting and other rights in our company will likewise be diluted — see “Description of Securities” for a description of the voting and liquidation rights of our common stock and preferred stock.

**May I sell, transfer or assign my Subscription Rights or Series Rights?**

No. You may not transfer, sell or assign any of the Subscription Rights or the Series Rights distributed to you, except that such rights will be transferable by operation of law (*e.g.*, by death). The Subscription Rights and Series Rights will not be listed on any securities exchange or trading market.

The shares of common stock and Series Rights comprising the units will be issued separately. Units will not be issued as a separate security and will be non-transferable.

Shares of common stock issued upon the exercise of the Subscription Rights and the Series Rights are expected to be listed on The Nasdaq Capital Market under the symbol “FPAY.”

**How do I exercise my Subscription Rights or Series Rights if my shares of common stock are held in my name?**

If you hold your shares of common stock in your name and you wish to participate in this offering, you must deliver a properly completed and duly executed subscription certificate and Series Rights certificate and all other required subscription documents, together with payment of the Unit Subscription Price and the maximum price for Series Rights exercised, to the subscription agent for the offering before 5:00 p.m., Eastern time, on the applicable expiration date.

Please follow the delivery instructions on the subscription certificate and Series Rights certificate. Do not deliver documents to us. You are solely responsible for completing delivery of your subscription certificate and Series Rights certificates, all other required subscription documents and subscription payment to the subscription agent. You should allow sufficient time for delivery of your subscription materials to the subscription agent so that the subscription agent receives them by 5:00 p.m., Eastern time, on the applicable expiration date. See “— To whom should I send my forms and payment?” below.

If you send a payment that is insufficient to purchase the number of units you requested or insufficient to exercise the number of rights you requested pursuant to your Series Rights, or if the number of units you requested or the number of rights you requested is not specified in the forms, the payment received will be applied to exercise your Subscription Rights and Series Rights to the fullest extent possible based on the amount of the payment received pursuant to your Subscription Rights and Series Rights. Any payment that is received but not so applied will be refunded to you without interest or penalty (subject to the rounding of the amount so applied to the nearest whole cent).

**What form of payment is required to purchase units or exercise the Series Rights?**

As described in the instructions accompanying the subscription certificate and Series Rights certificate, payments submitted to the subscription agent must be made in U.S. dollars. Checks or bank drafts drawn on U.S. banks should be payable to the order of “Continental Stock Transfer & Trust Company, as the subscription agent for FlexShopper, Inc.”

If you hold your shares of common stock in the name of a broker, dealer, custodian bank or other nominee (including any mobile investment platform), separate payment instructions may apply. Please contact your nominee, if applicable, for further payment instructions.

**How do I exercise my Subscription Rights or Series Right if my shares of common stock are held in the name of a broker, dealer, custodian bank or other nominee?**

If you hold shares of common stock in the name of a broker, dealer, custodian bank or other nominee (including any mobile investment platform) that uses the services of Depository Trust Company, then Depository Trust Company will credit two basic subscription rights to your nominee record holder for each share of common stock that you beneficially owned or issuable upon the conversion of our preferred stock owned as of the record date. If you are not contacted by your nominee (including any mobile investment platform), you should contact your nominee as soon as possible.

**How soon must I act to exercise my Subscription Rights or Series Rights?**

If your shares of common stock are registered in your name and you elect to exercise any of your Subscription Rights or Series Rights, the subscription agent must receive your properly completed and duly executed subscription certificate or Series Rights certificate, all other required subscription documents and full subscription payment, before 5:00 p.m., Eastern time, on the applicable expiration date. If you hold shares in the name of a broker, dealer, custodian bank or other nominee (including any mobile investment platform), your nominee may establish an earlier deadline before the expiration of this offering by which time you must provide the nominee with your instructions and payment to exercise your Subscription Rights or Series Rights.



Although we will make reasonable attempts to provide this prospectus to our stockholders to whom rights are distributed, this offering and all related Subscription Rights and Series Rights will expire at 5:00 p.m., Eastern time, on the applicable expiration date, whether or not we have been able to locate and deliver this prospectus to you or any other stockholder.

**After I exercise my Subscription Rights and Series Rights, can I change my mind?**

No. Once made, all exercises of the Subscription Rights and Series Rights are irrevocable.

**Can this offering be terminated or extended?**

Yes. If we terminate this offering, neither we nor the subscription agent will have any obligation with respect to Subscription Rights or Series Rights that have been exercised except to promptly return, without respect or penalty, any subscription payment the subscription agent received from you and we would not be obligated to issue units to rights holders who have exercised their Subscription Rights or shares of common stock to rights holder who have exercised their Series Rights prior to termination.

We may extend this offering for one or more additional periods in our sole discretion not to exceed 30 days from the initial expiration date, in which case all basic subscription rights and over-subscription privileges exercised during the extension period will be filled on a first-come, first-serve basis. We will announce any extension in a press release issued no later than 9:00 a.m., Eastern time, on the business day after the most recently announced expiration date.

If and to the extent there are unsubscribed units upon the expiration of the offering of the Subscription Rights, NRNS, the manager of which is Howard S. Dvorkin, our Chairman, has indicated to us that it may purchase up to approximately \$10.6 million of units through the conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS. These notes have been issued to NRNS to supplement our credit facilities. All units sold to NRNS will be at the same price and on the same terms as this offering.

**How were the Unit Subscription Price and exercise price of the Series Rights determined?**

The Unit Subscription Price and exercise price of Series Rights were set by our board of directors, considering, among other things, input from the dealer-manager for this offering. The factors considered by our board are discussed in “The Rights Offering — Reasons for this Offering” and “Determination of the Unit Subscription Price and Exercise Price.”

**How was the discount to market price determined by our board of directors for purposes of establishing the Unit Subscription Price and exercise price?**

Our board of directors considered, among other things, the following factors in determining the discount to market price for purposes of establishing the Unit Subscription Price and exercise price:

- the current and historical trading prices of our common stock;
- the price at which holders might be willing to participate in this offering;
- our need for additional capital and liquidity;
- the cost of capital from other sources; and
- comparable precedent transactions, including the percentage of shares offered, the terms of the Subscription Rights and Series Rights being offered, the Unit Subscription Price and exercise price and the discount that the Unit Subscription Price and exercise prices represented to the immediately prevailing closing price of those offerings.

In conjunction with the review of these factors and following discussion with the dealer-manager, our board of directors also reviewed our history and prospects, including our past and present burn rate and cash requirements, our prospects for the future, the outlook for our industry and our current financial condition. Our board of directors believes that the discount to market price should be designed to provide an incentive to our current stockholders to participate in this offering and exercise their rights.

The Unit Subscription Price or exercise price of Series Rights does not necessarily bear any relationship to any established criteria for value, other than the current market price of our common stock on certain dates. You should not consider the Unit Subscription Price or exercise price of Series Rights as an indication of the actual value of our company. We cannot assure you that the market price of our common stock will not decline during or after this offering. You should obtain a current price quote for our common stock before exercising your rights and make your own assessment of our business and financial condition, our prospects for the future, and the terms of this offering. Once made, all exercises of the Subscription Rights and Series Rights are irrevocable.

**Has the board of directors made a recommendation to stockholders regarding the exercise of Subscription Rights or Series Rights under this offering?**

No. Our board of directors has not made, nor will it make, any recommendation to stockholders regarding the exercise of Subscription Rights or the Series Rights in this offering. We cannot predict the price at which shares of our outstanding common stock will trade after this offering. You should make an independent investment decision about whether or not to exercise your Subscription Rights or Series Rights. Rights holders who exercise Subscription Rights or Series Rights risk investment loss on new money invested. We cannot assure you that the market price for common stock will remain above the price payable per share of common stock or the exercise price, or that anyone purchasing units or exercising Series Rights to purchase shares of common stock at the exercise price will be able to sell those shares in the future at the same price or a higher price. If you do not exercise your Subscription Rights or Series Rights, you will lose any value represented by your Subscription Rights or Series Rights, and if you do not exercise your rights in full, your percentage ownership interest and related rights in our company will be diluted.

**By when must I purchase shares of common stock in order to participate in this offering? May I participate in this offering if I sell my common stock after the record date?**

The record date for this offering is 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024. If you purchase shares of our common stock and do not settle such purchase by 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 you will not receive Subscription Rights with respect to such shares. If you own common stock as of the record date, you will receive two Subscription Rights for each share of common stock beneficially owned or issuable upon the conversion of a preferred stock and may participate in this offering even if you subsequently sell your common stock.

**Are there any risks associated with this offering?**

Yes. The exercise of your Subscription Rights and Series Rights involves risks. Exercising your Subscription Rights and Series Rights involves the purchase of common stock and should be considered as carefully as you would consider any other equity investment. Among other things, you should carefully consider the risks described under the heading “Risk Factors” in this prospectus and all other information contained in this prospectus.

**Will the directors and executive officers participate in this offering?**

To the extent they hold common stock as of the record date, our directors and executive officers are entitled to participate in this offering on the same terms and conditions applicable to all other stockholders. None of our directors or executive officers have entered into any binding commitment or agreement to exercise Subscription Rights received in the offering, but some have given indications they intend to participate in the offering at varying levels, though there can be no assurances any of our principal stockholders, directors and executive officers will participate in the offering. Additionally, if and to the extent there are unsubscribed units upon the expiration of the offering of the Subscription Rights, NRNS, the manager of which is Howard S. Dvorkin, our Chairman, has indicated to us that it may purchase up to approximately \$10.6 million of units through the conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS. These notes have been issued to NRNS to supplement our credit facilities. All units sold to NRNS will be at the same price and on the same terms as this offering.

**When will I receive my shares of common stock and Series Rights?**

Holder whose shares are held of record by Cede & Co., the nominee of Depository Trust Company, or by any other depository or nominee on their or their broker-dealers' behalf will have any shares of common stock and the Series Rights comprising units they acquire credited to the account of Cede & Co. or such other depository or

nominee. With respect to all other stockholders, the shares of common stock and all Series Rights will be issued in book-entry, or uncertificated form meaning you will receive a direct registration account book-entry statement from our subscription agent reflecting the ownership of these securities if you are a holder of record of shares, which may take up to 15 business days from the applicable expiration date.

**What effects will this offering have on our outstanding common stock?**

Based on shares of common stock outstanding as of November 19, 2024, assuming the sale of all offered units and no exercise of the Series Rights included in the units, we will have up to approximately 56,461,489 shares of common stock outstanding, representing an increase of approximately 163% of our outstanding shares as of the record date. If you fully exercise your basic subscription rights, your proportional common stock interest in our company will not change. If all of the Series Rights to purchase shares of our common stock are exercised in full at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), we will have up to approximately 91,461,489 shares of common stock outstanding, representing an increase of approximately 326% in our outstanding shares as of the record date. If you exercise only a portion, or none, of your basic subscription rights, your interest in our company will be diluted and your proportional interest in our company will decrease.

The number of shares of common stock outstanding listed above assumes that (a) all of the other shares of common stock outstanding on the record date will remain issued and outstanding and owned by the same persons as of the closing of this offering, and (b) we will not issue any shares of common stock in the period between the record date and the closing date of this offering.

**How much will we receive from this offering, and how will the proceeds be used?**

If all offered units are sold and assuming no exercise of the Series Rights, we estimate our net proceeds from the offering will total approximately \$ \_\_\_ million, after deducting fees and expenses of Moody Capital, as dealer-manager, and our other estimated offering expenses. If the Series Rights are exercised at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), we will receive additional gross proceeds from this offering of approximately \$ \_\_\_ million from the sale of the remaining 35,000,000 shares available. We intend to use the net proceeds from this offering to (i) provide funding for the repurchase of our series 2 convertible preferred stock from B2 FIE V LLC, (ii) reduce a portion of the outstanding balance under our credit facility with Waterfall, (iii) finance the costs of potential acquisitions or investments in competitive and complementary payment solution businesses, and (iv) apply the balance for working capital and general corporate purposes. In the event we raise less than approximately \$20.0 million in gross cash proceeds in this offering, we expect to prioritize the use of the net proceeds of this offering for funding the repurchase of our series 2 convertible preferred stock and reducing the outstanding balance under our credit agreement. Any additional net proceeds received from the exercise of the Series Rights will be used for further reducing the outstanding balance under our credit agreement, as well as financing potential business acquisitions and for general corporate purposes. See “*Use of Proceeds*” for a more detailed description of the intended use of proceeds from this offering.

**If my exercise of Subscription Rights is not valid or if this offering is not completed, will my subscription payment be refunded to me?**

Yes. An escrow agent retained by the subscription agent will hold all funds it receives in escrow until the completion or termination of this offering. If your exercise of Subscription Rights or Series Rights is deemed not to be valid or this offering is not completed, all subscription payments received by the subscription agent will be promptly returned, without interest or penalty, following the expiration of the offering. If you own shares through a nominee (including any mobile investment platform), it may take longer for you to receive your Unit Subscription Price or exercise price repayment because the subscription agent will return payments through your nominee.

**What fees or charges apply if I purchase units in this offering?**

We are not charging any fee or sales commission to issue rights to you or, if you exercise any of your Subscription Rights, to issue units to you. If you exercise your Subscription Rights through a broker, dealer, custodian bank or other nominee (including any mobile investment platform), you are responsible for paying any fees your nominee may charge you.

**What are the U.S. federal income tax consequences of exercising my Subscription Rights or Series Rights?**

For U.S. federal income tax purposes, a rights holder should generally not recognize income or loss in connection with the receipt or exercise of the Subscription Rights or Series Rights in this offering. You should consult your tax advisor as to your particular tax consequences resulting from the offering. For a summary of certain U.S. federal income tax consequences of this offering, see “Material U.S. Federal Income Tax Considerations.”

**To whom should I send my forms and payment?**

If your shares of common stock are held in the name of a broker, dealer, custodian bank or other nominee (including any mobile investment platform), then you should deliver all required subscription documents and subscription payments pursuant to the instructions provided by your nominee. If your shares of common stock are held in your name, then you should send your subscription certificate, all other required subscription documents and your subscription payment by mail to:

Continental Stock Transfer & Trust Company  
1 State Street, 30<sup>th</sup> Floor  
New York, NY 10004  
Attention: Corporate Actions — FlexShopper, Inc.

You and, if applicable, your nominee are solely responsible for completing delivery to the subscription agent your subscription certificate and/or Series Rights certificate, as well as for completing delivery of all other required subscription documents and your subscription payment. You should allow sufficient time for delivery of your subscription materials to the subscription agent and for clearance of payments before applicable expiration date. If you hold your common stock through a broker, dealer, custodian bank or other nominee (including any mobile investment platform), your nominee may establish an earlier deadline before the applicable expiration date.

**Who is the dealer-manager?**

Moody Capital Solutions, Inc (“Moody Capital”) will act as dealer-manager for this offering. Under the terms and subject to the conditions contained in the dealer-manager agreement, Moody Capital will use its commercially reasonable efforts to solicit the exercise of the Subscription Rights and Series Rights. We have agreed to pay Moody Capital certain fees for acting as dealer-manager and to reimburse it for certain expenses incurred in connection with this offering. Moody Capital is not underwriting this offering. Moody Capital is not making any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), shares of common stock or Series Rights.

**Who should I contact if I have other questions?**

If you have any questions regarding this offering, completion of the subscription certificate or any other subscription documents or submitting payment in the offering, please contact MacKenzie Partners, Inc., the information agent, by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com).

## USE OF PROCEEDS

Assuming the sale of all offered units and no exercise of Series A Rights, Series B Right and Series C Rights, we estimate our net proceeds from the offering will total approximately \$\_\_ million, after deducting fees and expenses of Moody Capital, as dealer-manager, and our other estimated offering expenses. If the Series Rights are exercised at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), we will receive additional gross proceeds from this offering of approximately \$\_\_ million from the sale of the remaining 35,000,000 shares available.

We intend to use the net proceeds from this offering to:

***Provide funding for the repurchase of our series 2 convertible preferred stock from B2 FIE V LLC.***

On October 25, 2024, we entered into a Preferred Stock Purchase Option Agreement granting us the right at any time through October 25, 2025 to repurchase and cancel 20,000 shares of our series 2 convertible preferred stock, representing approximately 91% of the shares in such series, at varying purchase prices below the then-current liquidation value of the series 2 convertible preferred stock, ranging from \$20,250,000 to \$22,500,000, depending on when we exercise the option, from B2 FIE V LLC, which acquired the preferred stock in a private placement in June 2016. Each share of series 2 convertible preferred stock is convertible into 266.2942 shares of our common stock or an aggregate of 5,325,888 shares of our common stock, based on the series 2 convertible preferred stock issue price of \$1,000 per share and conversion rate of \$3.76 per share, and accrues dividends through an increase in its liquidation preference at an annual rate equal to 10% of the original series 2 convertible preferred stock issue price per share. The purchase price of the series 2 convertible preferred stock, which was negotiated between the parties, represents approximately 50% of the current liquidation preference of the preferred stock, which was approximately \$44.2 million as of September 30, 2024. The terms of the preferred stock repurchase provide that if we exercise the option and within 12 months following the date of the Preferred Stock Purchase Option Agreement we complete a liquidity event or a change of control occurs, we would be required to make an incremental “true-up” payment to B2 FIE V LLC. This payment would be in an amount equal to the difference between our share price before the announcement of the liquidity event or change of control and the increased value of our share price, if any, after announcing the transaction, applied to the number of repurchased preferred shares on an as-if-converted to common stock basis. A discount of 8.3% is applied to this payment every 30-day period following the closing of the preferred stock repurchase. Additionally, assuming the shares of series 2 preferred stock are repurchased, and we are awarded monetary damages or a settlement award in connection with our patent infringement lawsuits, we would be required to pay a portion of those proceeds to B2 FIE V LLC. That portion would be determined by the increase in the value of our share price, if any, after announcing the award as applied to the number of repurchased preferred shares on an as-if-converted to common stock basis, provided that we are not required to pay B2 FIE V LLC more than \$4.00 per share on any share increase in value or 18% of the award. We intend to use a substantial portion of the net proceeds of this offering to repurchase the shares of series 2 convertible preferred stock from B2 FIE V LLC.

***Reduce the outstanding balance under our credit facility with Waterfall Asset Management, LLC.*** On March 27, 2024, through a wholly owned subsidiary (“Borrower”), we entered into a credit agreement (the “Credit Agreement”) with Computershare Trust Company, National Association as paying agent, various lenders from time to time party thereto and Powerscourt Investment 50, LP, an affiliate of Waterfall Asset Management, LLC, as administrative agent and lender (“Lender”). The Borrower is permitted to borrow funds under the Credit Agreement based on our cash on hand and the amortized order value of our eligible leases less certain deductions described in the Credit Agreement. Under the terms of the Credit Agreement, subject to the satisfaction of certain conditions, the Borrower may borrow up to \$150 million from the Lender until the Commitment Termination Date and must repay all borrowed amounts one year thereafter, on the date that is 12 months following the Commitment Termination Date (unless such amounts become due or payable on an earlier date pursuant to the terms of the Credit Agreement). The Commitment Termination Date is April 1, 2026. The Lender was granted a security interest in certain leases and loans as collateral under the Credit Agreement. The interest rate charged on amounts borrowed is SOFR plus 9% per annum. We will pay the Lender a fee in an amount equal to 1% of the aggregate commitments as of March 27, 2024, payable in 12 monthly installments on each interest payment date commencing April 2024. As of September 30, 2024, the outstanding balance under the Credit Agreement was \$131.4 million and amounts borrowed bear interest at 14.21%. We intend to use a portion of the net proceeds of this offering to reduce the outstanding balance (and interest payable) under the Credit Agreement.

***Finance potential acquisitions of competitive companies.*** We may also use a portion of the net proceeds of this offering to finance the costs of acquisitions or investments in competitive and complementary payment solution businesses as a part of our growth strategies. We currently have no commitments with respect to any such acquisitions or investments.

***Apply the balance for working capital and general corporate purposes.*** Any remaining net proceeds from this offering after applied to the above uses will be used for working capital and general corporate purposes, including investing in our sales and marketing, product enhancement efforts, and payment of officers' salaries, consulting fees, professional fees, public reporting costs, computer equipment costs, office-related expenses and other corporate expenses, including interest and overhead. We may allocate funds from other sources to fund some or all of these activities.

In the event we raise less than approximately \$20.0 million in gross cash proceeds in this offering, we expect to prioritize the use of the net proceeds of this offering for funding the repurchase of our series 2 convertible preferred stock and reducing the outstanding balance under our credit agreement. If the Series Rights are exercised at the Unit Subscription Price (assuming stockholders exercise Subscription Rights for all the units that we are offering), we will receive additional gross proceeds from the offering of approximately \$\_\_\_ million from the sale of the remaining 35,000,000 shares available. Any additional net proceeds received from the exercise of the Series Rights will be used for further reducing the outstanding balance under our credit agreement, as well as financing potential business acquisitions and for general corporate purposes.

Certain of our directors and executive officers may subscribe for the Subscription Rights in this offering; however, we do not currently know the number of units such directors and executive officers will obtain upon exercise of the Subscription Rights and the Series Rights and thus are unable to determine the gross proceeds we will receive from subscriptions by our directors and executive officers.

In the event NRNS, the manager of which is Howard S. Dvorkin, our Chairman, elects to convert the subordinated promissory notes payable by us to NRNS into units following the expiration of the offering of the Subscription Rights, we will not receive any cash proceeds from the sale of the units to NRNS, from the conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS in the amount of up to approximately \$10.6 million.

We will pay estimated expenses of approximately up to \$\_\_\_ in connection with the offering (assuming no exercise of the Subscription Rights or Series Rights by our directors and executive officers).

Net offering proceeds not immediately applied to the uses summarized above will be invested in short-term, investment-grade, interest-bearing instruments, certificates of deposit, or direct or guaranteed obligations of the U.S. government.

## CAPITALIZATION

The table below sets forth our capitalization as of September 30, 2024 on an actual basis and on an adjusted basis to reflect our issuance of the units offered pursuant to this prospectus, assuming the sale of 35,000,000 shares of our common stock at \$\_\_ per unit and no exercise of the Series Rights in this offering and our receipt and application of the proceeds from this offering, after deducting fees and expenses of Moody Capital, as dealer-manager, and our other estimated offering expenses. This table should be read in conjunction with “Use of Proceeds” in this prospectus and our consolidated audited and unaudited financial statements and the notes thereto incorporated by reference in this prospectus.

	As of September 30, 2024 (unaudited)	
	Actual	As Adjusted
<b>Long-term debt</b>	\$ 138,829,295	\$
<b>Stockholders’ equity</b>		
Series 1 Convertible Preferred Stock, \$0.001 par value – authorized 250,000 shares, issued and outstanding 170,332 shares at \$5.00 stated value issued and outstanding at September 30, 2024	851,660	
Series 2 Convertible Preferred Stock, \$0.001 par value – authorized 25,000 shares, issued and outstanding 21,952 shares at \$1,000 stated value	21,952,000	
Common Stock, \$0.0001 par value – authorized 40,000,000 shares, issued 21,988,711 shares at September 30, 2024 and 21,752,304 shares at December 31, 2023	2,200	
Treasury Shares, at cost- 526,822 shares at September 30, 2024 and 164,029 shares at December 31, 2023	(563,537)	
<b>Additional paid-in capital</b>	42,841,302	
<b>Accumulated deficit</b>	(35,275,053)	
<b>Total stockholders’ equity</b>	29,808,572	
<b>Total capitalization</b>	\$ 168,637,867	\$

The table above excludes:

- \$26,525,613 of cumulative accrued dividends on our series 2 convertible preferred stock;
- 225,231 shares of common stock issuable upon the conversion of our outstanding series 1 convertible preferred stock;
- 5,845,695 shares of common stock issuable upon the conversion of our outstanding series 2 convertible preferred stock;
- 5,073,447 shares of common stock reserved for issuance upon the exercise of our outstanding stock options;
- 2,255,184 shares of common stock reserved for issuance upon the exercise of our outstanding warrants;
- 937,499 shares of common stock reserved for issuance under our equity incentive plan; and
- 35,000,000 shares of common stock issuable upon the exercise of the Series Rights sold in this offering (assuming the sale of all offered units).

The above table excludes the possible conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS in the amount of up to \$10.6 million as described in the prospectus. The effect of the conversion would essentially be to reduce our total liabilities by such amount as of September 30, 2024, on an adjusted basis.

## **MARKET FOR COMMON STOCK AND DIVIDEND POLICY**

Our common stock is traded on The Nasdaq Capital Market under the symbol “FPAY.” As of November 19, 2024, the closing price of the common stock as reported on The Nasdaq Capital Market was \$1.62 per share. As of November 19, 2024, there were approximately 126 holders of record of common stock. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners but whose shares are held in street name by brokers and other nominees (including any mobile investment platform).

We have not paid or declared any cash dividends on our common stock and do not anticipate doing so in the foreseeable future. The payment of dividends on our common stock will depend on earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates. We are additionally restricted under our Credit Agreement from declaring or making any dividends in cash or stock, subject to certain limited permitted dividends payment assuming we have positive net income and there is no existing default or event of default thereunder.



## THE RIGHTS OFFERING

*Before deciding whether to exercise your Subscription Rights and Series Rights, you should carefully read this prospectus, including the information set forth under the heading “Risk Factors” and the information incorporated by reference into this prospectus.*

### Reasons for this Offering

We are conducting this offering as part of our strategic plan to raise funds aimed at accelerating our capital structure initiatives. By repurchasing preferred stock at a discount and reducing our outstanding debt, we will lower our preferred stock PIK (payment in kind) dividend accrued and debt interest expense and the offering will provide additional liquidity for addressing other general corporate needs. Our board of directors has approved this offering and has evaluated and determined the pricing and financial terms of the securities offered.

After careful review and analysis by our board of directors, we believe this offering is in the best interests of our company and its stockholders. However, the board is not making any recommendation regarding your exercise of the Subscription Rights and Series Rights.

The board considered and evaluated several factors related to this offering, including:

- our current capital resources and indebtedness, and our future need for additional liquidity and capital;
- our need for increased financial flexibility in order to enable us to achieve our business plan;
- the size and timing of the offering and alternative securities to be offered;
- the most effective use of proceeds to decrease dividends and interest expense;
- the potential dilution to our current shareholders if they choose not to participate in the offering;
- the impact on our cumulative net operating losses and their potential limitation;
- the non-transferability of the Subscription Rights; and
- alternatives available for raising capital.

### Terms of this Offering

We are distributing, at no charge, non-transferable subscription rights (the “Subscription Rights”) entitling holders of our common stock and holders of our series 1 convertible preferred stock and series 2 convertible preferred stock as of the record date, whom we refer to as rights holders or you. Your Subscription Rights will consist of:

- your basic subscription right, which will entitle you to purchase one unit for each Subscription Right; and
- your over-subscription privilege, which will be exercisable only if you exercise your basic subscription right in full and will entitle you to purchase additional units for which other rights holders do not subscribe, subject to the pro rata allocations and ownership limitation described in “— Over-Subscription Privilege.”

All units are being offered and sold at a subscription price equal to \$ \_\_\_\_ per unit (the “Unit Subscription Price”).

### Units

Each unit will consist of:

- one share of common stock;
- one Series A Right exercisable for one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price.

- one Series B Right exercisable for one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price; and
- one Series C Right exercisable for one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price.

Shares of our common stock and the Series Rights comprising the units may only be purchased as a unit, but will be issued separately. Subscription Rights and Series Rights will not be transferable. Subscription Rights and Series Rights may only be exercised in aggregate for whole numbers of units.

Subscription Rights may be exercised at any time during the subscription period, which commences on \_\_\_\_, 2024, and ends at 5:00 p.m., Eastern time, on \_\_\_\_, 2024, the expiration date, unless extended by us. If and to the extent there are unsubscribed units upon the expiration of the offering of the Subscription Rights, NRNS, the manager of which is Howard S. Dvorkin, our Chairman, has indicated to us that it may purchase up to approximately \$10.6 million of units through the conversion of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS. These notes have been issued to NRNS to supplement our credit facilities. All units sold to NRNS will be at the same price and on the same terms as this offering.

Series A Rights, Series B Rights and Series C Rights may be exercised commencing on their date of issuance and continuing respectively, 30, 60 and 90 days following the closing of the Subscription Rights offering.

The shares of common stock issued upon the exercise of Subscription Rights and Series Rights are expected to be listed on The Nasdaq Capital Market under the symbol “FPAY.” We will not apply to list the Subscription Rights or Series Rights for trading on The Nasdaq Capital Market. The Subscription Rights will be evidenced by subscription certificates that will be mailed to stockholders, except as discussed below under “Foreign Stockholders.”

For purposes of determining the number of units a rights holder may acquire in this offering, broker-dealers, trust companies, banks or others whose shares are held of record by Cede & Co. or by any other depository or nominee will be deemed to be the holders of the Subscription Rights that are issued to Cede & Co. or the other depository or nominee on their behalf.

There is no minimum number of Subscription Rights or Series Rights that must be exercised in order for this offering to close.

### **Over-Subscription Privilege**

If you exercise your basic subscription rights in full, you may also choose to exercise your over-subscription privilege.

#### ***Allocation of Units Available for Over-Subscription Privileges***

Subject to the ownership limitation described below, we will seek to honor the over-subscription requests in full. If over-subscription requests exceed the number of units available, however, we will allocate the available units pro rata among the holders in proportion to the number of over-subscription units for which they have subscribed. Continental Stock Transfer & Trust Company, which will act as the subscription agent for the Subscription Rights and Series Rights and which we refer to as the subscription agent, will determine the over-subscription allocation based on the formula described above.

To the extent your aggregate subscription payment for the actual number of unsubscribed units available to you pursuant to the over-subscription privilege is less than the amount you actually paid in connection with the exercise of the over-subscription privilege, you will be allocated only the number of unsubscribed units available to you, and any excess subscription payment will be promptly returned to you, without interest or penalty, after the expiration of this offering. See “*The Rights Offering — Limitation on the Purchase of Units*” for a description of certain limitations on purchase.

We can provide no assurances that you will actually be entitled to purchase the number of units issuable upon the exercise of your over-subscription privilege in full at the expiration of this offering.

There is no over-subscription privilege applicable to the Series Rights.

### **Limitation on the Purchase of Units**

In the event that the exercise by a stockholder of the basic Subscription Right or the over-subscription privilege could, as determined by us in our sole discretion, potentially result in a limitation on our ability to use net operating losses, tax credits and other tax attributes, which we refer to as the “Tax Attributes,” under the Internal Revenue Code of 1986, as amended, which we refer to as the “Code,” and rules promulgated by the Internal Revenue Service, we may, but are under no obligation to, reduce the exercise by such stockholder of the basic Subscription Right or the over-subscription privilege to such number of units as we in our sole discretion shall determine to be advisable in order to preserve our ability to use the Tax Attributes. If the amount of Subscription Rights that you exercise is so limited, any amount not used for purchases will be promptly refunded.

### **Expiration of Offer**

The Subscription Rights offering will expire at 5:00 p.m., Eastern time, on \_\_\_\_, 2024, unless extended by us, and Subscription Rights may not be exercised after the expiration date.

Our board of directors may determine to extend the Subscription Rights offering period, and thereby postpone the expiration date, not to exceed 30 days from the initial expiration date, to the extent it determines that doing so is in the best interest of our stockholders. If we extend the Subscription Rights offering, all basic and over-subscription privileges exercised during the extension period will be filled on a first-come, first-serve basis.

Any extension of this offering will be followed as promptly as practicable by announcement thereof, and in no event later than 9:00 a.m., Eastern time, on the next business day following the previously scheduled expiration date. Without limiting the manner in which we may choose to make such announcement, we will not, unless otherwise required by law, have any obligation to publish, advertise or otherwise communicate any such announcement other than by issuing a press release or such other means of announcement as we deem appropriate.

Subscription Rights may be exercised at any time during the Subscription Rights Offering period. If and to the extent there are unsubscribed units upon the expiration of the offering of the Subscription Rights, NRNS, the manager of which is Howard S. Dvorkin, our Chairman, has indicated to us that it may purchase up to approximately \$10.6 million of units through the conversion into units of the outstanding principal and accrued interest under the subordinated promissory notes payable by us to NRNS. These notes have been issued to NRNS to supplement our credit facilities. All units sold to NRNS will be at the same price and on the same terms as this offering.

Series A Rights, Series B Rights and Series C Rights may be exercised commencing on their date of issuance and continuing, respectively, 30, 60 and 90 days following the closing of the Subscription Rights offering.

### **Determination of the Unit Subscription Price and Exercise Prices of Series Rights**

The Unit Subscription Price and exercise prices of the Series Rights were set by our board of directors considering, among other things, input from the dealer-manager for this offering. In approving the Unit Subscription Price and exercise prices of the Series Rights, the board of directors considered, among other things, the following factors:

- the market price of common stock prior to public announcement of the Unit Subscription Price and exercise price;
- the fact that the Subscription Rights and Series Rights will be non-transferable;
- the fact that holders of Subscription Rights will have an over-subscription privilege;
- the terms and expenses of this offering relative to other alternatives for raising capital, including fees payable to Moody Capital, and our ability to access capital through such alternatives;
- comparable precedent transactions, including the range of discounts to market value represented by the subscription prices and exercise prices in other rights offerings;

- the size of this offering; and
- the general condition of the securities market.

### **No Recombination of Units**

The shares of common stock and the Series Rights comprising the units will be issued separately upon the exercise of Subscription Rights, and the units will not trade as a separate security. Rights holders may not recombine shares of common stock and Series Rights to receive a unit.

### **Subscription Agent for the Offering**

Continental Stock Transfer & Trust Company, the subscription agent for the Subscription Rights and Series Rights, will receive for its administrative, processing, invoicing and other services a fee estimated to be up to approximately \$60,000 plus reimbursement for all out-of-pocket expenses related to the offering.

A completed subscription certificate and/or Series Rights certificate, together with full payment of the Unit Subscription Price for Subscription Rights and the applicable exercise price for the Series Rights exercised, must be sent to the subscription agent for (i) all whole numbers of units subscribed for through the exercise of a basic subscription right and the over-subscription privilege and (ii) the Series Rights exercised by one of the methods described below. We will accept only properly completed and duly executed subscription certificates and Series Rights certificates actually received at any of the addresses listed below, at or prior to 5:00 p.m., Eastern time, on the applicable expiration date. See “Payment for Securities” below. In this prospectus, close of business means 5:00 p.m., Eastern time, on the relevant date.

<b>Subscription Certificate Delivery Method</b>	<b>Address/Number</b>
By Hand or Overnight Courier or Regular Mail:	Continental Stock Transfer & Trust Company 1 State Street, 30 <sup>th</sup> floor New York, NY 10004 Attention: Corporate Actions — FlexShopper, Inc.

Delivery to an address other than one of the addresses listed above may not constitute valid delivery and, accordingly, may be rejected by us.

### **Information Agent**

Any questions or requests for assistance concerning the method of subscribing for units or for additional copies of this prospectus or subscription certificates may be directed to MacKenzie Partners, Inc., the information agent, by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com).

Rights holders may also contact their broker-dealers or nominees (including any mobile investment platform) for information with respect to this offering.

### **Methods for Exercising the Subscription Rights and Series Rights**

#### ***Exercise of the Subscription Rights and Series Rights***

Subscription Rights and the Series Rights are evidenced by subscription certificates or Series Rights certificates that, except as described below under “Foreign Stockholders,” will be mailed to record date stockholders or, if a record date stockholder’s shares are held by a depository or nominee (including any mobile investment platform) on his, her or its behalf, to such depository or nominee. Subscription Rights and the Series Rights may be exercised by completing and signing the subscription certificate or Series Rights certificate that accompanies this prospectus and mailing it in the envelope provided, or otherwise delivering the completed and duly executed subscription certificate or Series Rights certificate to the subscription agent, together with payment in full by the applicable expiration date. Completed subscription certificates and Series Rights certificates and related payments must be received by the subscription agent prior to 5:00 p.m., Eastern time, on or before the applicable expiration date at the offices of the subscription agent at the address set forth above. The Subscription Rights offering will expire at 5:00 p.m., Eastern time, on \_\_\_\_, 2024, unless extended by us, and Subscription Rights may not be

exercised after the expiration date. Subscription Rights may be exercised at any time during the Subscription Rights Offering period. Series A Rights, Series B Rights and Series C Rights may be exercised commencing on their date of issuance and continuing, respectively, 30, 60 and 90 days following the closing of the Subscription Rights offering.

***Exercise of the Over-Subscription Privilege***

Rights holders who fully exercise all of their basic subscription rights may purchase additional shares in accordance with the over-subscription privilege by indicating on their subscription certificate the number of additional units they are willing to acquire. If sufficient units are available after all exercises of basic subscription rights, we will seek to honor over-subscriptions requests in full, subject to the pro rata allocations and ownership limitation described in “— Over-Subscription Privilege.” There is no over-subscription privilege applicable to the Series Rights.

***Record Date Stockholders Whose Shares are Held by a Nominee***

Record date stockholders whose shares are held by a nominee, such as a bank, broker-dealer, trustee, depositories or mobile investment platform, must contact that nominee to exercise their Subscription Rights or Series Rights. In that case, the nominee will complete the subscription certificate or Series Rights certificate on behalf of the record date stockholder and arrange for proper payment by one of the methods set forth under “Payment for Securities” below.

***Nominees***

Nominees, such as brokers, trustees, depositories or mobile investment platforms for securities, who hold shares of common stock for the account of others, should notify the respective beneficial owners of the shares as soon as possible to ascertain the beneficial owners’ intentions and to obtain instructions with respect to the Subscription Rights and Series Rights. If the beneficial owner so instructs, the nominee should complete the subscription certificate or Series Rights certificate and submit it to the subscription agent with the proper payment as described under “Payment for Securities” below.

**General**

All questions as to the validity, form, eligibility (including times of receipt and matters pertaining to beneficial ownership) and the acceptance of subscription forms and the Unit Subscription Price will be determined by us, which determinations will be final and binding. No alternative, conditional or contingent subscriptions will be accepted. We reserve the right to reject any or all subscriptions not properly submitted or the acceptance of which would, in the opinion of our counsel, be unlawful.

We reserve the right to reject any exercise of Subscription Rights or Series Rights if such exercise is not in accordance with the terms of this offering or not in proper form or if the acceptance thereof or the issuance of units or shares of common stock thereto could be deemed unlawful. We reserve the right to waive any deficiency or irregularity with respect to any subscription certificate or Series Rights certificate. Subscriptions will not be deemed to have been received or accepted until all irregularities have been waived or cured within such time as we determine in our sole discretion. We will not be under any duty to give notification of any defect or irregularity in connection with the submission of subscription certificates or Series Rights certificates or incur any liability for failure to give such notification.

**Participation of Preferred Stockholders**

Holders of our series 1 convertible preferred stock and series 2 convertible preferred stock have the contractual right to participate in this offering pursuant to the terms of the certificates of designations for each such series of preferred stock. Each preferred stockholder will receive two Subscription Rights for each share of common stock underlying a share of preferred stock owned by such holder. A total of 12,141,852 Subscription Rights will be issued to these preferred stockholders.

### **No Revocation or Change**

Once you submit the subscription certificate or Series Rights certificate or have instructed your nominee of your subscription request, you are not allowed to revoke or change the exercise or request a refund of monies paid. All exercises of Subscription Rights or Series Rights are irrevocable, even if you learn information about us that you consider to be unfavorable. You should not exercise your Subscription Rights or Series Rights unless you are certain that you wish to purchase units at the Unit Subscription Price or exercise your Series Rights at the exercise price.

### **Transferability**

**Subscription Rights.** The Subscription Rights are evidenced by a subscription certificate and are non-transferable. The Subscription Rights will not be listed for trading on The Nasdaq Capital Market or any other securities exchange or trading market.

**Units.** The common stock and the Series Rights comprising the units may only be purchased as a unit but will be issued separately. The units will not be issued as a separate security and will not be transferable.

**Common Stock.** The shares of common stock included in units and underlying the Series Rights will be separately transferable following their issuance. All of the shares of common stock issued in this offering are expected to be listed on The Nasdaq Capital Market under the symbol “FPAY.”

**Series Rights.** The Series Rights are evidenced by a Series Rights certificate for each such right and are non-transferable. The Series Rights will not be listed for trading on The Nasdaq Capital Market or any other securities exchange or trading market.

### **Foreign Stockholders**

Subscription certificates and Series Rights certificates will not be mailed to foreign stockholders. Foreign stockholders will receive written notice of this offering. The subscription agent will hold the Subscription Rights and Series Rights to which those subscription certificates or Series Rights certificates relate for these stockholders’ accounts until instructions are received to exercise the Subscription Rights or Series Rights certificate, subject to applicable law.

### **Payment for Securities**

A participating rights holder may send to the subscription agent (a) payment of the Unit Subscription Price for each unit acquired in the basic subscription right and any additional units subscribed for pursuant to the over-subscription privilege, (b) a properly completed and duly executed subscription certificate, (c) payment of the initial price of the Series Rights exercised and (d) properly completed and duly executed Series Rights certificate, each must be received by the subscription agent at the offices set forth above (see “— Subscription Agent for the Offering”), at or prior to 5:00 p.m., Eastern time, on the applicable expiration date. A properly completed and duly executed subscription certificate and Series Rights certificate and full payment for the units or rights exercised must be received by the subscription agent at or prior to 5:00 p.m., Eastern time, the applicable expiration date, unless this offering is extended by us.

All payments by a participating rights holder must be in U.S. dollars by certified checks located in the United States and payable to the order of “Continental Stock Transfer & Trust Company, as the subscription agent for the offering for FlexShopper, Inc.” Payment also may be made by wire transfer to the account maintained by Continental Stock Transfer & Trust Company, as the subscription agent for the offering, with reference to the holder’s name. The subscription agent will deposit all funds received by it prior to the final payment date into a segregated account pending pro-rata and distribution of the units.

**The method of delivery of subscription certificates and Series Rights certificates along with the payment of the Unit Subscription Price for the Subscription Right and the applicable initial exercise price for the Series Rights to us will be at the election and risk of the participating rights holders, but if sent by mail it is recommended that such certificates and payments be sent by registered mail, properly insured, with return receipt requested, and that a sufficient number of days be allowed to ensure delivery to the subscription agent prior to 5:00 p.m., Eastern time, on the applicable expiration date.**

**Whichever of the two methods described above is used, Subscription Rights and the Series Rights will not be successfully exercised unless the subscription agent actually receives checks and actual payment.** If a participating rights holder who subscribes for units as part of the basic subscription right or over-subscription privilege or who exercises his or her Series Rights does not make payment of any amounts due by the applicable expiration date or as promptly as practicable of the confirmation date, as applicable, the subscription agent reserves the right to take any or all of the following actions: (i) reallocate the units to other participating rights holders in accordance with the over-subscription privilege; (ii) reallocate the shares of common stock to other participating rights holders in accordance with the Series Rights; (iii) apply any payment actually received by it from the participating rights holder toward the purchase of the greatest whole number of units or shares of common stock that could be acquired by such participating rights holder upon exercise of the basic subscription right and/or the over-subscription privilege or Series Rights, as applicable; and/or (iv) exercise any and all other rights or remedies to which it may be entitled, including the right to set off against payments actually received by it with respect to such subscribed for units or shares of common stock.

All questions concerning the timeliness, validity, form and eligibility of any exercise of Subscription Rights or Series Rights will be determined by us, whose determinations will be final and binding. We may waive any defect or irregularity or permit a defect or irregularity to be corrected within such time as we may determine, or reject the purported exercise of any right. Subscriptions will not be deemed to have been received or accepted until all irregularities have been waived or cured within such time as we determine. The subscription agent will not be under any duty to give notification of any defect or irregularity in connection with the submission of subscription certificates or Series Rights certificate or incur any liability for failure to give such notification.

#### **Escrow Arrangements; Return of Funds**

An escrow agent retained by the subscription agent will hold funds received in payment for units or exercise of the Series Rights in a segregated escrow account pending completion of the offering. An escrow agent retained by the subscription agent will hold this money in escrow until the offering is completed or is terminated. If the offering is terminated for any reason, all subscription payments received by the subscription agent will be promptly returned, without interest or penalty.

#### **Delivery of Securities**

Stockholders whose shares are held of record by Cede & Co. or by any other depository or nominee on their behalf or their broker-dealers' behalf will have any shares of common stock and Series Rights comprising units that they acquire credited to the account of Cede & Co. or the other depository or nominee. With respect to all other stockholders, the shares of common stock and Series Rights acquired will be issued in book-entry, or uncertificated form meaning that you will receive a direct registration account book-entry statement from our subscription agent reflecting the ownership of these securities if you are a holder of record of shares, which may take up to 15 business days from the applicable expiration date.

#### **Termination**

We reserve the right to terminate the offering before its expiration for any reason. In particular, we may terminate the offering, in whole or in part, if at any time before completion of the offering there is any judgment, order, decree, injunction, statute, law or regulation entered, enacted, amended or held to be applicable to the offering that in the sole judgment of the board would or might make the offering or its completion, whether in whole or in part, illegal or otherwise restrict or prohibit completion of the offering. We may choose to proceed with the offering even if one or more of these events occur. If we terminate the offering in whole or in part, we will issue a press release notifying the stockholders of such event, all affected Subscription Rights or Series Rights will expire without value, and all excess subscription payments received by the subscription agent will be promptly returned, without interest or penalty, following such termination.

If this offering is terminated, all rights will expire without value and we will promptly arrange for the refund, without interest or penalty, of all funds received from rights holders. All monies received by an escrow agent retained by the subscription agent in connection with this offering will be held in escrow by the escrow agent, on our behalf, in a segregated account. Any interest earned on such an account shall be payable to us even if we determine to terminate this offering and return your subscription payment.

### **No Recommendation to Stockholders**

Our board of directors has not made, nor will it make, any recommendation to stockholders regarding the exercise of Subscription Rights or Series Rights under this offering. We cannot predict the price at which shares of our outstanding common stock will trade after this offering. You should consult with your legal, tax and financial advisors prior to making your independent investment decision about whether or not to exercise your Subscription Rights or Series Rights.

Holders who exercise Subscription Rights or Series Rights risk investment loss on new money invested. We cannot assure you that the market price for common stock will ever be above the Unit Subscription Price or exercise price of the Series Rights, or that anyone purchasing units, or exercising Series Rights to purchase shares, will be able to sell those shares in the future at the same price or a higher price. If you do not exercise your Subscription Rights (including if you do not exercise your basic subscription rights in full) or Series Rights, you will lose any value represented by your Subscription Rights or Series Rights, and your percentage ownership interest in our company will be diluted. For more information on the risks of participating in this offering, see “Risk Factors.”

### **Effect of the Offering on Existing Stockholders; Interests of Certain Stockholders, Directors and Officers**

Based on shares outstanding as of November 19, 2024, after giving effect to this offering (assuming that sale of all offered units and no exercise of the Series Rights included in the units), we would have approximately up to 56,461,489 shares of common stock outstanding, representing an increase in outstanding shares of approximately 163%. If all of the Series Rights to purchase shares of our common stock are exercised in full at the Unit Subscription Price (assuming that stockholders exercise Subscription Rights for all the units that we are offering), we will have up to 91,461,489 shares of common stock outstanding, representing an increase of approximately 326%. If you fully exercise the basic subscription rights that we distribute to you, your proportional interest in our company will remain the same. If you do not exercise any Subscription Rights, or you exercise less than all of your basic subscription rights, your interest in our company will be diluted, as you will own a smaller proportional interest in our company compared to your interest prior to this offering.

The number of shares of common stock outstanding listed in each case above assumes that (a) all of the other shares of common stock issued and outstanding on the record date will remain issued and outstanding and owned by the same persons as of the closing of this offering, and (b) we will not issue any shares of common stock in the period between the record date and the closing of the offering.

### **Material U.S. Federal Income Tax Treatment of Rights Distribution**

The U.S. federal income tax law governing transactions such as this offering is complex and does not speak directly to the consequences of certain aspects of the offering. Although we do not believe a stockholder’s receipt of Subscription Rights pursuant to the offering should be treated as a taxable distribution for U.S. federal income tax purposes, our position is not binding on the IRS or the courts. If this position were finally determined by the IRS or a court to be incorrect, your receipt of Subscription Rights may be treated as the receipt of a distribution equal to the fair market value of the rights, and may result in taxable dividend income to the extent of our current and accumulated earnings and profits, with any excess being treated as a return of basis to the extent thereof and then as capital gain. See “Material U.S. Federal Income Tax Considerations.”

### **Distribution Arrangements**

Moody Capital is the dealer-manager for this offering. The dealer-manager will provide marketing assistance and advice to us in connection with this offering and will use its best efforts to solicit the exercise of basic subscription rights and participation in the over-subscription privileges. The dealer-manager is not underwriting this offering. Moody Capital does not make any recommendation with respect to such Subscription Rights (including with respect to the exercise or expiration of such Subscription Rights), shares of common stock, Series Rights. We have agreed to pay the dealer-manager certain fees and to reimburse the dealer-manager for certain expenses in connection with this offering. See “Plan of Distribution.”



**Fees and Expenses**

We will pay all fees charged by the subscription agent, the information agent, and Moody Capital acting as dealer-manager for this offering. You are responsible for paying any commissions, fees, taxes or other expenses incurred in connection with the exercise of your Subscription Rights.

**Other Matters**

We are not making this offering in any state or other jurisdiction in which it is unlawful to do so, nor are we distributing or accepting any offers to purchase any shares of common stock from rights holders who are residents of those states or other jurisdictions or who are otherwise prohibited by federal or state laws or regulations to accept or exercise the Subscription Rights or Series Rights. We may delay the commencement of this offering in those states or other jurisdictions, or change the terms of the offering, in whole or in part, in order to comply with the securities laws or other legal requirements of those states or other jurisdictions. Subject to state securities laws and regulations, we also have the discretion to delay allocation and distribution of any units you may elect to purchase by exercise of your Subscription Rights and to delay allocation and distribution of any shares of common stock you may elect to purchase by exercise of your Series Rights in order to comply with state securities laws. We may decline to make modifications to the terms of this offering requested by those states or other jurisdictions, in which case, if you are a resident in those states or jurisdictions or if you are otherwise prohibited by federal or state laws or regulations from accepting or exercising the Subscription Rights or Series Rights, you will not be eligible to participate in the offering. However, we are not currently aware of any states or jurisdictions that would preclude participation in this offering.

## DESCRIPTION OF SECURITIES

We are distributing, at no charge, non-transferable subscription rights (the “Subscription Rights”), entitling holders of our common stock and holders of our series 1 convertible preferred stock and series 2 convertible preferred stock as of the record date of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, whom we refer to as a holder or you. For each share of common stock you hold or issuable upon the exercise of a share of preferred stock as of the record date, we will issue to you two Subscription Rights. Each Subscription Right consists of (a) basic subscription right entitling you to purchase a unit at a subscription price equal to \$ \_\_\_\_\_ (the “Unit Subscription Price”) and (b) an over-subscription privilege which will entitle you to purchase additional units for which other rights holders do not subscribe, subject to you exercising your basic subscription right in full and other limitations. Each unit will consist of one share of common stock, one Series A Right, one Series B Right and one Series C Right, with each right entitling the holders to purchase one share of our common stock commencing upon the date of issuance. The Subscription Rights may only be exercised in aggregate for whole numbers of units. The common stock and Series Rights comprising the units may only be purchased as a unit, but will be issued separately.

The following is a description of the material terms of our charter, by-laws and General Corporation Law of the State of Delaware (the “DGCL”). This description of our charter and by-laws does not purport to be complete and is qualified in its entirety by the provisions of our charter and bylaws, copies of which have been filed with the SEC and are incorporated by reference as exhibits to the registration statement of which this prospectus is a part.

### General

Our authorized capital stock consists of 100,000,000 shares of common stock, par value \$0.0001 per share, and 500,000 shares of preferred stock, par value \$0.001 per share, of which 250,000 shares of preferred stock have been designated as series 1 convertible preferred stock and 25,000 shares of preferred stock have been designated as series 2 convertible preferred stock. As of November 19, 2024, 21,461,489 shares of common stock were outstanding and were held by approximately 126 holders; 170,332 shares of series 1 convertible preferred stock were outstanding, convertible into 225,231 shares of common stock, and were held by 61 holders; and 21,952 shares of series 2 convertible preferred stock were outstanding, convertible into 5,845,695 shares of common stock, and were held by two holders.

### Units Offered

*The following description of the material terms and provisions of the common stock, Series A Rights, Series B Rights and Series C Rights comprising the units being offered is qualified in its entirety by reference to the form of each of the subscription rights certificate for the Series A Rights, Series B Rights and Series C Rights, filed as exhibits to the registration statement of which this prospectus forms a part.*

The shares of common stock, Series A Rights, Series B Rights and Series C Rights offered by this prospectus will be sold only together in units. Each unit consists of one share of common stock, one Series A Right, one Series B Right and one Series C Right. Each of the Series Rights will entitle the holder to purchase one share of common stock. Each of the Series Rights will be immediately detachable and separately transferable following the closing. The units will not be traded.

The maximum number of shares of our common stock available for issuance in this offering is 70,000,000 shares. If at any time the issuance of shares pursuant to the exercise of the Subscription Rights or the Series Rights exceeds such share limitation, no additional shares will be issued, this offering will be terminated, and any outstanding rights will immediately expire, and the amount subscribed for by each holder will be proportionally reduced.

### Common Stock Included in Units and Underlying the Series Rights

**Dividends.** Holders of our common stock are entitled to such dividends as may be declared by our board of directors out of funds legally available for such purpose. The shares of common stock are neither redeemable nor convertible. Holders of common stock have no preemptive to purchase any of our securities.

**Voting.** Each holder of our common stock is entitled to one vote for each such share outstanding in the holder's name. No holder of common stock is entitled to cumulate votes in voting for directors.

**Liquidation.** In the event of our liquidation, dissolution or winding up, the holders of our common stock are entitled to receive pro rata our assets, which are legally available for distribution, after payment of all debts and other liabilities. All of the outstanding shares of our common stock are fully paid and nonassessable. The shares of common stock offered by this prospectus will also be fully paid and nonassessable.

Our common stock is traded on The Nasdaq Capital Market under the symbol "FPAY."

#### **Series A Rights Included in Units Issued in this Offering**

The Series A Rights will not be transferable following their issuance and through their expiration date. We will not apply to list the Series A Rights for trading on any securities exchange or trading market. The common stock underlying the Series A Right, upon issuance, is expected to be listed for trading on The Nasdaq Capital Market under the symbol "FPAY."

**Exercisability.** Each Series A Right will be exercisable at any time and from time to time after the date of issuance and will expire 30 days following the closing date of the subscription offering. Each Series A Right will be exercisable, at the option of each holder, in whole or in part by delivering to us the subscription certificate for the Series A Right, a duly executed exercise notice and payment in full in cash for the number of shares of common stock purchased upon such exercise.

**Exercise Price.** Each Series A Right represents the right to purchase one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, but in any event not to exceed 150% of the Unit Subscription Price.

**Rights as Stockholder.** The holder of a Series A Right, solely in such holder's capacity as a holder of a Series A Right, will not be entitled to vote or to any of the other rights of our stockholders.

#### **Series B Rights Included in Units Issued in this Offering**

The Series B Rights will not be transferable following their issuance and through their expiration date. We will not apply to list the Series B Rights for trading on any securities exchange or trading market. The common stock underlying the Series B Right, upon issuance, is expected to be listed for trading on The Nasdaq Capital Market under the symbol "FPAY."

**Exercisability.** Each Series B Right will be exercisable at any time and from time to time after the date of issuance and will expire 60 days following the closing date of the subscription offering. Each Series B Right will be exercisable, at the option of each holder, in whole or in part by delivering to us the subscription certificate for the Series B Right, a duly executed exercise notice and payment in full in cash for the number of shares of common stock purchased upon such exercise.

**Exercise Price.** Each Series B Right represents the right to purchase one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, but in any event not to exceed 200% of the Unit Subscription Price.

**Rights as Stockholder.** The holder of a Series B Right, solely in such holder's capacity as a holder of a Series B Right, will not be entitled to vote or to any of the other rights of our stockholders.

#### **Series C Rights Included in Units Issued in this Offering**

The Series C Rights will not be transferable following their issuance and through their expiration date. We will not apply to list the Series C Rights for trading on any securities exchange or trading market. The common stock underlying the Series C Right, upon issuance, is expected to be listed for trading on The Nasdaq Capital Market under the symbol "FPAY."

*Exercisability.* Each Series C Right will be exercisable at any time and from time to time after the date of issuance and will expire 90 days following the closing date of the subscription offering. Each Series C Right will be exercisable, at the option of each holder, in whole or in part by delivering to us the subscription certificate for the Series C Right, a duly executed exercise notice and payment in full in cash for the number of shares of common stock purchased upon such exercise.

*Exercise Price.* Each Series C Right represents the right to purchase one share of common stock at an exercise price equal to the *higher* of (i) the Unit Subscription Price or (ii) 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, but in any event not to exceed 250% of the Unit Subscription Price.

*Rights as Stockholder.* The holder of a Series C Right, solely in such holder's capacity as a holder of a Series C Right, will not be entitled to vote or to any of the other rights of our stockholders.

## **Preferred Stock**

Our board of directors has the authority, without further action by the stockholders, to issue up to 500,000 shares of preferred stock from time to time in one or more series. The board of directors has the authority to fix the designations, voting powers, preferences, privileges and relative rights and the limitations of any series of preferred stock, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of our common stock. The board of directors, without stockholder approval, can issue preferred stock with voting, conversion or other rights that could adversely affect the voting power and other rights of the holders of common stock. Preferred stock could be issued quickly with terms that could delay or prevent a change of control of our company or make removal of management more difficult. Additionally, the issuance of preferred stock may decrease the market price of our common stock and may adversely affect the voting, economic and other rights of the holders of common stock.

### ***Series 1 Convertible Preferred Stock***

In January 2007, we filed a Certificate of Designations with the Secretary of State of the State of Delaware creating 250,000 shares of preferred stock designated as series 1 convertible preferred stock, which rank senior to our common stock upon liquidation.

As of September 30, 2024, each share of series 1 convertible preferred stock was convertible into 1.32230 shares of our common stock, subject to certain anti-dilution rights. The holders of series 1 convertible preferred stock have the option to convert the preferred shares to common stock at any time. Upon conversion, all accumulated and unpaid dividends, if any, will be paid as additional shares of common stock. The holders of series 1 convertible preferred stock have the same dividend rights as holders of common stock, as if the series 1 convertible preferred stock had been converted to common stock. Additionally, the holders of series 1 convertible preferred stock vote with holders of common stock, together as a single class, with each share of series 1 convertible preferred stock entitled to 1.32230 votes.

As of September 30, 2024, there were 170,332 shares of series 1 convertible preferred stock outstanding, which were convertible into 225,231 shares of common stock.

### ***Series 2 Convertible Preferred Stock***

In June 2016, we entered into a Subscription Agreement with B2 FIE V LLC, providing for the issuance and sale of 20,000 shares of series 2 convertible preferred stock for gross proceeds of \$20.0 million. We sold an additional 1,952 shares of series 2 convertible preferred stock to a different investor for gross proceeds of \$1.95 million at a subsequent closing.

Pursuant to the authority granted to our board of directors by the provisions of the Certificate of Incorporation, our board of directors created and designated 25,000 shares of series 2 convertible preferred stock by filing a Certificate of Designations with the Delaware Secretary of State of the State of Delaware. The shares of series 2 convertible preferred stock were sold for \$1,000 per share (the "Stated Value") and accrue dividends on the Stated Value at an annual rate of 10% compounded annually. Cumulative accrued dividends as of September 30, 2024 totaled \$26,525,613. As of September 30, 2024, the shares of series 2 preferred share were convertible into 5,845,695 shares of common stock. The conversion rate is subject to a weighted average anti-dilution provision.

The holders of the series 2 convertible preferred stock have the option to convert such shares into shares of common stock and have the right to vote with holders of common stock on an as-if converted basis. If the average closing price during any 45-day consecutive trading day period or Change of Control Transaction (as defined in the Certificate of Designations) values the common stock at a price equal to or greater than \$23.00 per share, then conversion shall be automatic. Upon a Liquidation Event or Deemed Liquidation Event (each as defined in the Certificate of Designations), holders of series 2 convertible preferred stock shall be entitled to receive out of the assets of our company prior to and in preference to the common stock and series 1 convertible preferred stock an amount equal to the greater of (i) the Stated Value, plus any accrued and unpaid dividends thereon, and (ii) the amount per share as would have been payable had all series 2 convertible preferred stock been converted to common stock immediately before the Liquidation Event or Deemed Liquidation Event.

#### **Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Charter Documents**

The following is a summary of certain provisions of Delaware law, our certificate of incorporation and our bylaws. This summary does not purport to be complete and is qualified in its entirety by reference to the corporate law of Delaware and our certificate of incorporation and bylaws.

*Effect of Delaware Anti-Takeover Statute.* We are subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination (as defined below) with any interested stockholder (as defined below) for a period of three years following the date that the stockholder became an interested stockholder, unless:

- prior to that date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares of voting stock outstanding (but not the voting stock owned by the interested stockholder) those shares owned by persons who are directors and officers and by excluding employee stock plans in which employee participants do not have the right to determine whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to that date, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66-2/3% of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines “business combination” to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- subject to limited exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation, or who beneficially owns 15% or more of the outstanding voting stock of the corporation at any time within a three-year period immediately prior to the date of determining whether such person is an interested stockholder, and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

***Our Charter Documents.*** Our charter documents include provisions that may have the effect of discouraging, delaying or preventing a change in control or an unsolicited acquisition proposal that a stockholder might consider favorable, including a proposal that might result in the payment of a premium over the market price for the shares held by our stockholders. Certain of these provisions are summarized in the following paragraphs.

***Effects of Authorized but Unissued Common Stock.*** One of the effects of the existence of authorized but unissued common stock may be to enable our board of directors to make more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, and thereby to protect the continuity of management. If, in the due exercise of its fiduciary obligations, the board of directors were to determine that a takeover proposal was not in our best interest, such shares could be issued by the board of directors without stockholder approval in one or more transactions that might prevent or render more difficult or costly the completion of the takeover transaction by diluting the voting or other rights of the proposed acquirer or insurgent stockholder group, by putting a substantial voting block in institutional or other hands that might undertake to support the position of the incumbent board of directors, by effecting an acquisition that might complicate or preclude the takeover, or otherwise.

***Cumulative Voting.*** Our certificate of incorporation does not provide for cumulative voting in the election of directors, which would allow holders of less than a majority of the stock to elect some directors.

***Vacancies.*** Our bylaws provide that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

***Special Meeting of Stockholders.*** Our bylaws provide that special meetings of our stockholders may be called by the chairman of the board of directors, the chief executive officer, or the president (in the absence of the chief executive officer) or by resolution of the board of directors or by the secretary at the request in writing of stockholders owning a majority of the voting power of the outstanding voting stock.

***Requirements for Advance Notification of Stockholder Nominations and Proposals.*** Our bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee thereof.

***Amendment of Bylaws.*** Our directors are expressly authorized to amend our bylaws.

## MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of the material U.S. federal income tax considerations with respect to the receipt and exercise (or expiration) of the Subscription Rights, Series Rights, the ownership and disposition of shares of common stock acquired through this offering upon exercise of the such rights, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the “Code”), Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the “IRS”), in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a holder of the Subscription Rights, Series Rights or shares of common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the receipt of Subscription Rights, Series Rights acquired through this offering and the acquisition, ownership and disposition of common stock acquired upon exercise of such rights.

This discussion is limited to stockholders that hold the Subscription Rights, Series Rights and shares of common stock, in each case, as a “capital asset” within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a holder’s particular circumstances, including the impact of the alternative minimum tax or the unearned income Medicare contribution tax. In addition, it does not address consequences relevant to holders subject to particular rules, including:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons holding the Subscription Rights, Series Rights or shares of common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- “controlled foreign corporations,” “passive foreign investment companies,” and corporations that accumulate earnings to avoid U.S. federal income tax;
- entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell Series Rights or shares of common stock under the constructive sale provisions of the Code;
- persons subject to special tax accounting rules as a result of any item of gross income with respect to the Subscription Rights, Series Rights or shares of common stock being considered in an “applicable financial statement” (as defined in the Code);
- persons for whom our capital stock constitutes “qualified small business stock” within the meaning of Section 1202 of the Code;
- persons who hold or receive the Subscription Rights, Series Rights or shares of common stock pursuant to the exercise of any employee stock option or otherwise as compensation; and
- tax-qualified retirement plans.

If a holder is treated as a partnership for U.S. federal income tax purposes, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

**THIS DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE RECEIPT, OWNERSHIP AND EXERCISE OF SUBSCRIPTION RIGHTS, SERIES RIGHTS AND THE SHARES OF COMMON STOCK ACQUIRED UPON EXERCISE OF SUCH RIGHTS ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.**

#### **Tax Considerations Applicable to U.S. Holders**

##### ***Definition of a U.S. Holder***

For purposes of this discussion, a “U.S. holder” is any beneficial owner of Subscription Rights, shares of common stock, the Series Rights acquired upon exercise of Subscription Rights, or shares of common stock acquired upon exercise of the Series Rights, as the case may be, that, for U.S. federal income tax purposes, is:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (a) is subject to the primary supervision of a U.S. court and the control of one or more United States persons (within the meaning of Section 7701(a)(30) of the Code), or (b) has made a valid election under applicable Treasury Regulations to continue to be treated as a United States person.

##### ***Receipt of Subscription Rights***

Section 305(a) of the Code states that a stockholder’s taxable income does not include in-kind stock dividends. The general non-recognition rule in Section 305(a) of the Code is, however, subject to exceptions described in Section 305(b) of the Code, which include “disproportionate distributions” and certain distributions with respect to certain preferred stock. A disproportionate distribution is a distribution or a series of distributions, including deemed distributions, that has the effect of the receipt of cash or other property by some stockholders (including holders of rights to acquire stock and holders of debt instruments convertible into stock), and an increase in the proportionate interest of other stockholders (including holders of rights to acquire stock and holders of debt instruments convertible into stock) in a corporation’s assets or earnings and profits. For this purpose, if a distribution of stock to some stockholders and the receipt of cash and other property by other stockholders occur more than 36 months from each other, the transactions are presumed not to result in the receipt of cash or other property by some stockholders and an increase in the proportionate interest of other stockholders, unless the transactions are done pursuant to a plan.

During the last 36 months, we have not made any distributions of cash or property, and we did not have any convertible debt instruments. Therefore, whether this offering is treated as a disproportionate distribution may depend upon, among other things, whether we make distributions on another class of stock in the future and the timing of such distributions. As described in the section titled “Use of Proceeds,” we intend to use part of the net proceeds from this offering to provide funding for the repurchase of our series 2 convertible preferred stock, representing approximately 91% of the shares in such series. For federal income tax purposes, we intend to take the position that such repurchase is an “isolated redemption” within the meaning of the Treasury Regulations promulgated under Section 305 of the Code. In addition, as described in the section titled “Market for Common Stock and Dividend Policy,” we do not currently intend to make any future distributions of cash or property (other than stock or rights to acquire stock). However, there is no guarantee that the IRS or the courts will not take a contrary position, or that we will not make such distributions or payments in the future.

Based on the above, although the authorities governing transactions such as this offering are complex and do not speak directly to the consequences of certain aspects of the offering, including the effects of the over-subscription privilege, we do not believe that a U.S. holder’s receipt of Subscription Rights pursuant to the offering should be treated as a taxable distribution for U.S. federal income tax purposes. Our position regarding the



tax-free treatment of the receipt of Subscription Rights is not binding on the IRS or the courts. If this position were finally determined by the IRS or a court to be incorrect, whether on the basis that the issuance of the Subscription Rights is a “disproportionate distribution” or otherwise, the receipt of the Subscription Rights would be taxable generally in the same manner as described under “— Tax Consequences Applicable to U.S. Holders — Distributions on Common Stock” below. If our position were incorrect, other U.S. federal income tax consequences applicable to the U.S. holders such as tax basis and holding period may also be materially different from the discussion below.

The following discussion is based upon the assumption that the Subscription Right issuance is treated as a non-taxable distribution for U.S. federal income tax purposes.

***Tax Basis and Holding Period in the Subscription Rights***

If the fair market value of the Subscription Rights a U.S. holder receives is less than 15% of the fair market value of the U.S. holder’s existing shares of stock with respect to which the Subscription Rights are distributed on the date the U.S. holder receives the Subscription Rights, the Subscription Rights will be allocated a zero tax basis for U.S. federal income tax purposes, unless the U.S. holder elects to allocate its tax basis in its existing shares of stock between its existing shares of stock and the Subscription Rights in proportion to the relative fair market values of the existing shares of stock and the Subscription Rights determined on the date of receipt of the Subscription Rights. If a U.S. holder chooses to allocate tax basis between its existing shares of stock and the Subscription Rights, the U.S. holder must make this election on a statement included with its timely filed tax return (including extensions) for the taxable year in which the U.S. holder receives the Subscription Rights. Such an election is irrevocable. If the fair market value of the Subscription Rights a U.S. holder receives is 15% or more of the fair market value of their existing shares of stock on the date the U.S. holder receives the Subscription Rights, however, then the U.S. holder must allocate its tax basis in its existing shares of stock between those shares and the Subscription Rights the U.S. holder receives in proportion to their fair market values determined on the date the U.S. holder receives the Subscription Rights. The holding period of Subscription Rights received will include a holder’s holding period in shares of stock with respect to which the Subscription Rights were distributed.

The fair market value of the Subscription Rights on the date that the Subscription Rights are distributed is uncertain, and we have not obtained, and do not intend to obtain, an appraisal of the fair market value of the Subscription Rights on that date. In determining the fair market value of the Subscription Rights, U.S. holders should consider all relevant facts and circumstances, including any difference between the Unit Subscription Price of the Subscription Rights and the trading price of common stock on the date that the Subscription Rights are distributed, the exercise prices of each Series Right, the length of the period during which the Subscription Rights may be exercised and the fact that the Subscription Rights are non-transferable.

***Exercise of Subscription Rights***

Generally, a U.S. holder will not recognize gain or loss upon the exercise of a Subscription Right received in this offering. A U.S. holder’s adjusted tax basis, if any, in the Subscription Right plus the Unit Subscription Price should be allocated between the new shares of common stock and the Series Rights acquired upon exercise of the Subscription Right in proportion to their relative fair market values on the exercise date. This allocation will establish the U.S. holder’s initial tax basis for U.S. federal income tax purposes in the new shares of common stock and Series Rights received upon exercise. It is unclear whether a U.S. Holder’s holding period for a share of common stock and any Series Rights acquired upon exercise of a Subscription Right in this offering will begin on the date of exercise or the day following the date of exercise.

If, at the time of the receipt or exercise of the Subscription Right, the U.S. holder no longer holds the stock with respect to which the Subscription Right was distributed, then certain aspects of the tax treatment of the receipt and exercise of the Subscription Right are unclear, including (1) the allocation of the tax basis between the shares of stock previously sold and the Subscription Right, (2) the impact of such allocation on the amount and timing of gain or loss recognized with respect to the shares of stock previously sold, and (3) the impact of such allocation on the tax basis of the shares of stock and Series Rights acquired upon exercise of the Subscription Right. If a U.S. holder exercises a Subscription Right received in this offering after disposing of shares of common stock with respect to which the Subscription Right is received, the U.S. holder should consult its tax advisor.

***Expiration of Subscription Rights***

If a U.S. holder that receives Subscription Rights allows such Subscription Rights received in this offering to expire, the U.S. holder should not recognize any gain or loss for U.S. federal income tax purposes, and the U.S. holder should re-allocate any portion of the tax basis in its existing shares of stock previously allocated to the Subscription Rights that have expired to the existing shares of stock.

***Exercise or Expiration of the Series Rights***

In general, a U.S. holder will not be required to recognize income, gain or loss upon exercise of a Series Right for its exercise price. A U.S. holder's tax basis in a share of common stock received upon exercise of the Series Rights will be equal to the sum of (1) the U.S. holder's tax basis in the Series Rights exchanged therefor and (2) the exercise price of such Series Rights. It is unclear whether a U.S. Holder's holding period for a share of common stock acquired upon exercise of any Series Rights will begin on the date of exercise or the day following the date of exercise.

If a Series Right expires without being exercised, a U.S. holder will recognize a capital loss in an amount equal to such holder's tax basis in the Series Rights. Such loss will be long-term capital loss if, at the time of the expiration, the U.S. holder's holding period in such Series Rights is more than one year. The deductibility of capital losses is subject to certain limitations.

***Constructive Dividends on Series Rights***

If at any time during the period in which a U.S. holder holds Series Rights, we were to pay a taxable dividend to our stockholders and the exercise price of the Series Rights were decreased, that decrease would be deemed to be the payment of a taxable dividend to a U.S. holder of the Series Rights to the extent of our earnings and profits, notwithstanding the fact that such U.S. holder will not receive a cash payment. If the exercise price is adjusted in certain other circumstances (or in certain circumstances, there is a failure to make an adjustment), such adjustments may also result in the deemed payment of a taxable dividend to a U.S. holder. U.S. holders should consult their tax advisors regarding the proper treatment of any adjustments to the exercise price of the Series Rights.

***Distributions on Common Stock***

As described in the section titled "Market for Common Stock and Dividend Policy," we do not anticipate declaring or paying cash dividends to holders of our common stock in the foreseeable future. However, if we make distributions of cash or property on common stock, such distributions will constitute dividends to the extent paid out of our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes. Dividends received by a corporate U.S. holder may be eligible for a dividends received deduction, subject to applicable limitations. Dividends received by certain non-corporate U.S. holders, including individuals, are generally taxed at the lower applicable capital gains rate provided certain holding period and other requirements are satisfied. Distributions in excess of our current and accumulated earnings and profits will constitute a return of capital and first be applied against and reduce a U.S. holder's adjusted tax basis in its common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described in the section immediately below relating to the sale or disposition of common stock.

***Sale, Exchange or Other Disposition of Common Stock***

Upon a sale, exchange, or other disposition of common stock, a U.S. holder generally will recognize capital gain or loss equal to the difference between the amount realized (not including any amount attributable to declared and unpaid dividends, which will be taxable as described above to U.S. holders of record who have not previously included such dividends in income) and the U.S. holder's adjusted tax basis in common stock. A U.S. holder's adjusted tax basis in common stock generally will equal its initial tax basis in common stock reduced by the amount of any cash distributions treated as a return of capital as described above. Such capital gain or loss generally will be long-term capital gain or loss if the U.S. holder's holding period for common stock exceeded one year at the time of disposition). Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, generally are subject to reduced rates of taxation. The deductibility of capital losses is subject to limitations.

### ***Information Reporting and Backup Withholding***

A U.S. holder may be subject to information reporting and backup withholding when such holder receives dividend payments or receives proceeds from the sale or other taxable disposition of shares of common stock acquired through exercise of the Series Rights. Certain U.S. holders are exempt from backup withholding, including corporations and certain tax-exempt organizations. A U.S. holder will be subject to backup withholding if such holder is not otherwise exempt and such U.S. holder:

- fails to furnish such U.S. holder's taxpayer identification number;
- furnishes an incorrect taxpayer identification number;
- is notified by the IRS that such U.S. holder previously failed to properly report payments of interest or dividends; or
- fails to certify under penalties of perjury that such U.S. holder has furnished a correct taxpayer identification number and that the IRS has not notified the holder that such U.S. holder is subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS. U.S. holders should consult their tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption.

### **Tax Considerations Applicable to Non-U.S. Holders**

For purposes of this discussion, a "non-U.S. holder" is any beneficial owner of Subscription Rights, shares of common stock and the Series Rights acquired upon exercise of Subscription Rights, or shares of common stock acquired upon exercise of the Series Rights, as the case may be, that is neither a U.S. holder nor treated as a partnership for U.S. federal income tax purposes.

The discussion assumes that the receipt of Subscription Rights with respect to existing shares of common stock will be treated as a nontaxable distribution. See "— Tax Consequences Applicable to U.S. Holders — Receipt of Subscription Rights" above.

### ***Receipt, Exercise and Expiration of the Subscription Rights***

Non-U.S. holders that receive Subscription Rights with respect to existing shares of common stock will generally not be subject to U.S. federal income tax (or any withholding thereof) on the receipt, exercise or expiration of the Subscription Rights.

### ***Exercise of the Series Rights***

A non-U.S. holder generally will not be subject to U.S. federal income tax on the exercise of the Series Rights into shares of common stock.

### ***Constructive Dividends on Series Rights***

If at any time during the period in which a non-U.S. holder holds Series Rights we were to pay a taxable dividend to our stockholders and the exercise price of the Series Rights were decreased, that decrease would be deemed to be the payment of a taxable dividend to a non-U.S. holder to the extent of our earnings and profits, notwithstanding the fact that such non-U.S. holder will not receive a cash payment. If the exercise price is adjusted in certain other circumstances (or in certain circumstances, there is a failure to make an adjustment), such adjustments may also result in the deemed payment of a taxable dividend to a non-U.S. holder. Any resulting withholding tax attributable to deemed dividends may be collected from other amounts payable or distributable to, or other assets of, the non-U.S. holder. Non-U.S. holders should consult their tax advisors regarding the proper treatment of any adjustments to the Series Rights.

### ***Distributions on Common Stock***

As described in the section titled “Market for Common Stock and Dividend Policy,” we do not anticipate declaring or paying cash dividends to holders of our common stock in the foreseeable future. However, if we make distributions of cash or property on common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a non-U.S. holder’s adjusted tax basis in its common stock, as the case may be, but not below zero. Any excess will be treated as capital gain and will be treated as described below in the section relating to the sale or disposition of common stock. Because we may not know the extent to which a distribution is a dividend for U.S. federal income tax purposes at the time it is made, for purposes of the withholding rules discussed below we or the applicable withholding agent may treat the entire distribution as a dividend.

Subject to the discussion below on backup withholding and foreign accounts, dividends paid to a non-U.S. holder of common stock that are not effectively connected with the non-U.S. holder’s conduct of a trade or business within the United States will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty).

Non-U.S. holders will be entitled to a reduction in or an exemption from withholding on dividends as a result of either (a) an applicable income tax treaty or (b) the non-U.S. holder holding common stock in connection with the conduct of a trade or business within the United States and dividends being effectively connected with that trade or business. To claim such a reduction in or exemption from withholding, the non-U.S. holder must provide the applicable withholding agent with a properly executed (a) IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) claiming an exemption from or reduction of the withholding tax under the benefit of an income tax treaty between the United States and the country in which the non-U.S. holder resides or is established, or (b) IRS Form W-8ECI stating that the dividends are not subject to withholding tax because they are effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States, as may be applicable. These certifications must be provided to the applicable withholding agent prior to the payment of dividends and must be updated periodically. Non-U.S. holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

If dividends paid to a non-U.S. holder are effectively connected with the non-U.S. holder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such dividends are attributable), then, although exempt from U.S. federal withholding tax (provided the non-U.S. holder provides appropriate certification, as described above), the non-U.S. holder will be subject to U.S. federal income tax on such dividends on a net income basis at the regular graduated U.S. federal income tax rates. In addition, a non-U.S. holder that is a corporation may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on its effectively connected earnings and profits for the taxable year that are attributable to such dividends, as adjusted for certain items. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

### ***Sale or Other Disposition of Common Stock***

Subject to the discussions below on backup withholding and foreign accounts, a non-U.S. holder will not be subject to U.S. federal income tax on any gain recognized upon the sale or other taxable disposition of common stock unless:

- the gain is effectively connected with the non-U.S. holder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable);
- the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- common stock constitutes a U.S. real property interest (“USRPI”), by reason of our status as a U.S. real property holding corporation (“USRPHC”), for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on any gain derived from the disposition, which may be offset by U.S. source capital losses of the non-U.S. holder (even though the individual is not considered a resident of the United States), provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we are not currently and do not anticipate becoming a USRPHC. Because the determination of whether we are a USRPHC depends on the fair market value of our USRPIs relative to the fair market value of our other business assets and our non-U.S. real property interests, however, there can be no assurance we are not a USRPHC or will not become one in the future. If we are or were to become a USRPHC, gain arising from the sale or other taxable disposition of our common stock by a non-U.S. holder will not be subject to U.S. federal income tax if our common stock is “regularly traded,” as defined by applicable Treasury Regulations, on an established securities market and such non-U.S. holder owned, actually and constructively, 5% or less of our common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the non-U.S. holder’s holding period.

Non-U.S. holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

#### ***Information Reporting and Backup Withholding***

Subject to the discussion below on foreign accounts, a non-U.S. holder will not be subject to backup withholding with respect to distributions on common stock we make to the non-U.S. holder, provided the applicable withholding agent does not have actual knowledge or reason to know such non-U.S. holder is a United States person and such non-U.S. holder certifies its non-U.S. status, such as by providing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or other applicable certification. Information returns generally will be filed with the IRS, however, in connection with any distributions (including deemed distributions) made on Series Rights and common stock to the non-U.S. holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our common stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person or the holder otherwise establishes an exemption. Proceeds of a disposition of our common stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the non-U.S. holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder’s U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

#### ***Additional Withholding Tax on Payments Made to Foreign Accounts***

Withholding taxes may be imposed under the Foreign Account Tax Compliance Act (“FATCA”), on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends (including deemed dividends) on, or (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, our common stock paid to a “foreign financial institution” or a “non-financial foreign entity” (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any “substantial United States owners” (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the

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U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain “specified United States persons” or “United States-owned foreign entities” (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends (including deemed dividends) on our common stock. While withholding under FATCA would have applied also to payments of gross proceeds from the sale or other disposition of our rights or common stock on or after January 1, 2019, proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on these proposed Treasury Regulations until final Treasury Regulations are issued.

Investors should consult their tax advisors regarding the potential application of withholding under FATCA to their receipt, ownership, and exercise of Subscription Rights, Series A Rights, Series B Rights and Series C Rights and the ownership and disposition of shares of our common stock acquired upon exercise of Subscription Rights, Series A Rights, Series B Rights and Series C Rights.

## PLAN OF DISTRIBUTION

As soon as practicable after 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, the record date for this offering, we will distribute the Subscription Rights and subscription certificates to persons who owned settled shares of common stock at 5:00 p.m., Eastern time, on the record date. Subscription Rights and the Series Rights may be exercised by completing and signing the subscription certificate or Series Rights certificate that accompanies this prospectus and mailing it in the envelope provided, or otherwise delivering the completed and duly executed subscription certificate or Series Rights certificate to the subscription agent, together with payment in full before the applicable expiration date at the offices of the subscription agent at the address set forth above. The Subscription Rights offering will expire at 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024, unless extended by us, and Subscription Rights may not be exercised after the expiration date. Subscription Rights may be exercised at any time during the Subscription Rights Offering period. Series A Rights, Series B Rights and Series C Rights may be exercised commencing on their date of issuance and continuing, respectively, 30, 60 and 90 days following the closing of the Subscription Rights offering.

See “The Rights Offering — Methods for Exercising the Subscription Rights and Series Rights.” If you have any questions or need further information about this offering, please contact MacKenzie Partners, Inc., the information agent, by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com).

### Dealer-Manager

Moody Capital is the dealer-manager of this offering and, under the terms and subject to the conditions contained in its dealer-manager agreement with us, Moody Capital will provide marketing assistance and advice to us in connection with the offering.

We have agreed to pay Moody Capital a cash fee equal to 6.0% of the proceeds of the offering from the exercise of the Subscription Rights and the Series Rights, a non-accountable expense cash fee equal to 1.0% of the proceeds of the offering from the exercise of the Subscription Rights and the Series Rights and an out-of-pocket accountable expense allowance of \$35,000. Notwithstanding the foregoing, we will pay Moody Capital a cash fee equal to 3.0% of the proceeds of the offering from the exercise of the Subscription Rights and the Series Rights by our executive officers and directors and their respective investment vehicles. No dealer-manager fee will be paid to Moody Capital for sales of units in the rights offering to NRNS in respect of its possible note conversion.

We have agreed to indemnify Moody Capital and its affiliates against, or contribute to losses arising out of, certain liabilities, including liabilities under the Securities Act. Moody Capital’s participation in this offering is subject to customary conditions contained in the dealer-manager agreement. The dealer-manager agreement provides that the dealer-manager will not be subject to any liability to us in rendering the services contemplated by the dealer-manager agreement except for any act of bad faith, willful misconduct or gross negligence of the dealer-manager. The dealer-manager and its affiliates may provide us from time to time in the future in the ordinary course of its business certain financial advisory, investment banking and other services for which it will be entitled to receive customary fees.

The maximum commission to be received by any independent broker-dealer, dealer-manager or any member of FINRA will not be greater than 8.0% of the gross proceeds from the exercise of Subscription Rights in this offering.

Other than as described herein, we do not know of any existing agreements between or among any stockholder, broker, dealer, underwriter or agent relating to the sale or distribution of the underlying shares of common stock.

Some of our officers, employees and directors may solicit responses from the holders of Subscription Rights. None of our officers, directors or employees will be compensated in connection with these actions by the payment of commissions or other remuneration based either directly or indirectly on the subscriptions but will be reimbursed for reasonable expenses.

We have agreed to pay the subscription agent and the information agent customary fees plus certain expenses in connection with the offering. Except as described in this section, we are not paying any commissions, underwriting fees or discounts in connection with this offering.

**Electronic Distribution**

This prospectus may be made available in electronic format on websites or via email or through other online services maintained by Moody Capital or us. Other than this prospectus in electronic format, the information on our and Moody Capital's websites is not part of this prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us or Moody Capital, and should not be relied upon by investors.

The foregoing does not purport to be a complete statement of the terms and conditions of the dealer-manager agreement between Moody Capital and us. A copy of the dealer-manager agreement will be filed as an exhibit to the registration statement of which this prospectus forms a part. See "Where You Can Find Additional Information."

**Regulation M Restrictions**

Moody Capital, as dealer-manager, may be deemed to be an underwriter within the meaning of Section 2(a)(11) of the Securities Act, and any fees received by it might be deemed to be underwriting discounts or commissions under the Securities Act. As an underwriter, Moody Capital would be required to comply with the requirements of the Securities Act and the Exchange Act, including Rule 10b-5 and Regulation M under the Exchange Act. These rules and regulations may limit the timing of any purchases and sales of securities by Moody Capital acting as a principal. Under these rules and regulations, Moody Capital must not engage in any stabilization activity in connection with our securities and must not bid for or purchase any of our securities or attempt to induce any person to purchase any of our securities, other than as permitted under the Exchange Act.

**Price Stabilization**

We have not authorized any person to engage in any form of price stabilization in connection with this offering.



## **LEGAL MATTERS**

The validity of the securities offered will be passed upon for us by Olshan Frome Wolosky LLP, New York, New York. The dealer-manager is being represented by Barton LLP, Santa Monica, California.

## **EXPERTS**

The audited consolidated financial statements incorporated by reference in this prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

### Available Information

We make periodic filings and other filings required to be filed by us as a reporting company under Sections 13 and 15(d) of the Exchange Act. The SEC maintains a website at <http://www.sec.gov> that contains the reports, proxy and information statements, and other information that issuers, such as us, file electronically with the SEC. Our website address is <http://www.flexshopper.com>. Information contained on our website, however, is not, and should not be deemed to be, incorporated into this prospectus and you should not consider information contained on our website to be part of this prospectus. We have included our website address as an inactive textual reference only.

This prospectus and any prospectus supplement are part of a registration statement that we filed with the SEC and do not contain all of the information in the registration statement. The full registration statement may be obtained from the SEC or us, as provided below. Forms of the documents establishing the terms of the offered securities are or may be filed as exhibits to the registration statement or documents incorporated by reference in the registration statement. Statements in this prospectus or any prospectus supplement about these documents are summaries and each statement is qualified in all respects by reference to the document to which it refers. You should refer to the actual documents for a more complete description of the relevant matters. You may inspect a copy of the registration statement through the SEC's website, as provided above.

### Incorporation by Reference

The SEC's rules allow us to "incorporate by reference" information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus. Any statement contained in a previously filed document incorporated by reference will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus modifies or replaces that statement:

- our Annual Report on [Form 10-K](#) for the year ended December 31, 2023, filed with the SEC on April 1, 2024, as amended by [Form 10-K/A](#), filed with the SEC on April 3, 2024;
- our Quarterly Report on Form 10-Q for the quarter ended March 31, 2024, filed with the SEC on [May 13, 2024](#), for the quarter ended June 30, 2024, filed with the SEC on [August 6, 2024](#), and for the quarter ended September 30, 2024, filed with the SEC on [November 19, 2024](#);
- our Definitive Proxy Statement on [Schedule 14A](#), filed with the SEC on September 9, 2024; and
- our Current Reports on Form 8-K filed with the SEC on [March 28, 2024](#), [October 8, 2024](#) and [October 28, 2024](#).

In addition to the filings listed above, we incorporate by reference any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the effective date of this registration statement and the date of this prospectus and before the completion of the offering of the securities included in this prospectus; however, we will not incorporate by reference any document or portions thereof that are not deemed "filed" with the SEC, or any information furnished pursuant to Item 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K.

We will provide, without charge, to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, upon such person's written or oral request, a copy of any and all of the information incorporated by reference in this prospectus. You may request a free copy of any of the documents incorporated by reference in this prospectus by writing or telephoning us at the following address:

FlexShopper, Inc.  
901 Yamato Road, Ste. 260  
Boca Raton, FL 33431  
(855) 353-9289

Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference in this prospectus or any accompanying prospectus supplement.

# FlexShopper<sup>®</sup>

**Non-Transferable Subscription Rights to Purchase Up to 35,000,000 Units  
Each Unit Consisting of One Share of Common Stock,  
One Series A Right, One Series B Right and One Series C Right, and shares of  
Common Stock Issuable Upon Exercise of the Series A Rights, Series B Rights and  
Series C Rights**

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*PRELIMINARY PROSPECTUS*

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C A P I T A L

*Dealer-Manager*

, 2024

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**Part II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth the expenses payable by us in connection with the offering of securities described in this registration statement. All amounts shown are estimates, except for the SEC registration fee. We will bear all expenses shown below.

SEC registration fee	\$	27,194.40
FINRA filing fee	\$	27,143.75
Subscription Agent fees and expenses	\$	60,000
Information Agent fees and expenses	\$	31,000
Printing and engraving expenses	\$	9,800
Legal fees and expenses	\$	200,000
Accounting fees and expenses	\$	23,000
Miscellaneous fees and expenses	\$	1,861.85
Total	\$	<u>380,000</u>

**Item 14. Indemnification of Directors and Officers.**

The following summary is qualified in its entirety by reference to the complete text of any statutes referred to below and the Restated Certificate of Incorporation of FlexShopper, Inc., a Delaware corporation.

Section 145 of the DGCL permits a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

In the case of an action by or in the right of the corporation, Section 145 of the DGCL permits a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL also permits a Delaware corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145 of the DGCL.

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Article TENTH of our Restated Certificate of Incorporation states that our directors shall not be personally liable to us or to our stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. Under Section 102(b)(7) of the DGCL, the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty can be limited or eliminated except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the DGCL (relating to unlawful payment of dividend or unlawful stock purchase or redemption); or (iv) for any transaction from which the director derived an improper personal benefit.

Article EIGHTH of our Fourth Amended and Restated Certificate of Incorporation provides that we shall indemnify our officers and directors to the full extent permitted by the DGCL.

We have obtained directors' and officers' liability insurance insuring our directors and officers against liability for acts or omissions in their capacities as directors or officers, subject to certain exclusions.

In addition, we have entered into employment agreements to indemnify certain of our officers in addition to the indemnification provided for in the certificate of incorporation and bylaws. These agreements, among other things, indemnify our directors and some of our officers for certain expenses (including attorney's fees), judgments, fines and settlement amounts incurred by such person in any action or proceeding, including any action by or in our right, on account of services by that person as a director or officer of FlexShopper, Inc. or as a director or officer of any of our subsidiaries, or as a director or officer of any other company or enterprise that the person provides services to at our request.

**Item 15. Recent Sales of Unregistered Securities.**

None.

**Item 16. Exhibits and Financial Statement Schedules.**

(a) Exhibits.

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
1.1*	<a href="#">Form of Dealer-Manager Agreement with Moody Capital Solutions, Inc.</a>
2.1	<a href="#">Asset Purchase Agreement, dated as of October 10, 2022, by and among FlexShopper Revolution, LLC, the sellers signatory thereto, and Revolution Financial, Inc. (previously filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on December 8, 2022 and incorporated herein by reference)</a>
2.2	<a href="#">Amendment to Asset Purchase Agreement, dated as of December 1, 2022, by and among FlexShopper Revolution, LLC, the sellers signatory thereto, and Revolution Financial, Inc. (previously filed as Exhibit 2.2 to the Company's Current Report on Form 8-K filed on December 8, 2022 and incorporated herein by reference)</a>
3.1	<a href="#">Restated Certificate of Incorporation of FlexShopper, Inc. (previously filed as Exhibit 3.1 to the Company's Annual Report on Form 10-K filed on March 8, 2018 and incorporated herein by reference)</a>
3.2	<a href="#">Amended and Restated Bylaws (previously filed as Exhibit 3.2 to the Company's Annual Report on Form 10-K filed on March 11, 2019 and incorporated herein by reference)</a>
3.3	<a href="#">Certificate of Amendment to the Certificate of Incorporation of the Company (previously filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed on September 21, 2018 and incorporated herein by reference)</a>
3.4	<a href="#">Certificate of Amendment to the Certificate of Incorporation of the Company (previously filed as Exhibit 3.4 to the Company's Quarterly Report on Form 10-Q filed on November 5, 2018 and incorporated herein by reference)</a>
3.5	<a href="#">Certificate of Designations of Series 1 Convertible Preferred Stock (previously filed as Exhibit 3.4 to the Company's General Form of Registration on Form 10-SB filed on April 30, 2007 and incorporated herein by reference)</a>

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<b>Exhibit Number</b>	<b>Description of Exhibit</b>
3.6	<a href="#">Certificate of Decrease of the Number of Authorized Shares of Preferred Stock of FlexShopper, Inc. Designated as Series 1 Preferred Stock (previously filed as Exhibit 4.6 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017 and incorporated herein by reference)</a>
3.7	<a href="#">Certificate of Designations for Series 2 Convertible Preferred Stock (previously filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed on June 13, 2016 and incorporated herein by reference)</a>
3.8	<a href="#">Certificate of Amendment to Certificate of Incorporation of FlexShopper, Inc. (previously filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed on October 8, 2024 and incorporated herein by reference)</a>
4.1	<a href="#">Description of the FlexShopper, Inc. Securities Registered under Section 12 of the Securities Exchange Act (previously filed as Exhibit 4.8 to the Company's Annual Report on Form 10-K filed on March 3, 2020 and incorporated herein by reference)</a>
4.2*†	<a href="#">Form of Subscription Rights Certificate for Subscription Rights</a>
4.3**†	<a href="#">Form of Subscription Rights Certificate for Series A Rights</a>
4.4**†	<a href="#">Form of Subscription Rights Certificate for Series B Rights</a>
4.5**†	<a href="#">Form of Subscription Rights Certificate for Series C Rights</a>
5.1*	<a href="#">Opinion of Olshan Frome Wolosky LLP</a>
8.1*	<a href="#">Tax Opinion of Olshan Frome Wolosky LLP</a>
10.1	<a href="#">Credit Agreement, dated as of March 6, 2015, by and among FlexShopper 2, LLC, Wells Fargo Bank, N.A., various Lenders from time to time party thereto and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 12, 2015 and incorporated herein by reference)</a>
10.2	<a href="#">Investor Rights Agreement, dated as of March 6, 2015, by and among the Company, the Management Stockholders and affiliates of Waterfall (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on March 12, 2015 and incorporated herein by reference)</a>
10.3	<a href="#">Form of Investor Rights Agreement, dated as of March 6, 2015, by and among the Company and the Investors party thereto (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed on March 12, 2015 and incorporated herein by reference)</a>
10.4	<a href="#">Amendment No. 1 to the Credit Agreement, dated November 6, 2015, by and among FlexShopper 2, LLC and WE2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 12, 2015 and incorporated herein by reference)</a>
10.5	<a href="#">Amendment No. 2 to the Credit Agreement, dated November 6, 2015, by and among FlexShopper 2, LLC and WE2014-1, LLC (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on November 12, 2015 and incorporated herein by reference)</a>
10.6+	<a href="#">Executive Employment Agreement, dated December 1, 2015, by and between the Company and Russ Heiser (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 7, 2015 and incorporated herein by reference)</a>
10.7	<a href="#">Amendment No. 3 to the Credit Agreement, Consent and Temporary Waiver, dated February 11, 2016, by and among FlexShopper 2, LLC and WE-2014-1, LLC (previously filed as Exhibit 10.12 to the Company's Annual Report on Form 10-K filed on March 30, 2016 and incorporated herein by reference)</a>
10.8+	<a href="#">2007 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.1 to the Company's General Form of Registration on Form 10-SB filed on April 30, 2007 and incorporated herein by reference)</a>
10.9+	<a href="#">Form of Non-Qualified Stock Option Grant issuable under 2007 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.2 to the Company's General Form of Registration on Form 10-SB filed on April 30, 2007 and incorporated herein by reference)</a>
10.10+	<a href="#">Amendment to 2007 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.3 to the Company's Annual Report on Form 10-K filed on March 29, 2012 and incorporated herein by reference)</a>
10.11+	<a href="#">2015 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.1 to the Company's Current Report on Form 8-K filed on September 21, 2015 and incorporated herein by reference)</a>
10.12+	<a href="#">Form of Stock Option Agreement issuable under 2015 Omnibus Equity Compensation Plan (previously filed as Exhibit 10.18 to the Company's Annual Report on Form 10-K filed on March 30, 2016 and incorporated herein by reference)</a>

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<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.13	<a href="#">Amendment No. 4 to the Credit Agreement and Waiver, dated March 29, 2016, by and among FlexShopper 2, LLC and WE-2014-1, LLC (previously filed as Exhibit 10.19 to the Company's Annual Report on Form 10-K filed on March 30, 2016 and incorporated herein by reference)</a>
10.14	<a href="#">Investor Rights Agreement, dated as of June 10, 2016, by and among FlexShopper, Inc., B2 FIE V LLC and the other parties thereto (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 13, 2016 and incorporated herein by reference)</a>
10.15	<a href="#">Omnibus Amendment, dated January 27, 2017, by and among FlexShopper 2, LLC, FlexShopper, LLC and WE2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 31, 2017 and incorporated herein by reference)</a>
10.16	<a href="#">Letter Agreement, dated January 9, 2018, by and between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 12, 2018 and incorporated herein by reference)</a>
10.17	<a href="#">Form of Commitment Letter and Subordinated Promissory Note issued by FlexShopper, LLC to each of Russ Heiser and NRNS Capital Holdings LLC (previously filed as Exhibit 10.23 to the Company's Annual Report on Form 10-K filed on March 8, 2018 and incorporated herein by reference)</a>
10.18+	<a href="#">2018 Omnibus Equity Compensation Plan (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 30, 2018)</a>
10.19	<a href="#">Amendment No. 6 to Credit Agreement, dated April 3, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 6, 2018 and incorporated herein by reference)</a>
10.20	<a href="#">Amendment No. 1 to Investor Rights Agreement, dated April 3, 2018, by and among the Company, the Management Stockholders and affiliates of Waterfall (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed April 6, 2018 and incorporated herein by reference)</a>
10.21	<a href="#">Amendment No. 7 to Credit Agreement, dated July 31, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed August 6, 2018 and incorporated herein by reference)</a>
10.22	<a href="#">Amendment No. 8 to Credit Agreement, dated August 29, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 31, 2018 and incorporated herein by reference)</a>
10.23	<a href="#">Amendment No. 2 to Investor Rights Agreement, dated August 27, 2018, by and among the Company, B2 FIE V LLC and the other parties thereto (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed August 31, 2018 and incorporated herein by reference)</a>
10.24	<a href="#">Form of Amended and Restated Subordinated Promissory Note issued by FlexShopper, LLC to each of Russ Heiser and NRNS Capital Holdings LLC (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed August 31, 2018 and incorporated herein by reference)</a>
10.25	<a href="#">Amendment No. 9 to Credit Agreement, dated September 22, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 24, 2018 and incorporated herein by reference)</a>
10.26	<a href="#">Amendment No. 10 to Credit Agreement, dated September 24, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed October 1, 2018 and incorporated herein by reference)</a>
10.27	<a href="#">Amendment No. 11 to Credit Agreement, dated September 24, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as an exhibit to the Company's Annual Report on Form 10-K filed March 11, 2019 and incorporated herein by reference)</a>
10.28	<a href="#">Form of Commitment Letter and Subordinated Promissory Note, dated January 25, 2019, issued by FlexShopper, LLC to 122 Partners, LLC (previously filed as an exhibit to the Company's Annual Report on Form 10-K filed March 11, 2019 and incorporated herein by reference)</a>
10.29	<a href="#">Office Lease, dated January 29, 2019, between FlexShopper, LLC and Mainstreet CV North 40, LLC (previously filed as an exhibit to the Company's Annual Report on Form 10-K filed March 11, 2019 and incorporated herein by reference)</a>
10.30	<a href="#">Consulting Agreement, dated as of February 19, 2019, between the Company and XLR8 Capital Partners LLC (previously filed as an exhibit to the Company's Annual Report on Form 10-K filed March 11, 2019 and incorporated herein by reference)</a>

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<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.31	<a href="#">Form of Commitment Letter and Subordinated Promissory Note, dated February 19, 2019, issued by FlexShopper, LLC to NRNS Capital Holdings LLC (previously filed as an exhibit to the Company's Annual Report on Form 10-K filed March 11, 2019 and incorporated herein by reference)</a>
10.32	<a href="#">Amendment No. 1 to 2018 Omnibus Equity Compensation Plan (incorporated by reference to Appendix A of the Company's definitive proxy statement for its 2019 Annual Meeting of Stockholders, filed March 25, 2019)</a>
10.33	<a href="#">Form of Amended and Restated Subordinated Promissory Note issued by FlexShopper, LLC to NRNS Capital Holdings LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 28, 2019 and incorporated herein by reference)</a>
10.34	<a href="#">Form of Warrant Amendment and Exchange Agreement, dated as of December 30, 2019, amount FlexShopper, Inc. and the Holders signatory thereto (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed December 30, 2019 and incorporated herein by reference)</a>
10.35+	<a href="#">Employment Agreement, dated January 1, 2020, by and between the Company and Harold Russell Heiser, Jr. (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed January 6, 2020 and incorporated herein by reference)</a>
10.36	<a href="#">Amendment to Consulting Agreement, dated February 19, 2019, between the Company and XLR8 Capital Partners LLC. (previously filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on May 6, 2020 and incorporated herein by reference)</a>
10.37	<a href="#">Form of Commitment Letter and Promissory Note between FlexShopper, LLC and Customer Bank, (previously filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on May 6, 2020 and incorporated herein by reference)</a>
10.38	<a href="#">Amendment to Subordinated Debt Financing Letter Agreement issued by FlexShopper, LLC to 122 Partners, LLC. (previously filed as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on May 6, 2020 and incorporated herein by reference)</a>
10.39	<a href="#">Amendment to the FlexShopper, Inc. 2018 Omnibus Equity Compensation Plan (previously filed as Appendix A to the Company's Definitive Proxy Statement filed on April 29, 2020 and incorporated herein by reference)</a>
10.40	<a href="#">Amendment of Consulting Agreement, dated August 30, 2020, between FlexShopper, Inc. and XLR8 Capital Partners, LLC. (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 1, 2020 and incorporated herein by reference)</a>
10.41	<a href="#">Credit Agreement, dated as of March 6, 2015, among FlexShopper 2, LLC, as company, Wells Fargo Bank, National Association, as paying agent, various lenders from time to time party thereto, and WE 2014-1, LLC, as administrative agent, as conformed through Omnibus Amendment dated January 29, 2021 (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 4, 2021 and incorporated herein by reference)</a>
10.42	<a href="#">Amendment No. 13 to Credit Agreement, dated February 26, 2020, between FlexShopper 2, LLC and WE 2014-1, LLC. (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 3, 2021 and incorporated herein by reference)</a>
10.43	<a href="#">Amendment No. 2 to Subordinated Debt Financing Letter Agreement between FlexShopper, LLC and 122 Partners, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 25, 2021 and incorporated herein by reference)</a>
10.44	<a href="#">Amendment to Subordinated Debt Financing Commitment Letter and Second Amended and Restated Subordinated Promissory Note between FlexShopper, LLC and NRNS Capital Holdings LLC (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on March 25, 2021 and incorporated herein by reference)</a>
10.45+	<a href="#">Amendment to the FlexShopper, Inc. 2018 Omnibus Equity Compensation Plan (previously filed as Appendix A to the Company's Definitive Proxy Statement filed on April 29, 2021 and incorporated herein by reference)</a>
10.46	<a href="#">Amendment No. 14 to Credit Agreement, dated December 28, 2021, between FlexShopper 2, LLC and WE 2014-1, LLC. (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 28, 2021 and incorporated herein by reference)</a>



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<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.47	<a href="#">Amendment dated February 2, 2022 to Subordinated Debt Financing Commitment Letter and Second Amended and Restated Subordinated Promissory Note between FlexShopper, LLC and NRNS Capital Holdings LLC, (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 4, 2022 and incorporated herein by reference)</a>
10.48+	<a href="#">Amended and Restated Employment Agreement, dated as of February 23, 2022, between FlexShopper, Inc. and H. Russell Heiser Jr. (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on February 25, 2022 and incorporated herein by reference)</a>
10.49	<a href="#">Amendment No. 15 to Credit Agreement, dated as of March 8, 2022, between FlexShopper 2, LLC, as borrower, WE 2014-1, LLC, as administrative agent and lender, and WE 2022-1, LLC, as lender, (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 8, 2022 and incorporated herein by reference)</a>
10.50	<a href="#">Amendment No 3 to Subordinated Debt Financing Letter Agreement between FlexShopper, LLC and 122 Partners, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 1, 2022 and incorporated herein by reference)</a>
10.51	<a href="#">Amendment No. 16 to Credit Agreement, dated as of October 21, 2022, between FlexShopper 2, LLC, as borrower and Powerscourt Investment 32, LP, as administrative agent and lender, (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 27, 2022 and incorporated herein by reference)</a>
10.52	<a href="#">Amendment No 4 to Subordinated Debt Financing Letter Agreement between FlexShopper, LLC and 122 Partners, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 31, 2023 and incorporated herein by reference)</a>
10.53	<a href="#">Amendment No. 1 to Amended and Restated Employment Agreement, dated April 21, 2023, (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 27, 2023 and incorporated herein by reference)</a>
10.54	<a href="#">Amendment No. 17 to Credit Agreement, dated as of June 5, 2023, between FlexShopper 2, LLC, as borrower, and Powerscourt Investment 32 LP, as administrative agent and lender (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 13, 2023 and incorporated herein by reference)</a>
10.55	<a href="#">Joinder Agreement, Consent, Waiver and Second Amendment to Credit Agreement, dated as of June 7, 2023, between Revolution Financial, Inc., as existing borrower, and Flex Revolution, LLC, as the new borrower, the subsidiary guarantors party hereto, the lenders party thereto, the individual guarantor party hereto, and BP Fundco, LLC, as administrative agent (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on June 13, 2023 and incorporated herein by reference)</a>
10.56	<a href="#">Amendment to Subordinated Debt and Warrants to Purchase Common Stock, dated as of June 29, 2023, between FlexShopper, Inc., FlexShopper, LLC and NRNS Capital Holdings LLC and, for purposes of the warrants only, Harold R. Heiser and PITA Holdings, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 3, 2023 and incorporated herein by reference)</a>
10.57	<a href="#">Credit Agreement, dated as of March 24, 2024, by and among FlexShopper 2, LLC, Computershare Trust Company, National Association, various lenders from time to time party hereto, and Powerscourt Investment 50, LP (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 27, 2024 and incorporated herein by reference)</a>
10.58	<a href="#">Preferred Stock Purchase Option Agreement (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 28, 2024 and incorporated herein by reference)</a>
21.1	<a href="#">Subsidiaries of the Company (previously filed as Exhibit 21.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2023 and incorporated herein by reference)</a>
97.1	<a href="#">FlexShopper, Inc. - Clawback Policy (previously filed as Exhibit 97.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2023 and incorporated herein by reference)</a>
23.1*	<a href="#">Consent of Grant Thornton LLP, independent registered public accounting firm</a>
23.2*	<a href="#">Consent of Olshan Frome Wolosky LLP (included in the opinion filed as Exhibit 5.1)</a>
24.1**	<a href="#">Power of Attorney (set forth on signature page of the Registration Statement)</a>
99.1*	<a href="#">Form of Instructions as to Use of Subscription Rights Certificate</a>
99.2*	<a href="#">Form of Instructions as to Use of Series Rights Certificate</a>

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
99.3*	<a href="#">Form of Letter to Stockholders Who Are Record Holders</a>
99.4*	<a href="#">Form of Letter to Brokers and Other Nominee Holders</a>
99.5*	<a href="#">Form of Broker Letter to Clients Who are Beneficial Holders</a>
99.6*	<a href="#">Form of Beneficial Owner Election Form</a>
99.7*	<a href="#">Form of Nominee Holder Certification</a>
99.8*	<a href="#">Form of Notice of Important Tax Information</a>
107**	<a href="#">Filing Fee Table</a>

\* Filed herewith.

\*\* Previously filed.

+ Indicates management contract or compensatory plan.

† Portions of this exhibit (indicated by asterisks) have been redacted in accordance with Item 601(a)(6) of Regulation S-K. This information is not material and disclosure of such information would constitute an unwarranted invasion of personal privacy.

(b) Financial Statement Schedules. Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

### **Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the registration statement is on Form S-1 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
  - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (ii) Each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
  - (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
  - (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
  - (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act, as amended, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

- (d) The undersigned registrant hereby undertakes that:
  - (i) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and
  - (ii) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Boca Raton, Florida, on this 20<sup>th</sup> day of November 2024.

**FLEXSHOPPER, INC.**

By:           /s/ H. Russell Heiser Jr.

Name: H. Russell Heiser Jr.

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Registration Statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>          /s/ Howard S. Dvorkin</u> Howard S. Dvorkin	Chairman of the Board of Directors	November 20, 2024
<u>          /s/ H. Russell Heiser Jr.</u> H. Russell Heiser Jr.	Chief Executive Officer (principal executive officer, principal financial officer and principal accounting officer)	November 20, 2024
<u>          /s/ James D. Allen*</u> James D. Allen	Director	November 20, 2024
<u>          /s/ Sean Hinze*</u> Sean Hinze	Director	November 20, 2024
<u>          /s/ Thomas O. Katz*</u> Thomas O. Katz	Director	November 20, 2024
<u>          /s/ T. Scott King*</u> T. Scott King	Director	November 20, 2024

\* By:           /s/ H. Russell Heiser Jr.  
          H. Russell Heiser Jr.  
          Attorney-in-fact

## FORM OF DEALER-MANAGER AGREEMENT

\_\_\_\_\_, 2024

Moody Capital Solutions, Inc.  
As Dealer-Manager  
2458 Dunkerrin Lane  
Atlanta, GA 30360

Ladies and Gentlemen:

The following will confirm our agreement relating to the proposed offering (the “**Offering**”) to be undertaken by FlexShopper Inc., a Delaware corporation (the “**Company**”), pursuant to which the Company will distribute to holders of record of its (i) common stock, par value \$0.0001 per share (“**Common Stock**”), (ii) series 1 convertible preferred stock, par value \$0.001 per share (“**Series 1 Preferred**”), and (iii) series 2 convertible preferred stock, par value \$0.001 per share (“**Series 2 Preferred**”), non-transferable subscription rights (the “**Subscription Rights**”) as set forth in the Company’s registration statement on Form S-1 (File No. 333-282857) initially filed with the U.S. Securities and Exchange Commission (the “**Commission**”) on October 28, 2024, to subscribe for and purchase up to 35.0 million units (the “**Units**”), at a fixed subscription price (the “**Unit Subscription Price**”). Each Unit will consist of one share of Common Stock, one series A common stock purchase right (“**Series A Right**”), one series B common stock purchase right (“**Series B Right**”) and one series C common stock purchase right (“**Series C Right**”) and, collectively with the Series A Right and Series B Right, the “**Series Rights**”), with each of the Series Rights entitling the holder to purchase one share of Common Stock. Shares of Common Stock and the Series Rights comprising the Units may only be purchased as a Unit but will be issued separately. The Subscription Rights and Series Rights are collectively referred to herein as the “**Rights**”. Shares of Common Stock underlying the Rights are referred to herein as the “**Shares**”. The maximum number of Shares that may be issued in the Offering is 70.0 million.

1. The Offering.

(a) The Company proposes to undertake the Offering pursuant to which each holder of Common Stock, Series 1 Preferred and Series 2 Preferred shall receive two Subscription Rights for every share of Common Stock held of record by such holder or into which the preferred stock is exercisable, as the case may be, at the close of business on \_\_\_\_\_, 2024 (the “**Record Date**”). Holders of Subscription Rights (each, a “**Holder**”) will be entitled to subscribe for and purchase, at the Subscription Price, one Unit for every Subscription Right granted to Holders on the Record Date (the “**Basic Subscription Right**”) and an over-subscription privilege which will entitle Holders to purchase additional Units for which other Holders do not subscribe (the “**Over-Subscription Privilege**”).

(b) The Subscription Rights shall be non-transferable.

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(c) Any Holder who fully exercises all Basic Subscription Rights issued to such Holder is entitled to subscribe for Units which were not otherwise subscribed for by other Holders pursuant to their Basic Subscription Rights (the “**Over-Subscription Privilege**”). The Over-Subscription Privilege shall allow a Holder to subscribe for any or all of the Units which were not otherwise subscribed for as of the Subscription Rights Expiration Date (as defined below). Units acquired pursuant to the Basic Subscription Right and the Over-Subscription Privilege are subject to certain limitations and pro rata allocation, as more fully discussed in the Prospectus (as defined below).

(d) Unless extended as provided in the Prospectus (as defined below), the Subscription Rights are intended to expire at 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 (the “**Subscription Rights Expiration Date**”). Notwithstanding the foregoing, the Company shall have the right to extend the Subscription Rights Expiration Date for up to an additional thirty (30) calendar days in its sole discretion, in which case all Basic Subscription Rights and Over-Subscription Privileges exercised during the extension period will be filled on a first-come, first-serve basis. The Company will announce any extension in a press release issued no later than 9:00 a.m., Eastern time, on the business day after the most recently announced expiration date.

The Series Rights are exercisable commencing on their date of issuance at an exercise price equal to the higher of (x) the Unit Subscription Price or (y)(i) in the case of the Series A Rights, 90% of the volume weighted average price (“**VWAP**”) of the Common Stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the Closing Date of the Subscription Rights offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of the Common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the Closing Date of the Subscription Rights Offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of the Common Stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the Closing Date of the Subscription Rights Offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent. If at the expiration date of each Series Right (each, a “**Series Right Expiration Date**”), the exercise price as determined above, is lower than the initial maximum amount paid, any excess subscription amount paid by a Holder will be promptly, returned to the Holder, without interest or penalty.

(e) All funds from the exercise of Rights shall be deposited with a bank or other financial institution and Continental Stock Transfer and Trust Company shall act as the subscription and escrow agent (the “**Subscription Agent**”). Funds from the exercise of Subscription Rights shall be held in a segregated escrow account pending a final determination of the number of Units to be issued pursuant to the exercise of Basic Subscription Rights and Over-Subscription Privileges. As soon as practicable after the Subscription Rights Expiration Date, the Company shall conduct a closing of the Subscription Rights. As soon as practicable after each Series Right Expiration Date, the Company shall conduct a closing as to each Series Right.

## 2. Appointment as Dealer-Manager; Role of Dealer-Manager.

(a) The Company has engaged Moody Capital Solutions, Inc. as the exclusive dealer-manager (the “**Dealer-Manager**”) in connection with the Offering, and authorizes the Dealer-Manager to act as such on its behalf in connection with the Offering, in accordance with this Dealer-Manager Agreement (this “**Agreement**”). Until the closing of the Series C Right Expiration Date, the Company will not solicit, negotiate with or enter into any agreement with any placement agent, financial advisor, dealer-manager, brokers, dealers or underwriters or any other person or entity in connection with the Offering. On the basis of the representations and warranties and agreements of the Company contained in this Agreement and subject to and in accordance with the terms and conditions hereof, the Dealer-Manager agrees that as Dealer-Manager it will, in accordance with its customary practice and to the extent requested by the Company, use its commercially reasonable efforts to (i) advise on pricing, structuring and other terms and conditions of the Offering, including whether to provide for transferability, tradability and over-subscription privileges and limits (it being acknowledged that such services have been previously provided pursuant to the engagement letter, dated as of September 20, 2024, between the Dealer-Manager and the Company (the “**Engagement Letter**”), (ii) provide guidance on general market conditions and their impact on the Offering, (iii) assist the Company in drafting a presentation that may be used to market the Offering to existing and potential investors, describing the proposed capital raise, the Company’s history and performance to date, track records of key executives, highlights of the Company’s business plan and the intended use of proceeds from the Offering, (iv) advise on the selection of the Information Agent and Subscription Agent (it being acknowledged that such advice has been previously rendered pursuant to the Engagement Letter), (v) assist the Company with its understanding of state blue sky laws, (vi) solicit the holders of the Rights to encourage them to exercise such Rights, and (vii) enter into selected dealer agreements with other registered broker-dealers and provide the Company with the opportunity to introduce the Company and make a presentation to such broker-dealers, in each case using its best efforts and in conformity with all applicable federal and state securities laws. Notwithstanding anything that may be to the contrary in this Agreement, the Company and the Dealer-Manager hereby agree that the Dealer-Manager will not underwrite the Offering, the Dealer-Manager has no obligation to act, and will not act, in any capacity as an underwriter in connection with the Offering, and the Dealer-Manager has no obligation to purchase or procure purchases of the Rights or Shares offered in connection with the Offering. The parties acknowledge and agree that the Dealer-Manager may perform certain of its services through its affiliates and any of its affiliates performing services hereunder shall be entitled to the benefits and be subject to the terms and conditions of this Agreement.

(b) The Company acknowledges and agrees that: (i) the terms of this Agreement are intended to be arm's-length commercial transactions between the Company, on the one hand, and the Dealer-Manager, on the other hand; (ii) other than the obligations expressly set forth in this Agreement and the Engagement Letter, in connection therewith, the Dealer-Manager is not acting as a fiduciary of the Company; (iii) other than the obligations expressly set forth in this Agreement and the Engagement Letter, the Dealer-Manager has not assumed any agency or fiduciary responsibilities in favor of the Company with respect to the Offering or the process leading thereto (irrespective of whether the Dealer-Manager has advised or is currently advising the Company on other matters in its capacity as Dealer-Manager or otherwise) or any other obligation to the Company with respect to the Offering, except the obligations expressly set forth in this Agreement; and (iv) the Dealer-Manager may be engaged in a broad range of transactions that involve interests that differ from those of the Company which the Dealer-Manager may be under no obligation to disclose. The Company acknowledges that it has consulted its own legal and financial advisors with respect to its execution of and performance under this Agreement.

3. No Liability for Acts of Brokers, Dealers, Banks and Trust Companies. The Dealer-Manager shall not be subject to any liability (in tort, contract or otherwise) to the Company or the Company's Subsidiaries, if any (as such term is defined in Rule 405 of the Securities Act of 1933, as amended (the "**Securities Act**")), or Affiliates (as such term is defined in Rule 144 under the Securities Act) for any act or omission on the part of any broker or dealer in securities (other than the Dealer-Manager or any Affiliates of the Dealer-Manager) or any natural person, partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other entity or organization (each, a "**Person**"). Except as set forth herein or in the Engagement Letter, the Company agrees that it will not hold the Dealer-Manager liable for its own acts or omissions in performing its obligations as advisor or Dealer-Manager hereunder or otherwise in connection with the Offering or the related transactions, and except for any losses, claims, damages, liabilities and expenses to have resulted directly from any such acts or omissions undertaken or omitted to be taken by the Dealer-Manager or its Affiliates through gross negligence, bad faith or willful misconduct, in all cases as determined in a non-appealable final judgment by a court of competent jurisdiction. The Dealer-Manager may appoint sub-placement agents and/or dealers in connection with the Offering. In soliciting or obtaining exercises of Rights, the Dealer-Manager shall not be deemed to be acting as the agent of the Company or as the agent of any broker, dealer, bank or trust company, and no broker, dealer, bank or trust company shall be deemed to be acting as the Dealer-Manager's agent or as the agent of the Company. Unless the context specifically requires otherwise, the term "**Company**" as used in this Agreement means the Company and its Subsidiaries, if any, collectively on a consolidated basis. Except as set forth herein, the Company agrees that it will not hold the Dealer-Manager liable or responsible for the failure of the Offering in the event that the Offering is not successfully consummated for any reason other than because of any acts or omissions undertaken or omitted to be taken by the Dealer-Manager through its gross negligence, bad faith or willful misconduct, in all cases as determined in a non-appealable final judgment by a court of competent jurisdiction.

#### 4. The Offer Documents.

(a) There will be used in connection with the Offering certain materials in addition to the Registration Statement, any Preliminary Prospectus and the Prospectus (each as defined herein), together with any amendments or supplements thereto, as filed, including: (i) all exhibits to the Registration Statement which pertain to the conduct of the Offering and (ii) any soliciting materials relating to the Offering approved by the Company, and (iii) any "free-writing prospectus" with respect to the Offering filed by the Company (collectively with the Registration Statement and the Prospectus, the "**Offer Documents**"). The Offer Documents have been or will be prepared and approved by, and, except for the Dealer-Manager Information, are the sole responsibility of, the Company.

(b) The Company shall furnish copies of drafts of any Offer Documents to the Dealer-Manager within a reasonable time in advance of filing with the Commission or with any other federal, state, or other governmental agency or instrumentality or court ("**Other Agency**"). The Dealer-Manager shall be given an opportunity to review and comment upon the Offer Documents, to which comments the Company will give reasonable consideration.



(c) In the event that the Company uses or permits the use of, or files with the Commission or any Other Agency, any Offer Documents (i) which have not been submitted to the Dealer-Manager for its comments, or (ii) which have been so submitted and with respect to which the Dealer-Manager has made comments, but which comments have not resulted in a response reasonably satisfactory to the Dealer-Manager and its counsel to reflect such comments, then the Dealer-Manager shall be entitled to withdraw as a Dealer-Manager in connection with the Offering and the related transactions, without any liability or penalty to the Dealer-Manager or any other Person identified in Section 11 hereof as an “indemnified party,” and the Dealer-Manager shall be entitled to receive the payment of all fees and expenses payable under this Agreement or the Engagement Letter which have accrued to the date of such withdrawal. No such event has occurred through the date hereof.

(d) The Company agrees to furnish the Dealer-Manager with as many copies as it may reasonably request of the final forms of the Offer Documents, and the Dealer-Manager is authorized to use copies of the Offer Documents in connection with its acting as Dealer-Manager. The Company represents and warrants to the Dealer-Manager that the Dealer-Manager may rely on the accuracy and completeness of all of the Offer Documents and any other information delivered to the Dealer-Manager by or on behalf of the Company in connection with the Offering. The Dealer-Manager hereby agrees that it will not disseminate any written material for or in connection with the solicitation of exercises of Rights pursuant to the Offering other than the Offer Documents and any other information delivered to the Dealer-Manager by or on behalf of the Company in connection with the Offering.

(e) The Company represents and agrees that no solicitation material, other than the Offer Documents and the documents to be filed therewith as exhibits thereto, will be used by or on behalf of the Company in connection with the Offering, in either case without the prior approval of the Dealer-Manager, which approval will not be unreasonably withheld. In the event that the Company uses or permits the use of any such solicitation material in connection with the Offering, then the Dealer-Manager shall be entitled to withdraw as Dealer-Manager in connection with the Offering and the related transactions without any liability or penalty to the Dealer-Manager or any other Person identified in Section 11 hereof as an “indemnified party,” and the Dealer-Manager shall be entitled to receive the payment of all fees and expenses payable under this Agreement or the Engagement Letter which have accrued to the date of such withdrawal or which otherwise thereafter become payable.

(f) As of the date hereof and at all times prior to and following the effectiveness of the Registration Statement, the Company shall, and cause its officers, directors and Affiliates to, comply with all rules and regulations of the Commission relating to public offerings, including, without limitation, those relating to public statements and disclosures of material non-public information.

(g) The Company agrees that any reference to the Dealer-Manager in any Offer Documents or in any newspaper, announcement or press release or other document or communication is subject to the Dealer-Manager’s prior consent, which consent shall not be unreasonably withheld. The Dealer-Manager agrees that any reference to the Company or the Offering in a press release or other document or communication made by the Dealer-Manager, any of its Affiliates or a registered broker-dealer with whom the Dealer-Manager has entered into a selected dealer agreement is subject to the Company’s prior consent, which consent shall not be unreasonably withheld.

5. Representations and Warranties. The Company represents and warrants to the Dealer-Manager that:

(a) The Company has prepared and filed with the Commission a registration statement and an amendment or amendments thereto, on Form S-1 (File No. 333-282857), including a Preliminary Prospectus (as defined below), describing the Subscription Rights, the Series Rights and the units, in accordance with the provisions of the rules and regulations of the Commission under the Securities Act, for the registration of the Subscription Rights, the Series Rights, the Units, and the Shares under the Securities Act. At the time of such filing, the Company met the requirements of Form S-1 under the Securities Act. Promptly after execution and delivery of this Agreement, the Company will prepare and file a prospectus in accordance with the provisions of Rule 430A (“**Rule 430A**”) of the rules and regulations of the Commission under the Securities Act (the “**Securities Act Regulations**”) and paragraph (b) of Rule 424 (“**Rule 424(b)**”) of the Securities Act Regulations. The information included in such prospectus that was omitted from such Registration Statement at the time it became effective but that is deemed to be part of such Registration Statement at the time it became effective pursuant to paragraph (b) of Rule 430A is referred to as “**Rule 430A Information**.” The Preliminary Prospectus and each prospectus used before such Registration Statement became effective, and any prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of this Agreement, is referred to herein as a “**Preliminary Prospectus**.” For purposes of this Agreement, “**Effective Time**” means the date and the time as of which such registration statement, or the most recent post-effective amendment thereto, if any, was declared effective by the Commission; “**Effective Date**” means the date of the Effective Time; “**Registration Statement**” means such Registration Statement, as amended at the Effective Time, including any documents which are exhibits thereto; and “**Prospectus**” means such final prospectus, as first filed with the Commission pursuant to paragraph (1) or (4) of Rule 424(b) of the Securities Act, including the Preliminary Prospectus and all information or reports under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), incorporated in the Prospectus by reference. The Commission has not issued any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus. All references in this Agreement to the Registration Statement, a Preliminary Prospectus, and the Prospectus, or any amendments or supplements to any of the foregoing shall be deemed to include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (“**EDGAR**”). The Prospectus delivered to the Dealer-Manager for use in connection with the Offering will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T promulgated by the Commission.

(b) The Registration Statement (together with all exhibits filed as part of the Registration Statement) conforms, and any Preliminary Prospectus and the Prospectus and any further amendments or supplements to the Registration Statement conforms or will conform, when they are filed with or become effective by the Commission, as the case may be, in each case, in all material respects to the requirements of the Securities Act and collectively do not and will not, as of the applicable Effective Date (as to the Registration Statement and any amendment thereto) and as of the applicable filing date (as to the Prospectus and any amendment or supplement thereto) contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein (with respect to the Prospectus, in the light of the circumstances under which they were made) not misleading; provided that no representation or warranty is made by the Company as to information contained in or omitted from the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Dealer-Manager specifically for inclusion therein, it being acknowledged and agreed that such information provided by or on behalf of the Dealer-Manager consists solely and exclusively of disclosure of the name of the Dealer-Manager acting in its capacity as dealer-manager for the Offering contained in the Prospectus, and information provided within the “Plan of Distribution” section of the Prospectus, except for the information provided under the sub-section entitled “Sales by Principal Stockholders, Directors and Executive Officers,” (collectively, the “**Dealer-Manager Information**”) under appropriate headings and in its final form as approved by the Dealer-Manager and its counsel.

(c) There are no contracts, agreements, plans or other documents which are required to be described in the Prospectus or filed as exhibits to the Registration Statement by the Securities Act which have not been described in the Prospectus, or filed as exhibits to the Registration Statement or incorporated by reference into the exhibit table of the Registration Statement as permitted by the Securities Act.

(d) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which its ownership or lease of property or the conduct of its business requires such qualification, and has all power and authority necessary to own or hold its properties and to conduct the business in which it is engaged, except where the absence of such power, authority, qualification or ownership (either individually and in the aggregate) could not reasonably be expected to have a material adverse effect on: (i) the business, condition (financial or otherwise), results of operations, stockholders' equity, or properties of the Company or (ii) the Offering or consummation of any of the other transactions contemplated by this Agreement, the Registration Statement or the Prospectus (any such effect being a "**Material Adverse Effect**").

(e) This Agreement has been duly authorized, executed and delivered by the Company and, assuming the due authorization, execution and delivery by the Dealer-Manager, constitutes the valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity.

(f) The Company is not: (i) in violation of its charter or by-laws, (ii) in default under or in breach of, and no event has occurred which, with notice or lapse of time or both, would constitute a default or breach under or result in the creation or imposition of any lien, charge, mortgage, pledge, security interest, claim, equity, trust or other encumbrance, preferential arrangement, defect or restriction of any kind whatsoever (each, a "**Lien**") upon any of the Company's property or assets pursuant to any material contract, agreement, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) in violation in any respect of any law, rule, regulation, ordinance, directive, judgment, decree or order, foreign and domestic, to which it or its properties or assets may be subject or has failed to obtain any material license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its properties or assets or to the conduct of its business, except, in the case of clauses (ii) and (iii) above, any violation, default or failure to possess the same that would not reasonably be expected to have a Material Adverse Effect.

(g) Prior to or on the date hereof: (i) the Company and the Subscription Agent have entered into a subscription agent agreement (the “**Subscription Agent Agreement**”) and an escrow agreement (“**Escrow Agreement**”) if required by the Subscription Agent and (ii) the Company and MacKenzie Partners, Inc. (the “**Information Agent**”) have or will have entered into an information agent agreement (the “**Information Agent Agreement**”) if required by the Information Agent. When executed by the Company, if applicable, each of the Subscription Agent Agreement and the Information Agent Agreement will have been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by Subscription Agent or the Information Agent, as the case may be, will constitute a valid and legally binding agreement of the Company enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws relating to or affecting creditors’ rights generally and by general principles of equity.

(h) The Rights to be issued and distributed by the Company have been duly and validly authorized and, when issued and delivered in accordance with the terms of the Offer Documents, as applicable, will be duly and validly issued, and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms. No Holder is or will be subject to personal liability by reason of being such a holder, and the Rights conform to the description thereof contained in the Prospectus.

(i) Except as disclosed in the Prospectus with respect to the Company’s authorized capitalization, the Shares have been or will be duly and validly authorized and reserved for issuance upon exercise of the Rights, as applicable, are free of statutory and contractual preemptive rights and are sufficient in number to meet the exercise requirements of the Offering; and the Shares, when so issued and delivered against payment therefor in accordance with the terms of the Offering, will be duly and validly issued, fully paid and non-assessable, with no personal liability attaching to the ownership thereof.

(j) The Common Stock is listed for trading on the Nasdaq Capital Market. The Company has not received an oral or written notification from Nasdaq or any court or any other federal, state, local or foreign governmental or regulatory authority having jurisdiction over the Company or any of its properties or assets (“**Governmental Authority**”) of any investigation or other action that would cause the Common Stock to not be listed on the Nasdaq Capital Market.

(k) The Company has an authorized capitalization as set forth under the caption “Capitalization” in the Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Company capital stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its Subsidiaries other than those accurately described in the Registration Statement and Prospectus or in information incorporated therein by reference. The description of the Company’s stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth, or incorporated by reference, in the Registration Statement and Prospectus accurately and fairly presents in all material respects the information required to be shown with respect to such plans, arrangements, options and rights.

(l) The Company owns or leases all such assets or properties as are reasonably necessary to the conduct of its business as presently operated and as proposed to be operated as described in the Registration Statement and the Prospectus. Except to the extent licensed or leased by the Company, the Company has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of any Lien, except for such Liens as are described in the Registration Statement and the Prospectus or in information incorporated therein by reference. Any real property and buildings held under lease or sublease by the Company is held under valid, subsisting and enforceable leases with such exceptions as are not material to, and do not interfere with, the use made and proposed to be made as described in the Registration Statement and the Prospectus of such property and buildings by the Company. The Company has not received any notice of any material claim adverse to its ownership of any real or personal property or of any material claim against the continued possession of any real property, whether owned or held under lease or sublease by the Company.

(m) The Company has all material consents, approvals, authorizations, orders, registrations, qualifications, licenses, filings and permits of, with and from all judicial, regulatory and other Governmental Authorities and all third parties, foreign and domestic, including, without limitation, those administered by the U.S. Food and Drug Administration of the U.S. Department of Health and Human Services (“**FDA**”), or any foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA (collectively, with the Licensing Requirements described below, the “**Consents**”), to own, lease and operate its properties and conduct their businesses as presently being conducted and as disclosed in the Registration Statement and the Prospectus, and each such Consent is valid and in full force and effect. The Company has not received notice of any investigation or proceedings which results in or, if decided adversely to the Company, could reasonably be expected to result in, the revocation of any Consent or reasonably be expected to have a Material Adverse Effect.

(n) The execution, delivery and performance by the Company of this Agreement, the Subscription Agent Agreement, the Escrow Agreement and the Information Agent Agreement, if applicable, the issuance of the Rights, Units and Shares in accordance with the terms of the Offer Documents and the consummation by the Company of the transactions contemplated hereby and thereby, will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company is a party or by which it is bound or to which any of the properties or assets of the Company is subject, nor will such actions result in any violation of the provisions of the charter or by-laws of the Company or any statute or any order, rule or regulation of any court or any Governmental Authority; and except for the registration of the Rights, Units and Shares under the Securities Act, and such consents, approvals, authorizations, registrations or qualifications as may be required under the Exchange Act, and applicable state securities laws in connection with the distribution of the Rights, Units and Shares during the Offering, no consent, approval, authorization or order of, or filing or registration with, any Governmental Authority is required for the execution, delivery and performance of this Agreement by the Company and the consummation by it of the transactions contemplated hereby.

(o) There are no contracts, agreements or understandings between the Company and any Person granting such Person the right to require the Company to include such securities in the securities registered pursuant to the Registration Statement. No holder of any security of the Company has any rights of rescission or similar rights with respect to such securities held by them.

(p) The Company has not sustained, since the date of the latest balance sheet included in the Prospectus or after such date and as disclosed in the Prospectus, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and, since such date or after such date and as disclosed in the Prospectus, there has not been any material adverse change or any development affecting the general affairs, management, financial position, stockholders' equity or results of operations the Company (a "**Material Adverse Change**"). Since the date of the latest balance sheet presented in the Prospectus, the Company has not incurred or undertaken any liabilities or obligations, whether direct or indirect, liquidated or contingent, matured or unmatured, or entered into any transactions, including any acquisition or disposition of any business or asset, which are material to the Company, except for liabilities, obligations and transactions which are disclosed in the Registration Statement, any Preliminary Prospectus and the Prospectus.

(q) Grant Thornton LLP (the "**Auditors**"), whose reports relating to the Company are incorporated by reference in the Registration Statement, are independent registered public accountants as required by the Securities Act, the Exchange Act and the rules and regulations promulgated by the Public Company Accounting Oversight Board (the "**PCAOB**"). The Auditors, to the Company's knowledge, are duly registered and in good standing with the PCAOB. The Auditors have not, during the periods covered by the financial statements included in the Registration Statement, any Preliminary Prospectus and the Prospectus, provided to the Company or its Subsidiaries any non-audit services, as such term is used in Section 10A(g) of the Exchange Act.

(r) The financial statements, including the notes thereto, and any supporting schedules included (by incorporation or otherwise) in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the financial position as of the dates indicated and the cash flows and results of operations for the periods specified of the Company. Except as otherwise stated in the Registration Statement, any Preliminary Prospectus and the Prospectus, said financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the periods involved. Any supporting schedules included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the information required to be stated therein. No other financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement. The other financial and statistical information included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the information included therein and have been prepared on a basis consistent with that of the financial statements that are included in the Registration Statement, such Preliminary Prospectus and the Prospectus and the books and records of the respective entities presented therein.

(s) There are no pro forma or as adjusted financial statements which are required to be included in the Registration Statement, any Preliminary Prospectus and the Prospectus in accordance with Regulation S-X under the Securities Act which have not been included as so required. The pro forma and/or as adjusted financial information included in the Registration Statement, any Preliminary Prospectus and the Prospectus has been properly compiled and prepared in accordance with the applicable requirements of the Securities Act and include all adjustments necessary to present fairly, in all material respects, in accordance with generally accepted accounting principles the pro forma and as adjusted financial position of the respective entity or entities presented therein at the respective dates indicated and their cash flows and the results of operations for the respective periods specified. The assumptions used in preparing the pro forma and as adjusted financial information included in the Registration Statement, any Preliminary Prospectus and the Prospectus provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein. The related pro forma and pro forma as adjusted adjustments give appropriate effect to those assumptions; and the pro forma and pro forma as adjusted financial information reflect the proper application of those adjustments to the corresponding historical financial statement amounts.

(t) The statistical, industry-related and market-related data included in the Registration Statement, any Preliminary Prospectus and the Prospectus are based on or derived from sources which the Company reasonably believes are reliable and accurate, and such data agree with the sources from which they are derived. All applicable third-party consents have been obtained in order for such data to be included in the Registration Statement and the Prospectus.

(u) The Company maintains a system of internal accounting and other controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with United States generally accepted accounting principles and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(v) The Company's Board of Directors has validly appointed an audit committee, compensation committee and nominating and corporate governance committee whose composition satisfies the requirements of the rules and regulations of the Commission and Nasdaq, and the Company's Board of Directors and/or audit committee, compensation committee and the nominating corporate governance committee has each adopted a charter as described in the Registration Statement, and such charters are in full force and effect as of the date hereof. Neither the Company's Board of Directors nor the audit committee thereof has been informed of: (i) except as disclosed in the Registration Statement and the Prospectus, any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(w) The Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002, as amended (“**Sarbanes-Oxley**”), applicable to the Company, and the rules and regulations promulgated thereunder and related or similar rules and regulations promulgated by any other Governmental Authority or self-regulatory entity or agency, except for violations which, singly or in the aggregate, are disclosed in the Prospectus or would not reasonably be expected to have a Material Adverse Effect.

(x) No relationship, direct or indirect, exists between or among any of the Company or any Affiliate of the Company, on the one hand, and any director, officer, stockholder, customer or supplier of the Company or any Affiliate of the Company, on the other hand, which is required by the Securities Act or the Exchange Act to be described in the Registration Statement or the Prospectus which is not so described as required. Except as disclosed in the Registration Statement and the Prospectus, there are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of their respective family members. The Company has not, in violation of Sarbanes-Oxley, directly or indirectly, including through any Affiliate of the Company (other than as permitted under Sarbanes-Oxley for depository institutions), extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any director or executive officer of the Company.

(y) Subject to the parenthetical set forth below, there are no legal or governmental proceedings pending to which the Company or any of its Subsidiaries is a party or of which any property or asset of the Company or any of its Subsidiaries is the subject, including without limitation any proceeding before the FDA or comparable federal, state local or foreign governmental bodies (it being understood that the interaction between the Company and the FDA and such comparable governmental bodies relating to the clinical development and product approval process shall not be deemed proceeding for the purposes of this representation), which, if determined adversely to the Company, are reasonably likely to have a Material Adverse Effect; and to the Company’s knowledge, except as disclosed in the Prospectus, no such proceedings are threatened or contemplated by Governmental Authorities or threatened by others.

(z) The Company has filed, or to the extent disputed has set aside any necessary accruals, with respect to all necessary federal, state and foreign income and franchise tax returns and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them, except where the failure to make such filings or make such payments, either individually or in the aggregate, could not reasonably be expected to have, a Material Adverse Effect. The Company has made adequate charges, accruals and reserves in its financial statements above in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its Subsidiaries has not been finally determined.



(aa) The Company maintains insurance of the types and in the amounts which the Company believes to be reasonable and sufficient for a company of its size operating in the Company's industry, including, but not limited to: (i) directors' and officers' insurance (including insurance covering the Company, its directors and officers for liabilities or losses arising in connection with the Offering, including, without limitation, liabilities or losses arising under the Securities Act, the Exchange Act and applicable foreign securities laws), (ii) insurance covering real and personal property owned or leased against theft, damage, destruction, acts of vandalism and all other risks customarily insured against and (iii) business interruption insurance. There are no claims by the Company under any policy or instrument described in this paragraph as to which any insurance company is denying liability or defending under a reservation of rights clause. All of the insurance policies described in this paragraph are in full force and effect. The Company has not been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect.

(bb) To the Company's knowledge, the Company owns or possesses or has the right to use all patents, patent rights, patent applications, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names, service names and other intellectual property (collectively, "**Intellectual Property**") necessary to carry on its business as described in the Prospectus and as proposed to be conducted; the Company has not received any written notice and is not otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interests of the Company, and which asserted infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. To the Company's knowledge, all former and current employees of the Company, all other agents, consultants and contractors of the Company who contributed to or participated in the conception or development of any Intellectual Property for the Company) have executed written contracts or agreements that assign to the Company all rights to any inventions, improvements, discoveries or information relating to the business of the Company, including without limitation all Intellectual Property owned, controlled by or in the possession of the Company. To the Company's knowledge, there is no unauthorized use, infringement or misappropriation of any of the Intellectual Property by any third party, employee or former employee. To the Company's knowledge, each agreement and instrument (each, a "**License Agreement**") pursuant to which any Intellectual Property is licensed to the Company is in full force and effect, has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be subject to bankruptcy, insolvency or other similar laws relating to or affecting creditors' rights generally or by general equitable principles; the Company is in material compliance with its obligations under all License Agreements and, to the Company's knowledge, all other parties to any of the License Agreements are in material compliance with all of their respective obligations thereunder; no event or condition has occurred or exists that gives or would give any party to any License Agreement the right, either immediately or with notice or passage of time or both, to terminate or limit (in whole or in part) any such License Agreement or any rights of the Company thereunder, to exercise any of such party's remedies thereunder, or to take any action that would adversely affect any rights of the Company thereunder or that might reasonably be expected to have a Material Adverse Effect, and the Company is not aware of any facts or circumstances that would result in any of the foregoing or give any party to any License Agreement any such right; and the Company has not received any notice of default, breach or non-compliance under any License Agreement.

(cc) The Company: (i) is in full compliance with all existing privacy laws, statutes, rules, regulations or industry guidance applicable to the ownership, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured, distributed or sold by the Company or any component thereof (such laws, statutes, rules, regulations or guidance, collectively, “**Applicable Laws**”); (ii) is, and, to the Company’s knowledge, its facility and operations of its suppliers are, in compliance with all applicable federal, state, and local laws, regulations, orders and decrees governing its business as prescribed by the FDA; (iii) has not received any written notice of adverse finding, warning letter, untitled letter or other correspondence or notice from any Governmental Authority alleging or asserting noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws (“**Authorizations**”); (iv) possesses all Authorizations and such Authorizations are valid and in full force and effect, and the Company is not in violation of any term of any such Authorizations; (v) has not received written notice of any claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from any Governmental Authority alleging that any product operation or activity is in violation of any Applicable Laws or Authorizations and has no knowledge that any such Governmental Authority is considering any such claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action; (vi) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority is considering such action; (vii) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct in all material respects on the date filed (or were corrected or supplemented by a subsequent submission), except, in the case of each of clauses (i), (ii), (iii),(iv) and (v), for any default, violation or event that would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(dd) The studies and tests conducted or, to the Company’s knowledge, sponsored by or on behalf of the Company (the “**Studies and Tests**”) that are described or referred to in any Preliminary Prospectus, the Prospectus and the Registration Statement were and, if still pending, are being conducted in accordance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards and all Applicable Laws and Authorizations; the descriptions of the results of such studies, tests and trials contained in any Preliminary Prospectus, the Prospectus and the Registration Statement are accurate and complete in all material respects and fairly present the data derived from such studies, tests and trials. The Company is not aware of any studies or tests, the results of which the Company believes reasonably call into question the study or test described or referred to in any Preliminary Prospectus, the Prospectus and the Registration Statement when viewed in the context in which such results are described. The Company has not received any written notices or correspondence from the FDA or any foreign, state or local governmental body exercising comparable authority suggesting or requiring a clinical hold, termination, suspension or material modification of the Studies and Tests and that such clinical hold, termination, suspension or material modification would reasonably be expected to have a Material Adverse Effect. The Company has obtained (or caused to be obtained) informed consent by or on behalf of each human subject who participated in Studies and Tests. In using or disclosing patient information received by the Company in connection with the Studies and Tests, the Company has complied in all material respects with all applicable laws and regulatory rules, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations thereunder. To the Company’s knowledge, none of the Studies and Tests involved any investigator who has been disqualified as a clinical investigator or has been found by the FDA to have engaged in scientific misconduct or debarred or excluded from participation in any governmental health care payment program. There has not been any violation of applicable law or regulation by the Company in its product development efforts, submissions or reports to any regulatory authority that could reasonably be expected to require investigation, corrective action or enforcement action, except where such violation would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(ee) Neither the Company nor, to the Company's knowledge, any of the Company's directors, officers or employees has violated: (i) the Bank Secrecy Act, as amended, (ii) the Money Laundering Control Act of 1986, as amended, (iii) the Foreign Corrupt Practices Act of 1977, as amended, or (iv) the Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, and/or the rules and regulations promulgated under any such law, or any successor law, except for such violations which, singly or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No action, suit or proceeding by or before any Governmental Authority involving the Company with respect to any of the foregoing laws is pending or, to the Company's knowledge, threatened.

(ff) Neither the Company nor any of its Affiliates has, prior to the date hereof, made any offer or sale of any securities which are required to be "integrated" pursuant to the Securities Act with the offer and sale of the Shares pursuant to the Registration Statement.

(gg) Except as described in the Registration Statement and the Prospectus, there are no claims, payments, arrangements, agreements or understandings relating to the payment of a finder's, consulting or origination fee or other compensation by the Company with respect to the issuance or exercise of the Rights or the sale of the Shares or any other arrangements, agreements or understandings of the Company or, to the Company's knowledge, the Company's officers, directors and employees or Affiliates that may affect the Dealer-Manager's compensation, as determined by the Financial Industry Regulatory Authority, Inc. ("FINRA"). Except as previously disclosed by the Company to the Dealer-Manager in writing, no officer, director, or beneficial owner of 5% or more of any class of the Company's securities (whether debt or equity, registered or unregistered, regardless of the time acquired or the source from which derived) or any Affiliate thereof is a member of FINRA. No proceeds from the exercise of the Rights will be paid to any FINRA member, or any Persons associated or affiliated with a member of FINRA, except as specifically contemplated herein. Except as previously disclosed by the Company to the Dealer-Manager, no Person to whom securities of the Company have been privately issued within the 180-day period prior to the initial filing date of the Registration Statement has any relationship or affiliation or association with any member of FINRA.

(hh) There are no contracts, agreements or understandings between the Company and any Person that would give rise to a valid claim against the Company or the Dealer-Manager for a brokerage commission, finder's fee or other like payment in connection with the transactions contemplated by this Agreement. Other than the Dealer-Manager, the Company has not employed any brokers, dealers or underwriters in connection with solicitation of exercise of Rights in the Offering; and except as provided for in Sections 6 and 7 hereof, no other commissions, fees or discounts will be paid by the Company in connection with solicitation of the exercise of Rights in the Offering.

(ii) Neither the Company nor, to the Company's knowledge, any of the Company's officers or directors, has at any time during the last five (5) years: (i) made any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law, or (ii) made any payment to any federal or state governmental officer or official, or other Person charged with similar public or quasi-public duties, other than payments that are not prohibited by the laws of the United States of any jurisdiction thereof.

(jj) The Company has not and will not, directly or indirectly through any officer, director or Affiliate of the Company: (i) taken any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the issuance of the Rights or the sale or resale of the Shares, (ii) since the filing of the Registration Statement sold, bid for or purchased, or paid any Person (other than the Dealer-Manager) any compensation for soliciting exercises or purchases of, the Rights or the Shares and (iii) until the later of the expiration of the Rights or the completion of the distribution (within the meaning of Regulation M under the Exchange Act) of the Units and Shares, sell, bid for or purchase, apply or agree to pay to any Person (other than the Dealer-Manager) any compensation for soliciting another to purchase any other securities of the Company (except for the solicitation of the exercises of Rights pursuant to the Offer Documents). The foregoing shall not apply to the offer, sale, agreement to sell or delivery with respect to (i) Units and Shares offered and sold upon exercise of the Rights, as described in the Prospectus, or (ii) any shares of Common Stock sold pursuant to the Company's existing employee benefit plans.

(kk) Each "**forward-looking statement**" (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) included in the Registration Statement, any Preliminary Prospectus and the Prospectus has been made or reaffirmed with a reasonable basis and has been disclosed in good faith.

As used in this Agreement, the term “**the Company’s knowledge**” (or similar language) shall mean the actual knowledge of the officers of the Company who are named in the Prospectus with the assumption that such officers shall have made reasonable and diligent inquiry of the matters presented (with reference to what is customary and prudent for the applicable individuals in connection with the discharge by the applicable individuals of their duties as officers or directors of the Company).

As used in this Agreement, references to matters being “material” with respect to the Company or any matter relating to the Company shall mean a material item, event, change, condition, status or effect related to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, prospects (as such prospects are disclosed or described in any preliminary prospectus or the prospectus), operations or results of operations of the company, taken as a whole.

#### 6. Compensation.

(a) In consideration for its services in the Offering, the Dealer-Manager shall receive (i) a cash fee equal to 6.0% of the gross dollar amount of any exercise of the Subscription Rights, Over- Subscription Privilege and Series Rights by investors in the Offering as a commission, (ii) a non-accountable expense fee equal to 1.0% of the gross dollar amount of any exercise of the Subscription Rights (Including both the Basic Subscription Right and the Over-Subscription Privilege) and Series Rights by investors in the Offering and (iii) accountable expense allowance of \$35,000. Notwithstanding the foregoing, the Company will pay Moody Capital a cash fee equal to 3.0% of the gross dollar amount of any exercise of the Subscription Rights (Including both the Basic Subscription Right and the Over-Subscription Privilege), and Series Rights in the Offering by executive officers and directors and their respective investment vehicles. No dealer manager fee will be paid to the Dealer Manager for sales of units in the rights offering to NRNS Capital Holdings LLC in respect of its possible conversion. The Company has previously paid the Dealer-Manager a \$35,000 advance against such accountable expense allowance (the “**Advance**”). If the Offering is not consummated, the portion of the Advance not used for the Dealer-Manager’s actual out-of-pocket expenses shall be promptly reimbursed to the Company as required under FINRA Rule 5110(g)(4)(A). All payments to be made by the Company pursuant to this Section 6(a) shall be made at each applicable closing by wire transfer of immediately available funds upon the consummation of the subscriptions for (1) Units pursuant to Subscription Rights and (2) Common Stock pursuant to (a) Series A Rights, (b) Series B Rights and (c) Series C Rights (each (1), (2(a)), (2(b)) and (2(c)), a “**Closing Date**”)

(c) Notwithstanding the foregoing and subject to its entry into an acceptable form of selected dealer agreement(s) with other registered broker-dealers in connection with the exercise of the Rights, the Dealer-Manager may allocate to any such other registered broker-dealer a selected dealer fee, constituting a portion of its dealer-manager fee or placement fee, as applicable, equal to 3% of the total gross proceeds paid to and received by the Company for subscriptions accepted by the Company from clients of such other broker-dealers pursuant to the exercise of their Rights in the Offering.

(d) No Right of First Refusal.

7. Expenses. Subject to Section 6 hereof, and notwithstanding anything to the contrary contained in the Engagement Letter, the Company shall pay or cause to be paid:

- (a) all expenses (including any taxes) incurred by the Company in connection with the Offering and the authorization, preparation, issuance, execution, authentication and delivery of the Rights and the Shares;
- (b) all fees, expenses and disbursements of the Company's accountants, legal counsel and other third party advisors;
- (c) all reasonable and documented costs and expenses of the Dealer-Manager as set forth in Section 6 above and reimbursable upon any termination of this Agreement only as permitted by FINRA Rule 5110(g)(4)(A);
- (d) all agreed-upon fees and expenses of the Subscription Agent and the Information Agent;
- (e) all fees, expenses and disbursements (including, without limitation, fees and expenses of the Company's accountants and counsel) in connection with the preparation, printing, filing, delivery and shipping of the Registration Statement (including the financial statements therein and all amendments and exhibits thereto), each Preliminary Prospectus, the Prospectus, the other Offer Documents and any amendments or supplements of the foregoing and any printing, delivery and shipping of this Agreement to any organization of soliciting dealers, if any, to the members thereof by mail, fax or other means of communications;
- (f) all reasonable fees, expenses and disbursements, if any, relating to the registration or qualification of the Rights and the Shares under the "blue sky" securities laws of any states or other jurisdictions;
- (g) all filing fees of the Commission;
- (h) all filing fees relating to the review of the Offering by FINRA;
- (i) any applicable listing or other fees;
- (j) the cost of printing certificates representing the Units, Rights and the Shares;
- (k) the cost and charges of the Company's transfer agent(s) or registrar(s); and
- (l) all other costs and expenses incident to the performance of the Company's obligations hereunder for which provision is not otherwise made in this Section 7.

All payments to be made by the Company pursuant to this Section 7 shall be made promptly after the termination or expiration of the Offering or, if later, promptly after the related fees, expenses or charges accrue and an invoice therefor is sent by the Dealer-Manager. The Company shall perform its obligations set forth in this Section 7 whether or not the Offering commences or any Rights are exercised pursuant to the Offering, except that the Dealer-Manager's non-accountable expenses may only be reimbursed after initial closing. For the avoidance of doubt, except as reimbursed pursuant to the accountable expense allowance and the non-accountable allowance, the Dealer-Manager shall be responsible for expenses it incurs with respect to the performance of its obligations under this Agreement, including without limitation expenses it incurs with respect to travel and lodging expenses in connection with "roadshow" trips and legal counsel and other third parties engaged by the Dealer-Manager.

8. Stockholder Lists; Subscription Agent; Information Agent.

(a) The Company will cause the Dealer-Manager to be provided with any cards or lists showing the names and addresses of, and the number of shares of Common Stock, Series 1 Preferred and Series 2 Preferred held by or beneficially owned by, the holders of shares of Common Stock, Series 1 Preferred and Series 2 Preferred as of a recent date and will use its best efforts to cause the Dealer-Manager to be advised from time to time during the period, as the Dealer-Manager shall request, of the Offering as to any transfers of record of Common Stock, Series 1 Preferred and Series 2 Preferred ..

(b) The Company (i) has arranged for the Subscription Agent to serve as subscription and escrow agent in connection with the Offering, (ii) will arrange for the Subscription Agent to advise the Dealer-Manager regularly as to such matters as the Dealer-Manager may reasonably request, including the number of Rights that have been exercised, and (iii) will arrange for the Subscription Agent to be responsible for receiving subscription funds paid.

(c) The Company has arranged for the Information Agent to serve as the information agent in connection with the Offering (together with the Subscription Agent, the “**Agents**”) and to perform services in connection with the Offering that are customary for an information agent.

9. Covenants of the Company. The Company covenants and agrees with the Dealer-Manager:

(a) To use its best efforts to cause the Registration Statement and any amendments thereto to become effective; to advise the Dealer-Manager, promptly after it receives notice thereof, of the time when the Registration Statement, or any amendment thereto, becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish the Dealer-Manager with copies thereof; to prepare a Prospectus in a form approved by the Dealer-Manager (such approval not to be unreasonably withheld or delayed) and to file such Prospectus pursuant to Rule 424(b) under the Securities Act within the time prescribed by such rule; to advise the Dealer-Manager, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, of the suspension of the qualification of the Rights for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification, to use promptly its reasonable best efforts to obtain its withdrawal.

(b) To deliver promptly to the Dealer-Manager, at any such location as requested by the Dealer-Manager, such number of the following documents as the Dealer-Manager shall reasonably request: (i) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement, any other Offer Documents filed as exhibits, the computation of the ratio of earnings to fixed charges and the computation of per share earnings), (ii) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus and (iii) any document incorporated by reference in the Prospectus (excluding exhibits thereto); and, if the delivery of a prospectus is required at any time during which the Prospectus relating to the Rights, Units or the Shares is required to be delivered under the Securities Act and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Dealer-Manager and, upon its request, to file such document and to prepare and furnish without charge to the Dealer-Manager as many copies as the Dealer-Manager may from time to time reasonably request of an amended or supplemented Prospectus which will correct such statement or omission or effect such compliance.

(c) To file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Company or the Dealer-Manager, be necessary or advisable in connection with the distribution of the Rights, Units or the sale of the Shares or be requested by the Commission.

(d) Prior to filing with the Commission any: (i) Preliminary Prospectus, (ii) amendment to the Registration Statement, any document incorporated by reference in the Prospectus or (iii) any Prospectus pursuant to Rule 424 of the Securities Act, to furnish a copy thereof to the Dealer-Manager and counsel for the Dealer-Manager and obtain the consent, which does not have to be in written form, of the Dealer-Manager to the filing (which consent shall not be unreasonably withheld).

(e) To furnish to the Dealer-Manager copies of all materials not available via EDGAR furnished by the Company to its stockholders and all public reports and all reports and financial statements furnished by the Company to the principal national securities exchange upon which any of the Company's securities may be listed pursuant to requirements of or agreements with such exchange or to the Commission pursuant to the Exchange Act or any rule or regulation of the Commission thereunder.

(f) To qualify or register the Rights, Units and the Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws of those jurisdictions designated by the Dealer-Manager, the Company shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Rights, Units and the Shares, as applicable. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Dealer-Manager promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Rights, Units and the Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.



- (g) To apply the net proceeds from the exercise of the Rights in the manner described under the caption “Use of Proceeds” in the Prospectus.
- (h) To list for trading the Shares on Nasdaq and to maintain the listing of the Shares on Nasdaq.
- (i) To take such steps as shall be necessary to ensure that the Company shall not become an “investment company” within the meaning of such term under the Investment Company Act of 1940 and the rules and regulations of the Commission thereunder.
- (j) To advise the Dealer-Manager, directly or through the Subscription Agent, from time to time, as the Dealer-Manager shall request, of the number of Shares subscribed for, and arrange for the Subscription Agent to furnish the Dealer-Manager with copies of written reports it furnishes to the Company concerning the Offering.
- (k) To commence mailing the Offer Documents to record holders of the Common Stock, Series 1 Preferred and Series 2 Preferred not later than the second (2<sup>nd</sup>) business day following the record date for the Offering, and to complete such mailing as soon as practicable.
- (l) To reserve and keep available for issue, upon the exercise of the Rights, such number of authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all Rights, except as otherwise contemplated by the Prospectus.
- (m) To not take, directly or indirectly, any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the issuance of the Rights or the sale or resale of the Shares, including during the Offering.

10. Conditions of Dealer-Manager’s Obligations. The obligations of the Dealer-Manager hereunder are subject to (and the occurrence of any closing shall be conditioned upon) the accuracy, as of the date hereof and at all times during the Offering, of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

- (a) (i) The Registration Statement shall have become effective and the Prospectus shall have been timely filed with the Commission in accordance with the Securities Act; (ii) all post-effective amendments to the Registration Statement shall have become effective; (iii) no stop order suspending the effectiveness of the Registration Statement or any amendment or supplement thereto shall have been issued and no proceedings for the issuance of any such order shall have been initiated or threatened, and (iv) any request of the Commission for additional information (to be included in the Registration Statement or the Prospectus or otherwise) shall have been disclosed to the Dealer-Manager and complied with to the Dealer-Manager’s reasonable satisfaction.

(b) The Dealer-Manager shall not have been advised by the Company or shall have discovered and disclosed to the Company that the Registration Statement or the Prospectus or any amendment or supplement thereto, contains an untrue statement of fact which in the Dealer-Manager's opinion, or in the opinion of counsel to the Dealer-Manager, is material, or omits to state a fact which, in the Dealer-Manager's opinion, or in the opinion of counsel to the Dealer-Manager, is material and is required to be stated therein or is necessary to make the statements therein not misleading and that has not been corrected or disclosed in one or more amendments to the Registration Statement or the Prospectus.

(c) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Rights, the Units, the Shares, the Registration Statement and the Prospectus, and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to counsel for the Dealer-Manager, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(d) On each Closing Date, there shall have been furnished to the Dealer-Manager the signed opinion and negative assurance letter (addressed to the Dealer-Manager) of Olshan Frome Wolosky LLP, counsel for the Company, dated as of the Closing Date and in form and substance reasonably satisfactory to counsel for the Dealer-Manager.

(e) The Company shall have furnished to the Dealer-Manager a certificate, dated as of each Closing Date, of its Chief Executive Officer and Chief Financial Officer stating that:

- i. To their knowledge after reasonable investigation, the representations, warranties, covenants and agreements of the Company hereof are true and correct in all material respects;
- ii. The conditions to closing set forth in this Agreement have been fulfilled;
- iii. The Company has not sustained any material loss or interference with its business, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding;
- iv. Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been any Material Adverse Change; and
- v. They have carefully examined the Registration Statement and the Prospectus and, in their opinion (A) the Registration Statement and the Prospectus, as of the Effective Date, did not include any untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (B) since the Effective Date, no event has occurred which should have been set forth in a supplement or amendment to the Registration Statement or the Prospectus.

(f) No event has occurred at the Company since the date of the latest audited financial statements included in the Prospectus any Material Adverse Change, the effect of which is, in the judgment of the Dealer-Manager, so material and adverse as to make it impracticable or inadvisable to proceed with the Offering.

(g) Neither FINRA nor Nasdaq shall have objected to the Offering.

(h) The Common Stock shall then be listed and trading on Nasdaq and, prior to their issuance, Nasdaq shall have approved the listing of the Shares, subject only to official notice of issuance.

(i) All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Dealer-Manager. If any of the conditions specified in this Section 10 shall not have been fulfilled when and as required by this Agreement, this Agreement and all obligations of the Dealer-Manager hereunder may be canceled at, or at any time during the Offering by the Dealer-Manager. Any such cancellation shall be without liability of the Dealer-Manager to the Company. Notice of such cancellation shall be given the Company in writing, or by telegraph or telephone and confirmed in writing.

#### 11. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless the Dealer-Manager and its affiliates and any officer, director, employee or agent of the Dealer-Manager or any such affiliates and any Person controlling (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) the Dealer-Manager or any of such affiliates (collectively, the “**Indemnified Parties**”) from and against any and all losses, claims, damages, liabilities, expenses and actions (including stockholder actions, in respect thereof whatsoever, under the Securities Act or otherwise (as incurred or suffered and including, but not limited to, any and all legal or other expenses incurred in connection with investigating, preparing to defend or defending any lawsuit, claim or other proceeding, commenced or threatened, whether or not resulting in any liability, which legal or other expenses shall be reimbursed by the Company promptly after receipt of any invoices therefore from the Dealer-Manager), (A) arising out of or based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereto, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading (other than statements or omissions made in reliance upon and in conformity with the Dealer-Manager Information), (ii) any untrue statement or alleged untrue statement of a material fact contained in any Offer Document not the Registration Statement (or any amendment or supplement thereto), in any other solicitation material used by the Company or authorized by it for use in connection with the Offering, or in any blue sky application or other document prepared or executed by the Company (or based on any written information furnished by the Company) specifically for the purpose of qualifying any or all of the Rights, Units or the Shares under the securities laws of any state or other jurisdiction (any such application, document or information being hereinafter called a “**Blue Sky Application**”) or arising out of or based upon the omission or alleged omission to state in any such document a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than statements or omissions made in reliance upon and in conformity with the Dealer-Manager Information), (iii) any withdrawal or termination by the Company of, or failure by the Company to make or consummate, the Offering, (iv) any actions taken or omitted to be taken by an Indemnified Party with the express consent of the Company or in conformity with actions taken or omitted to be taken by the Company or (v) any failure by the Company to comply with any agreement or covenant contained in this Agreement, or (B) arising out of, relating to or in connection with or alleged to arise out of, relate to or be in connection with, the Offering, any of the other transactions or contemplated thereby or the performance of the Dealer-Manager’s services to the Company with respect to the Offering and pursuant to ancillary agreements contemplated thereby; provided, however, that in the case of clause (B) only, the Company shall not be responsible for any liabilities or expenses of any Indemnified Party that have resulted primarily from such Indemnified Party’s (x) gross negligence, bad faith or willful misconduct in connection with any of the advice, actions, inactions or services referred to herein or (y) use of any offering materials or information concerning the Company in connection with the Offering that were not authorized for such use by the Company and which use constitutes gross negligence, bad faith or willful misconduct.

(b) Promptly after receipt by an Indemnified Party of notice of any intention to commence an action, suit or proceeding or notice of the commencement of any action, suit or proceeding, such Indemnified Party will, if a claim in respect thereof is to be made against in respect of any matter for which indemnity may be sought pursuant hereto, promptly notify the Company in writing of the same. The Company shall, if requested by an Indemnified Party, assume control of the defense of any such claim including the employment of counsel reasonably satisfactory to the Indemnified Party, which counsel may also be counsel to the Company. An Indemnified Party may employ counsel to participate in the defense of any such action provided, that the employment of such counsel shall be at the Indemnified Party's own expense, unless (i) the employment of such counsel has been authorized in writing by the Company, (ii) the Indemnified Party has reasonably concluded (based upon advice of counsel to the Indemnified Party) that there may be legal defenses available to it or other Indemnified Parties that are different from or in addition to those available to the Company, or that a conflict or potential conflict exists (based upon advice of counsel to the Indemnified Party) between the Indemnified Party and the Company that makes it impossible or inadvisable for counsel to the Indemnifying Party to conduct the defense of both the Company and the Indemnified Party (in which case the Company will not have the right to direct the defense of such action on behalf of the Indemnified Party), or (iii) the Company has not in fact employed counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action within a reasonable time after receiving notice of the action, suit or proceeding, in each of which cases the reasonable fees, disbursements and other charges of such counsel will be at the expense of the Company; provided, further, that in no event shall the Company be required to pay fees and expenses for more than one firm of attorneys representing Indemnified Parties unless the defense of one Indemnified Party is unique or separate from that of another Indemnified Party subject to the same claim or action. Any failure or delay by an Indemnified Party to give the notice referred to in this paragraph may affect such Indemnified Party's right to be indemnified hereunder to the extent that such failure or delay prejudices the Company's ability to defend such action, suit or proceeding on behalf of such Indemnified Party, or otherwise results in harm to the Company.

(c) If the indemnification provided for in Section 11(a) is judicially determined to be unavailable (other than in accordance with the terms hereof) to any Indemnified Party otherwise entitled to indemnity in respect of any losses, claims, damages or liabilities referred to herein, then, in lieu of indemnifying such person hereunder, whether or not the Dealer-Manager is the person entitled to indemnification or reimbursement, the Company shall contribute to the amount paid or payable by the Indemnified Party as a result of such losses, claims, damages or liabilities (and expenses relating thereto) (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and the Dealer-Manager, on the other hand, of the Offering or (ii) if the allocation provided for in clause (i) above is not available, in such proportion as is appropriate to reflect not only the relative benefits referred to in such clause (i) but also the relative fault of each of the Company and the Dealer-Manager, as well as any other relevant equitable considerations; provided, however, in no event shall the Dealer-Manager's aggregate contribution to the amount paid or payable exceed the aggregate amount of fees actually received by the Dealer-Manager under this Agreement. For the purposes of this Agreement, the relative benefits to the Company and to the Dealer-Manager of the engagement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid or received or contemplated to be received by the Company in the Offering, whether or not the Offering is consummated, bears to (b) the fees paid or to be paid to the Dealer-Manager under this Agreement.

(d) The Company also agrees that neither the Dealer-Manager, nor any other Indemnified Party, shall have any liability to the Company for or in connection with the Dealer-Manager's engagement as Dealer-Manager, except for any such liability for losses, claims, damages, liabilities or expenses incurred by the Company which have resulted primarily from the Dealer-Manager's or Indemnified Party's bad faith, willful misconduct or gross negligence or the use of any offering material or information concerning the Company in connection with the Offering which were not authorized for such use. The foregoing agreement shall be in addition to any rights that the Dealer-Manager, the Company or any Indemnified Party may have at common law or otherwise, including, but not limited to, any right to contribution. For the sole purpose of enforcing and otherwise giving effect to the provisions of this Agreement, the Company hereby consents to personal jurisdiction and service and venue in any court in which any claim which is subject to this agreement is brought against the Dealer-Manager or any other indemnified party.

(e) The Company agrees that it will not, without the prior written consent of the Dealer-Manager, which consent shall not be unreasonably withheld, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the Dealer-Manager is an actual or potential party to such claim, action, suit or proceeding) unless such settlement, compromise or consent (i) relates solely to the payment of monetary damages and does not include any admission of liability on the part of the Dealer-Manager, and (ii) includes an unconditional release, reasonably satisfactory in form and substance to the Dealer-Manager, releasing the Dealer-Manager from all liability arising out of such claim, action, suit or proceeding.

(f) In the event that an Indemnified Party is requested or required to appear as a witness in any action brought by or on behalf of or against the Company in which such Indemnified Party is not named as a defendant, the Company agrees to promptly reimburse the Indemnified Party on a monthly basis for all expenses reasonably incurred by it in connection with such Indemnified Party's appearing and preparing to appear as such a witness, including, without limitation, the reasonable fees and disbursements of its legal counsel.

(g) If multiple claims are brought, and indemnification is permitted under applicable law and provided for under this Agreement with respect to at least one of such claims, the Company agrees that any judgment or arbitration award shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for, except to the extent the judgment or arbitrate award expressly states that it, or any portion thereof, is based solely on a claim as to which indemnification is not available.

(h) The Company agrees to reimburse each Indemnified Party for all expenses as they are incurred in connection with enforcing such Indemnified Party's rights hereunder.

#### 12. Effective Date of Agreement; Termination.

(a) This Agreement shall become effective upon the later of the time on which the Dealer-Manager shall have received notification of the effectiveness of the Registration Statement and the time which this Agreement shall have been executed by all of the parties hereto.

(b) This Agreement shall terminate upon the earliest to occur of (i) the consummation, termination or withdrawal of the Offering or (ii) withdrawal by the Dealer-Manager pursuant to Section 4.

(c) Any termination of this Agreement pursuant to this Section 12 shall be without liability on the part of the Company or the Dealer-Manager, except as otherwise provided in Section 11 hereof. Any notice referred to above may be given pursuant to Section 14 hereof.

13. Survival of Certain Provisions. The agreements contained in Sections 3, 6, 7, 11 and 13 through 22 hereof and the representations, warranties and agreements of the Company contained in Section 5 hereof shall survive the consummation of or failure to commence the Offering and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party; provided that the Company's obligations under Section 7 to reimburse the Dealer-Manager for accountable expenses are subject to FINRA Rule 5110 (g)(4)(A) in that such expenses are only reimbursable to the extent actually incurred and only if the Offering actually closes.

14. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and effective upon receipt if (a) delivered personally, (b) sent by email transmission, or (c) sent by nationally recognized overnight courier, to the parties hereto as follows:

If to the Dealer-Manager:

Moody Capital Solutions, Inc.  
2458 Dunkerrin Lane  
Atlanta, GA 30360  
Attention: Mr. Richard H. Kreger, Senior Managing Director  
Email: rkreger@moodycapital.com

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

Ruba Qashu, Partner  
Barton LLP  
711 Third Avenue  
14th Floor  
New York, NY 10017  
Email: rqashu@bartonesq.com

If to the Company:

H. Russell Heiser Jr., Chief Executive Officer  
FlexShopper, Inc.  
901 Yamato Road, Suite 260  
Boca Raton, FL 33431  
Email: russ.heiser@flexshopper.com

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

Olshan Frome Wolosky LLP  
1325 Avenue of the Americas, 15<sup>th</sup> Floor  
New York, New York 10019  
Attention: Spencer G. Feldman, Esq.  
Email: sfeldman@olshanlaw.com

15. Parties. This Agreement shall inure to the benefit of and be binding upon the Dealer-Manager, the Company and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those Persons, except that the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of the Person or Persons, if any, who control the Dealer-Manager within the meaning of Section 15 of the Securities Act. Nothing in this Agreement shall be construed to give any Person, other than the Persons referred to in this Section, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

16. Amendment. This Agreement may not be amended or modified except in writing signed by each of the parties hereto.

17. Governing Law; Venue. This Agreement shall be deemed to have been executed and delivered in New York and both this Agreement and the transactions contemplated hereby shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws of the State of New York, without regard to the conflicts of laws principles thereof (other than Section 5-1401 of The New York General Obligations Law). Each of the Dealer-Manager and the Company: (a) agrees that any legal suit, action or proceeding arising out of or relating to this Agreement and/or the transactions contemplated hereby shall be instituted exclusively in the Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York, (b) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (c) irrevocably consents to the jurisdiction of Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the Dealer-Manager and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address or delivered by Federal Express via overnight delivery shall be deemed in every respect effective service of process upon the Company, in any such suit, action or proceeding, and service of process upon the underwriters mailed by certified mail to the Dealer-Manager's address or delivered by Federal Express via overnight delivery shall be deemed in every respect effective service process upon the Dealer-Manager, in any such suit, action or proceeding. THE COMPANY (ON BEHALF OF ITSELF AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ON BEHALF OF ITS RESPECTIVE EQUITY HOLDERS AND CREDITORS) HEREBY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE REGISTRATION STATEMENT, ANY PRELIMINARY PROSPECTUS AND THE PROSPECTUS.

18. Entire Agreement. This Agreement, together with the exhibit attached hereto, as the same may be amended from time to time in accordance with the terms hereof, contains the entire agreement among the parties hereto relating to the subject matter hereof and there are no other or further agreements outstanding not specifically mentioned herein. Notwithstanding anything herein to the contrary, the Engagement Letter shall continue to be effective and the terms therein shall continue to survive and be enforceable by the parties thereto in accordance with its terms.

19. Assignment. Neither this Agreement nor any right or interest hereunder shall be assignable by the Company or the Dealer-Manager without the prior written consent of the other party hereto; provided, however, that nothing in this Section 19 shall preclude the Dealer-Manager from (i) assigning any rights hereunder to a corporation or other entity acquiring all or substantially all the assets and business, whether by operation of law or otherwise, of the Dealer-Manager, provided such entity is a registered broker-dealer, or (ii) designating another broker-dealer to perform services hereunder if the Dealer-Manager is unable to do so, provided such firm includes some or all of the Dealer-Manager's former investment banking staff, and such firm becomes subject to the same obligations and responsibilities as the Dealer-Manager as contemplated herein as it relates to the delegated services.

20. Severability. If any term or provision of this Agreement or the performance thereof shall be invalid or unenforceable to any extent, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement and this Agreement shall be valid and enforced to the fullest extent permitted by law.

21. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of a signed counterpart of this Agreement by facsimile or other electronic transmission (including .pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., www.docuSign.com) shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature Page Follows]

If the foregoing correctly sets forth your understanding, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among us.

Very truly yours,

**FLEXSHOPPER, INC.**

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

**Accepted and Agreed as of  
the date first written above:**

**MOODY CAPITAL SOLUTIONS, INC.**

By: \_\_\_\_\_  
Name: Richard H. Kreger  
Title: Senior Managing Director

[Signature Page to Dealer-Manager Agreement]



CERTIFICATE #

NUMBER OF SUBSCRIPTION RIGHTS:

THE TERMS AND CONDITIONS OF THE RIGHTS OFFERING ARE SET FORTH IN THE COMPANY'S PROSPECTUS DATED \_\_\_\_\_, (THE "PROSPECTUS") AND ARE INCORPORATED HEREIN BY REFERENCE. COPIES OF THE PROSPECTUS ARE AVAILABLE UPON REQUEST FROM MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, AT (212) 929-5500 OR CALL TOLL-FREE AT (800) 322-2885.

**FLEXSHOPPER, INC.****(Incorporated under the laws of the State of Delaware)****NON-TRANSFERABLE SUBSCRIPTION RIGHTS CERTIFICATE**

Evidencing non-transferable Subscription Rights, each to purchase one unit,  
each unit consisting of one share of common stock, one Series A Right, one Series B Right and one Series C Right

Unit Subscription Price: \$ \_\_\_\_\_

THE SUBSCRIPTION RIGHTS WILL EXPIRE IF NOT EXERCISED ON OR BEFORE 5:00 P.M., EASTERN TIME, ON \_\_\_\_\_, 202\_\_,  
SUBJECT TO EXTENSION OR EARLIER TERMINATION.

REGISTERED OWNER:

THIS CERTIFIES THAT the registered owner whose name is inscribed hereon is the owner of the number of non-transferable subscription rights ("**Subscription Rights**") set forth above. Each Subscription Right entitles the holder thereof to subscribe for and purchase one unit of FlexShopper, Inc., a Delaware corporation (the "**Company**"), at a subscription price equal to \$ \_\_\_\_ (the "**Unit Subscription Price**"), pursuant to the rights offering being conducted by the Company (the "**Rights Offering**"), on the terms and subject to the conditions set forth in the Prospectus and the "Instructions as to Use Of Non-Transferable Subscription Rights Certificates" accompanying this Subscription Rights Certificate. Each Unit consists of one share of common stock, one series A common stock purchase right ("**Series A Right**"), one series B common stock purchase right ("**Series B Right**") and one series C common stock purchase right ("**Series C Right**" and, collectively, with the Series A Right and Series B Right, the "**Series Rights**"). Each Series Right will be exercisable for one share of our common stock, at an exercise price equal to the *higher* of (x) the Unit Subscription Price or (y)(i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent.

If you exercise your basic rights in full, and any portion of the units remain available under the Rights Offering, you will be entitled to an over-subscription privilege to purchase a portion of the unsubscribed units at the Unit Subscription Price, subject to proration and ownership limitations. Each Subscription Right consists of a basic right and an over-subscription privilege. The Subscription Rights represented by this Subscription Rights Certificate may be exercised by completing the appropriate forms on the reverse side hereof and by returning the full payment of the Unit Subscription Price for each unit. If the Company is unable to issue the subscriber the full amount of units requested, the Subscription Agent will return to the subscriber any excess funds submitted as soon as practicable, without interest or deduction. This Subscription Rights Certificate is not valid unless countersigned by Continental Stock Transfer & Trust Company, the Subscription Agent.

WITNESS the seal of the Company. and the signatures of its duly authorized officers.

Countersigned and Registered

By: \_\_\_\_\_  
Continental Stock Transfer & Trust Company

**DELIVERY OPTIONS FOR SUBSCRIPTION RIGHTS CERTIFICATE**

FOR DELIVERY BY HAND DELIVERY, FIRST CLASS MAIL OR COURIER SERVICE:

Continental Stock Transfer & Trust Company  
1 State Street, 30th Floor  
New York, NY 10004  
Attn: Corporate Actions – FLEXSHOPPER, INC.

**DELIVERY OTHER THAN IN THE MANNER OR TO THE ADDRESSES LISTED ABOVE WILL NOT CONSTITUTE VALID DELIVERY**

PLEASE PRINT ALL INFORMATION CLEARLY AND LEGIBLY

**FORM 1-EXERCISE OF SUBSCRIPTION RIGHTS**

You have been allocated the number of units shown on this Subscription Rights Certificate. To subscribe for units pursuant to your basic Subscription Right, please complete lines (a) and (c) and sign under Form 3 below. To subscribe for shares pursuant to your Oversubscription Privilege, please also complete line (b) and sign under Form 3 below.

(a) EXERCISE OF BASIC SUBSCRIPTION RIGHT:

I subscribe for \_\_\_\_\_ Units x \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
(Number of Units) (Unit Subscription Price) (amount)\*

(b) EXERCISE OF OVERSUBSCRIPTION PRIVILEGE:

If you have exercised your basic Subscription Right in full and wish to subscribe for additional units pursuant to your Oversubscription Privilege:

I subscribe for \_\_\_\_\_ Units x \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
(Number of Units) (Unit Subscription Price) (amount)\*

(c) Total Amount of Payment Enclosed (lines (a) plus (b)) = \$ \_\_\_\_\_

METHOD OF PAYMENT (CHECK ONE)

- Check, certified check, or U.S. Postal money order payable to “Continental Stock Transfer & Trust Company, as subscription agent for FlexShopper, Inc.”
- Wire transfer of immediately available funds directly to the account maintained by Continental Stock Transfer & Trust Company, LLC, as Subscription Agent, for purposes of accepting subscriptions in this rights offering at: \_\_\_\_\_ Bank; ABA # \_\_\_\_\_; Acct # \_\_\_\_\_; Reference: FLEXSHOPPER, INC.

ANY QUESTIONS OR REQUESTS FOR ASSISTANCE CONCERNING THE RIGHTS OFFERING SHOULD BE DIRECTED TO MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, TOLL-FREE AT (800) 322-2885.

<b>FORM 2-TRANSFER TO DESIGNATED TRANSFEREE</b>	<b>FORM 3-SIGNATURE</b>	<b>FORM 4-SIGNATURE GUARANTEE</b>
<p>To transfer your Subscription Rights to another person, complete this Form 2, sign under Form 3 and have your signature guaranteed under Form 4. For value received _____ of the Units represented by this Subscription Rights Certificate are assigned to (you must obtain a MEDALLION SIGNATURE GUARANTEE.):</p> <p>Issue payment to:</p> <p>Name: _____ <b>(Please Print)</b></p> <p>Address: _____ <b>(Include Zip Code)</b></p> <p>_____ <b>(Tax Identification or Social Security No.)</b></p>	<p>TO SUBSCRIBE: I acknowledge that I have received the Prospectus for the Rights Offering and I hereby irrevocably subscribe for the number of units indicated above on the terms and conditions specified in the Prospectus. By signing below I confirm that I am not an “Excluded Stockholder” as defined in the Prospectus.</p> <p>Signature(s): _____</p> <p>IMPORTANT: The signature(s) must correspond with the name(s) as printed on the face of this Subscription Rights Certificate in every particular, without alteration or enlargement, or any other change whatsoever.</p>	<p>This form must be completed if you have completed any portion of Form 2.</p> <p>Signature Guaranteed: _____ <b>(Name of Bank or Firm)</b></p> <p>By: _____ <b>(Signature of Officer)</b></p> <p>IMPORTANT: The signature(s) should be guaranteed by an eligible guarantor institution (bank, stock broker, savings &amp; loan association or credit union) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15.</p>

ANY QUESTIONS OR REQUESTS FOR ASSISTANCE CONCERNING THE RIGHTS OFFERING SHOULD BE DIRECTED TO MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, TOLL-FREE AT (800) 322-2885.

November 20, 2024

FlexShopper, Inc.  
901 Yamato Road, Suite 260  
Boca Raton, FL 33431

Ladies and Gentlemen:

We have acted as counsel to FlexShopper, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing of a Registration Statement on Form S-1 (File No. 333-282857), including the prospectus contained therein (the "Prospectus"), originally filed with the Securities and Exchange Commission (the "Commission") by the Company on October 28, 2024 (as amended, the "Registration Statement"), under the Securities Act of 1933, as amended (the "Securities Act"), and the rules and regulations promulgated thereunder. The Registration Statement relates to the proposed distribution by the Company to holders of the Company's common stock, series 1 convertible preferred stock and series 2 convertible preferred stock, as of the record date therefor, of a nontransferable subscription right (the "Subscription Right") to purchase one unit at a subscription price described therein (the "Unit Subscription Price"). Each unit will consist of (i) one share of common stock ("Initial Share"), (ii) one series A common stock purchase right ("Series A Right"), (iii) one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights") with each of the Series Rights entitling the holder to purchase one share of the Company's common stock (such shares of common stock issuable upon exercise of each Series Right, the "Series Right Common Stock"). The maximum number of shares of the Company's common stock available for issuance in the offering is 70,000,000. This opinion is being furnished pursuant to the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

In connection with the foregoing, we have examined (i) the restated certificate of incorporation of the Company, as amended and as in effect on and as of the date hereof, (ii) the amended and restated bylaws of the Company, (iii) the form of non-transferable subscription rights certificate and all other required subscription documents, pursuant to which the securities are to be sold (collectively, the "Subscription Documents"), (iv) corporate proceedings, including the resolutions of the Board of Directors of the Company, with respect to the offering, (v) the Registration Statement as filed with the Commission and (vi) such other documents, instruments and records as we have deemed necessary to enable us to render the opinions contained herein:

In our examination of such legal documents, we have assumed the genuineness of all signatures, the legal capacity of all signatories who are natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, the authenticity of the originals of such documents and the due execution and delivery of all documents. Insofar as this opinion relates to factual matters, we have assumed with your permission and without independent investigation, that the statements of the Company contained in the Registration Statement (including any exhibits thereto) and such other documents, certificates, records, statements and representations as we have deemed necessary or appropriate as a basis for the opinions set forth below are true, correct and complete as to all factual matters stated therein. In addition, as to questions of fact material to this opinion, we have, when relevant facts were not independently established, relied upon certificates of, and information received from, the Company and/or representatives of the Company. We have made no independent investigation of the facts stated in such certificates or as to any information received from the Company and/or representatives of the Company and do not opine as to the accuracy of such factual matters. We also have relied as to certain matters on information obtained from public officials, officers of the Company, and other sources believed by us to be reliable. We also have assumed that the Registration Statement will remain effective pursuant to the Securities Act at the time of issuance of each of the securities, and the Company will have received the required consideration for the issuance of such securities at or prior to the issuance thereof.

We are members of the Bar of the State of New York. We do not express any opinion as to the effect of any laws other than the laws of the State of New York and the General Corporation Law of the State of Delaware, and the federal laws of the United States of America, as in effect on the date hereof.

Our opinions below are qualified to the extent that they may be subject to or affected by (i) applicable bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship, arrangement, usury, fraudulent conveyance or similar laws affecting the rights of creditors generally, and (ii) by general equitable principles and public policy considerations, whether such principles and considerations are considered in a proceeding at law or at equity. Furthermore, we express no opinion as to the availability of any equitable or specific remedy, or as to the successful assertion of any equitable defense, upon any breach of any agreements or obligations referred to therein, or any other matters, inasmuch as the availability of such remedies or defenses may be subject to the discretion of a court. We express no opinion as to the enforceability of any indemnification provision, or as to the enforceability of any provision that may be deemed to constitute liquidated damages.

Based upon and subject to the foregoing and the other assumptions, limitations and exceptions set forth herein, we are of the opinion that:

1. The Subscription Rights have been authorized by all necessary corporate action of the Company and, when issued and delivered as contemplated in the Registration Statement, will constitute valid and legally binding obligations of the Company.

2. The units have been authorized by all necessary corporate action of the Company and, when issued and sold in accordance with the terms set forth in the Subscription Documents against payment therefor, and as contemplated in the Registration Statement, will constitute valid and legally binding obligations of the Company.

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3. The Initial Shares have been duly and validly authorized by the Company and, upon issuance, delivery and payment therefor in the manner contemplated by the Registration Statement and the Prospectus, will be legally issued, fully paid and nonassessable.

4. The Series Rights have been authorized by all necessary corporate action of the Company, and when issued in accordance with the terms set forth in the Subscription Documents, and as contemplated in the Registration Statement, will have been duly executed and delivered by the Company and will constitute the valid and legally binding obligations of the Company.

5. The Series Right Common Stock have been duly and validly authorized by the Company and, upon issuance, delivery and payment therefor in the manner contemplated by the Registration Statement and the Prospectus, will be legally issued, fully paid and nonassessable.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon the laws, including the rules and regulations, as in effect on the date hereof, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement pursuant to Item 601(b)(5) of Regulation S-K under the Securities Act and to the use of this firm's name therein and in the related Prospectus and any supplement to the Prospectus under the caption "Legal Matters." In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission or that we are "experts" within the meaning of Section 11 of the Securities Act.

Very truly yours,

/s/ Olshan Frome Wolosky LLP

OLSHAN FROME WOLOSKY LLP

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November 20, 2024

FlexShopper, Inc.  
901 Yamato Road, Suite 260  
Boca Raton, FL 33431

Re: Material U.S. Federal Income Tax Considerations

Ladies and Gentlemen:

We have acted as United States tax counsel to FlexShopper, Inc., a Delaware corporation (“FPAY” or “Company”) in connection with the preparation and filing of a Registration Statement on Form S-1 (as amended, the “Registration Statement”), under the Securities Act of 1933, as amended (the “Securities Act”), and the rules and regulations promulgated thereunder. The Registration Statement relates to the proposed distribution of non-transferable subscription rights (the “Subscription Rights”) entitling holders of the Company’s common stock, series 1 convertible preferred stock and series 2 convertible preferred stock to purchase units, each of which will consist of one share of common stock, one series A common stock purchase right (“Series A Right”), one series B common stock purchase right (“Series B Right”) and one series C common stock purchase right (“Series C Right” and, collectively with the Series A Right and Series B Right, the “Series Rights”), with each of the Series Rights entitling the holder to purchase one share of the Company’s common stock (the “Offering”). This opinion is being furnished pursuant to the requirements of Item 601(b)(8) of Regulation S-K under the Securities Act. Capitalized terms used but not defined herein shall have the respective meanings set forth in the Registration Statement.

In providing our opinion, we have examined the Registration Statement and such other documents as we have deemed necessary or appropriate for purposes of this opinion. In our examination, we have assumed, without independent verification, (i) that the Offering will be consummated as described in the Registration Statement, (ii) that the statements concerning the terms of the Offering contained in the Registration Statement are true, correct and complete and will remain true, correct and complete at all relevant times, and no actions have been taken or will be taken which are inconsistent with such statements, (iii) the authenticity and completeness of original documents submitted to us and the completeness and conformity to the authentic originals of documents submitted to us as copies, (iv) that any statement or representation with the qualification “to the knowledge of” or “based on the belief of” or other similar qualification, is true, correct and complete and will remain true, correct and complete at all relevant times, in each case without such qualification, and (v) the genuineness of all signatures, the legal capacity of all natural persons to execute and deliver documents. If any of the above described assumptions is untrue for any reason or if the Offering is consummated in a manner that is different from the manner described in the Registration Statement, this opinion may be adversely affected.

The opinion set forth below is based on the Internal Revenue Code of 1986, as amended, administrative rulings, judicial decisions, Treasury regulations and other applicable authorities, all as in effect on the effective date of the Registration Statement. The statutory provisions, regulations, and interpretations upon which our opinion is based are subject to change, and such changes could apply retroactively. Any change in law or the facts regarding the Offering or any of the transactions related thereto, or any inaccuracy in the facts or assumptions upon which we relied, could affect the continuing validity of the opinion set forth below. We assume no responsibility to inform you of any such changes or inaccuracy that may occur or come to our attention.

Based upon and subject to the foregoing, and subject to the limitations and qualifications provided herein and in the Registration Statement, the discussion set forth in the Registration Statement under the caption "Material U.S. Federal Income Tax Considerations," insofar as it expresses legal conclusions as to the application of United States federal income tax law, constitutes an accurate summary of the material United States federal income tax consequences of the Offering with respect to the receipt and exercise (or expiration) of the Subscription Rights, Series Rights, and the ownership and disposition of shares of common stock acquired through this Offering upon exercise of the foregoing rights.

This opinion is being delivered prior to the consummation of the Offering and therefore is prospective and dependent on future events. This opinion is expressed as of the date hereof, and we are under no obligation to supplement or revise our opinion to reflect any legal developments, any factual matters arising subsequent to the date hereof, or the impact of any information, document, certificate, record, statement, representation, covenant, or assumption relied upon herein that becomes incorrect or untrue. We express our opinion herein only as to those matters specifically set forth above and no opinion should be inferred as to the tax consequences of the Offering under any state, local or foreign law, or with respect to other areas of United States federal taxation. We do not express any opinion herein concerning any law other than the federal income tax law of the United States.

The U.S. federal income tax consequences of the transactions described in the Registration Statement are complex and are subject to varying interpretations. Our opinion is not binding on the Internal Revenue Service (the "IRS") or any court, and there can be no assurance or guarantee that either will agree with our conclusions. The IRS may challenge one or more of the conclusions contained herein, and the IRS may take a position that is inconsistent with the views expressed herein. There can be no assurance or guarantee that a court would, if presented with the issues addressed herein, reach the same or similar conclusions as we have reached.

This opinion is furnished to you solely in connection with the Offering, as described in the Registration Statement, and this opinion is not to be relied upon for any other purpose without our prior written consent.

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We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name therein. In giving this consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission thereunder, nor do we admit that we are experts with respect to any part of the Registration Statement within the meaning of the term “experts” as used in the Securities Act or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Olshan Frome Wolosky LLP

OLSHAN FROME WOLOSKY LLP

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated April 1, 2024 with respect to the consolidated financial statements of FlexShopper, Inc. included in the Annual Report on Form 10-K for the year ended December 31, 2023, which is incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned report in the Registration Statement, and to the use of our name as it appears under the caption “Experts”.

/s/ Grant Thornton LLP

Fort Lauderdale, FL  
November 20, 2024

THE TERMS AND CONDITIONS OF THE OFFERING ARE SET FORTH IN THE COMPANY'S PROSPECTUS DATED \_\_\_\_\_, 2024 (THE "PROSPECTUS") AND ARE INCORPORATED HEREIN BY REFERENCE. COPIES OF THE PROSPECTUS ARE AVAILABLE UPON REQUEST FROM MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, BY CALLING (212) 929-5500 (BANKERS AND BROKERS) OR (800) 322-2885 (ALL OTHERS) OR BY EMAIL AT [RIGHTSOFFER@MACKENZIEPARTNERS.COM](mailto:RIGHTSOFFER@MACKENZIEPARTNERS.COM).

**FORM OF INSTRUCTIONS AS TO USE OF FLEXSHOPPER, INC.  
NON-TRANSFERABLE SUBSCRIPTION RIGHTS CERTIFICATES**

PLEASE CONSULT THE INFORMATION AGENT, SUBSCRIPTION AGENT, YOUR BANK OR BROKER FOR ANY QUESTIONS

The following instructions relate to the rights offering being conducted by **FLEXSHOPPER, INC.**, a Delaware corporation, to holders of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock, as described in the prospectus dated \_\_\_\_\_, 2024. Holders of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock, as of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 (the "Record Date") are receiving, at no charge, (i) non-transferable subscription rights (the "Subscription Rights") entitling such holders to purchase one unit for each basic right at a price equal to \$ \_\_\_\_ (the "Unit Subscription Price"); and (ii) an over-subscription privilege, which will be exercisable only if holder exercises his or her basic right in full and will entitle holder to purchase additional units for which other rights holders do not subscribe, subject to certain pro rata allocations and ownership limitations. Each unit will consist of one share of common stock, one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right", and together with the Series A Right and Series B Right, the "Series Rights"), with each Series Right entitling the holder to purchase one share of our common stock. The offering of the Subscription Rights and the Series Rights is referred to as the "offering."

The Series Rights are exercisable commencing on their date of issuance at an exercise price equal to the *higher* of the (x) Unit Subscription Price or (y) (i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent.

The Subscription Rights will be evidenced by non-transferable subscription rights certificates (the "Non-Transferable Subscription Rights Certificate"). The number of basic rights to which you are entitled is printed on the face of your Non-Transferable Subscription Rights Certificate.

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### *Over-Subscription Privilege*

If a holder purchases all of the units available to it pursuant to its basic rights, it may also exercise an over-subscription privilege to purchase additional units to the extent other rights holders do not exercise their basic rights in full. Over-subscription privilege will be allocated pro rata among rights holders who over-subscribe, based on the number of over-subscription units for which the rights holders have subscribed. If you exercise fewer than all of your basic rights, however, you will not be entitled to purchase any additional units pursuant to the over-subscription privilege. There will be no over-subscription privilege for the Series Rights.

If you wish to exercise your over-subscription privilege, you should deliver a completed Non-Transferable Subscription Rights Certificate indicating the number of additional units that you would like to purchase as well as the number of shares of common stock that you beneficially own without giving effect to any units to be purchased in this rights offering and the required payment to the subscription agent by \_\_\_\_\_, 2024, the expiration date of the subscription offering or, if your shares of common stock, series 1 convertible preferred stock and series 2 convertible preferred stock are held in an account with a broker-dealer, trust company, bank or other nominee that qualifies as an Eligible Guarantor Institution deliver a notice of guaranteed delivery to the subscription agent by the expiration date of the subscription offering. When you send in your Non-Transferable Subscription Rights Certificate, you must also send the Unit Subscription Price for the number of additional units that you have requested to purchase.

If the number of units remaining after the exercise of all Subscription Rights is not sufficient to satisfy all requests for units pursuant to over-subscription privilege, we will allocate the unsubscribed units pro rata among rights holders who oversubscribed based on the number of over-subscription units for which the rights holders have subscribed. The subscription agent will promptly return any excess payments in the form in which made. To the extent your aggregate subscription payment for the actual number of unsubscribed units available to you pursuant to the over-subscription privilege is less than the amount actually paid in connection with the exercise of the over-subscription privilege, you will be allocated only the number of unsubscribed units available to you, and any excess subscription payment will be promptly returned to you, without interest or penalty, after the expiration of this offering.

As soon as practicable after the expiration of the subscription offering, the subscription agent will determine the units that you may purchase pursuant to the over-subscription privilege. If you request and pay for more units than are allocated to you, we will refund the overpayment in the form in which made. In connection with the exercise of the over-subscription privilege, banks, brokers and other nominee holders of the basic rights who act on behalf of beneficial owners will be required to certify to us and to the subscription agent as to the aggregate number of basic rights exercised, and the number of units requested through the over-subscription privilege, by each beneficial owner on whose behalf the nominee holder is acting.

Subscription Rights may only be exercised in aggregate for whole numbers of units. Only whole numbers of shares of common stock and Series Rights exercisable for whole numbers of shares of common stock will be issuable to you in this offering; any right to a fractional share to which you would otherwise be entitled will be terminated, without consideration to you. You are not required to exercise any or all of your basic rights. If you do not exercise your Subscription Rights, you will lose any value represented by your Subscription Rights, and if you do not exercise your Subscription Rights in full, your percentage ownership interest and related rights in our company will be diluted. Your percentage ownership of our voting stock may also decrease if you do not exercise your Subscription Rights in full. Please see the discussion of dilution relating to the Subscription Rights in the Questions and Answers Relating to This Offering section of the prospectus entitled "Am I required to exercise the Subscription Rights or Series Rights I receive in this offering?"

### *Expiration Time – Subscription Rights*

THE BASIC RIGHTS WILL EXPIRE AND WILL HAVE NO VALUE AT 5:00 P.M., EASTERN TIME, \_\_\_\_\_, 2024, SUBJECT TO EXTENSION OR EARLIER TERMINATION (THE “SUBSCRIPTION RIGHTS EXPIRATION DATE”). YOUR NON-TRANSFERABLE SUBSCRIPTION RIGHTS CERTIFICATE AND SUBSCRIPTION PAYMENT FOR EACH SUBSCRIPTION RIGHT THAT IS EXERCISED PURSUANT TO THE SUBSCRIPTION RIGHTS MUST BE RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE 5:00 P.M., EASTERN TIME, ON THE SUBSCRIPTION RIGHTS EXPIRATION DATE. ONCE YOU HAVE EXERCISED YOUR SUBSCRIPTION RIGHT, SUCH EXERCISE MAY NOT BE REVOKED OR CHANGED, EVEN IF YOU LATER LEARN INFORMATION THAT YOU CONSIDER TO BE UNFAVORABLE TO THE EXERCISE OF YOUR SUBSCRIPTION RIGHTS. SUBSCRIPTION RIGHTS NOT EXERCISED PRIOR TO 5:00 P.M., EASTERN TIME, ON THE SUBSCRIPTION RIGHTS EXPIRATION DATE WILL EXPIRE WITHOUT VALUE.

If you do not exercise your Subscription Rights prior to that time, your Subscription Rights will expire and will no longer be exercisable. We will not be required to sell units to you if the subscription agent receives your Non-Transferable Subscription Rights Certificate(s) or your subscription payment after 5:00 p.m., Eastern time, on the Subscription Rights Expiration Date regardless of when the Non-Transferable Subscription Rights Certificate(s) and subscription payment were sent. If you send your Non-Transferable Subscription Rights Certificate(s) and payment of the Subscription Unit Price by mail, we recommend that you send them by registered mail, properly insured, with return receipt requested, and that a sufficient number of days be allowed to ensure delivery to the subscription agent and clearance of payment prior to the expiration of the subscription period or the date guaranteed payments are due under a notice of guaranteed delivery (as applicable). See “The Rights Offering—Expiration of the Offer” in the Prospectus.

The maximum number of shares of our common stock available for issuance in this offering is 70,000,000 shares. If at any time the issuance of shares pursuant to the exercise of the Subscription Rights or the Series Rights exceeds such share limitation, no additional shares will be issued, the offering will be terminated and any outstanding rights will immediately expire and the amount subscribed for by each holder will be proportionally reduced.

If you have any questions concerning the offering, please contact the Information Agent, MacKenzie Partners, Inc. by telephone at 212-929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com).

#### **1. Method of Subscription—Exercise of Subscription Rights**

To exercise your Subscription Rights, please: (1) complete Form 1 on your Non-Transferable Subscription Rights Certificate, attached to these instructions; (2) sign Form 3 of your Non-Transferable Subscription Rights Certificate; and (3) mail the properly completed and executed Non-Transferable Subscription Rights Certificate evidencing the basic rights and, if applicable, over-subscription privilege subscribed, together with payment in full of the Subscription Unit Price for each unit subscribed for pursuant to the basic rights and, if applicable, over-subscription privilege, to the subscription agent, on or prior to the expiration of the subscription offering.

Additionally, if the share of common stock and Series Rights issued pursuant to the units to be sold pursuant to the Subscription Rights are to be issued in a name other than that of the registered holder, or sent to an address other than that shown on the front of the Non-Transferable Subscription Rights Certificate, please complete Form 2 of the Non-Transferable Subscription Rights Certificate and obtain a signature guarantee on Form 4 prior to mailing the Non-Transferable Subscription Rights Certificate to the subscription agent, prior to the Subscription Rights Expiration Date. Payment of the Subscription Unit Price will be held in escrow by an escrow agent retained by the subscription agent, on our behalf, in a segregated account.

(a) Method of Execution

(i) *Execution by Registered Holder.* Your signature on the Non-Transferable Subscription Rights Certificate must correspond with the name of the registered holder exactly as it appears on the face of the Non-Transferable Subscription Rights Certificate without any alteration or change whatsoever. Persons who sign the Non-Transferable Subscription Rights Certificate in a representative or other fiduciary capacity must indicate their capacity when signing and, unless waived by the subscription agent in its sole and absolute discretion, must present to the subscription agent satisfactory evidence of their authority to so act.

(ii) *Execution by Person Other than Registered Holder.* If the Non-Transferable Subscription Rights Certificate is executed by a person other than the holder named on the face of the Non-Transferable Subscription Rights Certificate, proper evidence of authority of the person executing the Non-Transferable Subscription Rights Certificate must accompany the same unless, for good cause, the subscription agent dispenses with proof of authority.

(iii) *Signature Guarantees.* If you completed any part of Form 2 of the Non-Transferable Subscription Rights Certificate to provide that the common stock and Series Rights issued pursuant to the units sold pursuant to your exercise of Subscription Rights to be (x) issued in a name other than that of the registered holder, or (y) sent to an address other than that shown on the front of the Non-Transferable Subscription Rights Certificate, your signature in Form 3 must be guaranteed in Form 4 by an “Eligible Guarantor Institution,” as such term is defined in Rule 17Ad-15 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), such as a member firm of a registered national securities exchange or a member of the Financial Industry Regulatory Authority, Inc., or a commercial bank or trust company having an office or correspondent in the United States, or by a member of a Stock Transfer Association approved medallion program such as STAMP, SEMP or MSP, subject to standards and procedures adopted by the Subscription Agent.

(b) Method of Payment and Delivery

Registered holders may send to the subscription agent (a) payment of the full Unit Subscription Price for units acquired in the basic right and any additional units subscribed for pursuant to the over-subscription privilege and (b) a properly completed and duly executed Non-Transferable Subscription Rights Certificate, which must be received by the subscription agent at the subscription agent’s offices set forth below, at or prior to 5:00 p.m., Eastern time, on the Subscription Rights Expiration Date. A properly completed and duly executed Non-Transferable Subscription Rights Certificate and full payment for the units must be received by the subscription agent at or prior to 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 unless the offering is extended by us.

All payments by a registered holder must be in U.S. dollars by certified check payable to the order of “Continental Stock Transfer & Trust Company, as the subscription agent for FlexShopper, Inc.” Payment also may be made by wire transfer to the account maintained by an escrow agent retained by Continental Stock Transfer & Trust Company, as subscription agent, for purposes of accepting subscriptions in this offering with reference to the registered holder’s name. The subscription agent will deposit all funds received by it prior to the final payment date in escrow in a segregated account maintained by an escrow agent retained by the Subscription Agent on our behalf, pending pro-ration and distribution of the units.

Beneficiary Account Name: Continental Stock Transfer & Trust Company	
Account Number:	_____
ABA/Routing number:	_____
Bank:	_____
	_____
For Further Credit:	FlexShopper, Inc.
Account Number:	_____

Non-Transferable Subscription Rights Certificate and payments of Unit Subscription Price must be delivered to the subscription agent by hand, or overnight courier or by first class mail to the below:

Continental Stock Transfer & Trust Company  
1 State Street, 30th Floor  
New York, NY 10004  
Attention: Corporate Actions – FLEXSHOPPER, INC.

**Delivery to an address or by a method other than those above will not constitute valid delivery.**

## **2. Issuance of Common Stock and Series Rights**

The following deliveries and payments will be made and/or issued to the address shown on the face of your Non-Transferable Subscription Rights Certificate, unless you provide instructions to the contrary in your Non-Transferable Subscription Rights Certificate.

- (a) *Basic Rights.* As soon as practicable following the Subscription Rights Expiration Date and the valid exercise of the basic rights, we will issue to each holder exercising their basic rights shares of common stock and Series Rights in book-entry, or uncertificated form representing shares of common stock and Series Rights, included in the units purchased pursuant to the basic rights.
- (b) *Over-Subscription Privilege.* As soon as practicable following the Subscription Rights Expiration Date and after all prorations and adjustments contemplated by the terms of the rights offering have been effected, we will issue to each holder of Subscription Rights that validly exercises the over-subscription privilege shares of common stock and Series Rights in book-entry, or uncertificated, form representing the number of shares of common stock and Series Rights included in the units, if any, allocated to such holder of Subscription Rights pursuant to the over-subscription privilege.
- (c) *Excess Cash Payments.* As soon as practicable following the Subscription Rights Expiration Date and after all prorations and adjustments contemplated by the terms of the rights offering have been effected, any excess subscription payments received in payment of the initial price will be mailed by the subscription agent to each holder of Subscription Rights, without interest or penalty.

## **3. No Sale or Transfer of Subscription Rights**

The Subscription Rights granted to you are non-transferable and, therefore, you may not sell, transfer or assign your Subscription Rights to anyone.

## **4. Special Provisions Relating to the Delivery of Subscription Rights through the Depository Trust Company**

Banks, trust companies, securities dealers and brokers (each, a “Nominee”) that hold shares of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock on the Record Date as nominee for more than one beneficial owner may, upon proper showing to the subscription agent, exercise such beneficial owner’s Subscription Rights through DTC on the same basis as if the beneficial owners were stockholders on the Record Date. Such Nominee may exercise the basic rights on behalf of the exercising beneficial owner through DTC’s PSOP Function on the “agents subscription over PTS” procedure by (1) providing a certification as to the aggregate number of basic rights exercised by the beneficial owner on whose behalf such Nominee is acting, and (2) instruct DTC to charge the Nominee’s applicable DTC account for the subscription payment for the new units to facilitate the delivery of the full subscription payment to the subscription agent. DTC must receive the subscription instructions and payment for the new units no later than the Subscription Rights Expiration Date.

## **5. Form W-9**

Each basic right holder who elects to exercise basic rights should provide the subscription agent with a correct Taxpayer Identification Number (TIN) on IRS Form W-9. See “Material U.S. Federal Income Tax Consequences — Information Reporting and Backup Withholding” in the prospectus. Failure to provide the information on the form may subject such holder to a \$50 penalty for each such failure and to 24% federal income tax withholding with respect to dividends (including deemed dividends) that may be paid by the company on shares of its common stock, series 1 convertible preferred stock and series 2 convertible preferred stock. Foreign Persons are generally required to provide an appropriate IRS Form W-8 rather than IRS Form W-9 and may be subject to withholding on dividends (including deemed dividends) at a rate of up to 30%.



THE TERMS AND CONDITIONS OF THE OFFERING ARE SET FORTH IN THE COMPANY'S PROSPECTUS DATED \_\_\_\_\_, 2024 (THE "PROSPECTUS") AND ARE INCORPORATED HEREIN BY REFERENCE. COPIES OF THE PROSPECTUS ARE AVAILABLE UPON REQUEST FROM MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, BY CALLING (212) 929-5500 (BANKERS AND BROKERS) OR (800) 322-2885 (ALL OTHERS) OR BY EMAIL AT [RIGHTSOFFER@MACKENZIEPARTNERS.COM](mailto:RIGHTSOFFER@MACKENZIEPARTNERS.COM).

**FORM OF INSTRUCTIONS AS TO USE OF FLEXSHOPPER, INC.  
NON-TRANSFERABLE SERIES A RIGHTS CERTIFICATES  
NON-TRANSFERABLE SERIES B RIGHTS CERTIFICATES  
NON-TRANSFERABLE SERIES C RIGHTS CERTIFICATES**

PLEASE CONSULT THE SUBSCRIPTION AGENT, INFORMATION AGENT, YOUR BANK OR BROKER FOR ANY QUESTIONS

The following instructions relate to the rights offering being conducted by **FLEXSHOPPER, INC.**, a Delaware corporation, to holders of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock, as described in the Prospectus. Holders of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock, as of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 (the "Record Date") are receiving, at no charge, (i) non-transferable subscription rights (the "Subscription Rights") entitling such holders to purchase one unit of securities at a price equal to \$ \_\_\_\_ (the "Unit Subscription Price") and an over-subscription privilege, which will be exercisable only if holder exercises his or her basic right in full and will entitle holder to purchase additional units for which other rights holders do not subscribe, subject to certain pro rata allocations and ownership limitations. Each unit will consist of one share of common stock, one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights"), with each of the Series Rights entitling the holder to purchase one share of our common stock. There are no over-subscription privileges for the Series Rights. The offering of the Subscription Rights and the Series Rights is referred to as the "offering."

The Series Rights are exercisable commencing on their date of issuance at an exercise price equal to the *higher* of the (x) Unit Subscription Price or (y) (i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent.

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*Expiration Time – Series A Rights*

THE SERIES A RIGHTS WILL EXPIRE AND WILL HAVE NO VALUE AT 5:00 P.M., EASTERN TIME, ON \_\_\_\_\_, 2024 (“SERIES A RIGHT EXPIRATION DATE”) SUBJECT TO EXTENSION OR EARLIER TERMINATION. YOUR CERTIFICATE FOR YOUR SERIES A RIGHTS (THE “NON-TRANSFERABLE SERIES A RIGHTS CERTIFICATE”) AND PAYMENT OF THE INITIAL EXERCISE PRICE OF THE SERIES A RIGHTS (E.G., 150% OF THE UNIT SUBSCRIPTION PRICE) MUST BE RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE 5:00 P.M., EASTERN TIME, ON THE SERIES A RIGHT EXPIRATION DATE. ONCE YOU HAVE EXERCISED YOUR SERIES A RIGHTS, SUCH EXERCISE MAY NOT BE REVOKED OR CHANGED, EVEN IF YOU LATER LEARN INFORMATION THAT YOU CONSIDER TO BE UNFAVORABLE TO THE EXERCISE OF YOUR SERIES A RIGHTS. SERIES A RIGHTS NOT EXERCISED PRIOR TO 5:00 P.M., EASTERN TIME, ON THE SERIES A EXPIRATION DATE WILL EXPIRE WITHOUT VALUE.

If you do not exercise your Series A Rights prior to the Series A Expiration Date, your Series A Rights will expire and will no longer be exercisable. We will not be required to sell shares of common stock to you if the subscription agent receives your Non-Transferable Series A Rights Certificate or your payment after 5:00 p.m., Eastern time, on the Series A Right Expiration Date regardless of when the Non-Transferable Series A Rights Certificate and payment were sent. If you send your Non-Transferable Series A Rights Certificate and payment by mail, we recommend that you send them by registered mail, properly insured, with return receipt requested, and that a sufficient number of days be allowed to ensure delivery to the subscription agent and clearance of payment prior to the Series A Right Expiration Date or the date guaranteed payments are due under a notice of guaranteed delivery (as applicable). See “The Rights Offering—Expiration of the Offer” in the Prospectus.

*Expiration Time – Series B Rights*

THE SERIES B RIGHTS WILL EXPIRE AND WILL HAVE NO VALUE AT 5:00 P.M., EASTERN TIME, ON \_\_\_\_\_, 2024 (“SERIES B RIGHT EXPIRATION DATE”) SUBJECT TO EXTENSION OR EARLIER TERMINATION. YOUR CERTIFICATE FOR YOUR SERIES B RIGHTS (THE “NON-TRANSFERABLE SERIES B RIGHTS CERTIFICATE”) AND PAYMENT OF THE INITIAL EXERCISE PRICE OF THE SERIES B RIGHTS (E.G., 200% OF THE UNIT SUBSCRIPTION PRICE) MUST BE RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE 5:00 P.M., EASTERN TIME, ON THE SERIES B RIGHT EXPIRATION DATE. ONCE YOU HAVE EXERCISED YOUR SERIES B RIGHTS, SUCH EXERCISE MAY NOT BE REVOKED OR CHANGED, EVEN IF YOU LATER LEARN INFORMATION THAT YOU CONSIDER TO BE UNFAVORABLE TO THE EXERCISE OF YOUR SERIES B RIGHTS. SERIES B RIGHTS NOT EXERCISED PRIOR TO 5:00 P.M., EASTERN TIME, ON THE SERIES B RIGHT EXPIRATION DATE WILL EXPIRE WITHOUT VALUE.

If you do not exercise your Series B Rights prior to the Series B Right Expiration Date, your Series B Rights will expire and will no longer be exercisable. We will not be required to sell shares of common stock to you if the subscription agent receives your Non-Transferable Series B Rights Certificate or your payment after 5:00 p.m., Eastern time, on the Series B Right Expiration Date, regardless of when the Non-Transferable Series B Rights Certificate and payment were sent. If you send your Non-Transferable Series B Rights Certificate and payment by mail, we recommend that you send them by registered mail, properly insured, with return receipt requested, and that a sufficient number of days be allowed to ensure delivery to the subscription agent and clearance of payment prior to Series B Right Expiration Date or the date guaranteed payments are due under a notice of guaranteed delivery (as applicable). See “The Right Offering—Expiration of the Offer” in the prospectus.

### *Expiration Time – Series C Rights*

THE SERIES C RIGHTS WILL EXPIRE AND WILL HAVE NO VALUE AT 5:00 P.M., EASTERN TIME, ON \_\_\_\_\_, 2024 (“SERIES C RIGHT EXPIRATION DATE”) SUBJECT TO EXTENSION OR EARLIER TERMINATION. YOUR CERTIFICATE FOR YOUR SERIES C RIGHTS (THE “NON-TRANSFERABLE SERIES C RIGHTS CERTIFICATE”) AND PAYMENT OF THE INITIAL EXERCISE PRICE OF THE SERIES C RIGHTS (E.G., 250% OF THE UNIT SUBSCRIPTION PRICE) MUST BE RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE 5:00 P.M., EASTERN TIME, ON THE SERIES C RIGHT EXPIRATION DATE. ONCE YOU HAVE EXERCISED YOUR SERIES C RIGHTS, SUCH EXERCISE MAY NOT BE REVOKED OR CHANGED, EVEN IF YOU LATER LEARN INFORMATION THAT YOU CONSIDER TO BE UNFAVORABLE TO THE EXERCISE OF YOUR SERIES C RIGHTS. SERIES C RIGHTS NOT EXERCISED PRIOR TO 5:00 P.M., EASTERN TIME, ON THE SERIES C EXPIRATION DATE WILL EXPIRE WITHOUT VALUE.

If you do not exercise your Series C Rights prior to the Series C Right Expiration Date, your Series C Rights will expire and will no longer be exercisable. We will not be required to sell shares of common stock to you if the subscription agent receives your Non-Transferable Series C Rights Certificate or your payment after 5:00 p.m., Eastern time, on the Series C Right Expiration Date regardless of when the Non-Transferable Series C Rights Certificate and payment were sent. If you send your Non-Transferable Series C Rights Certificate and payment by mail, we recommend that you send them by registered mail, properly insured, with return receipt requested, and that a sufficient number of days be allowed to ensure delivery to the subscription agent and clearance of payment prior to the Series C Right Expiration Date or the date guaranteed payments are due under a notice of guaranteed delivery (as applicable). See “The Right Offering—Expiration of the Offer” in the Prospectus.

If, at the expiration date of each of the respective Series Rights, the exercise price as determined is lower than the initial exercise price (e.g., 150%, 200% or 250% of the Unit Subscription Price for the Series A Right, Series B Right and Series C Right, respectively), any excess amount paid by a holder will be promptly returned to the holder, without interest or penalty.

The maximum number of shares of our common stock available for issuance in this offering is 70,000,000 shares. If at any time the issuance of shares pursuant to the exercise of the Subscription Rights or the Series Rights exceeds such share limitation, no additional shares will be issued, this offering will be terminated and any outstanding rights will immediately expire and the amount subscribed for by each holder will be proportionally reduced.

If you have any questions concerning this offering, please contact the Information Agent, MacKenzie Partners, Inc., by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightoffer@mackenziepartners.com](mailto:rightoffer@mackenziepartners.com).

#### **1. Method of Exercise—Exercise of Series Rights**

For the Series Rights that you wish to exercise, please: (1) complete Form 1 of the applicable Non-Transferable Series Rights Certificate that you wish to exercise (see each of Non-Transferable Series Rights Certificate attached to these instructions); (2) sign Form 3 of the applicable Non-Transferable Series Rights Certificate; and (3) mail the properly completed and executed Non-Transferable Series Rights Certificate evidencing the exercise of the applicable Series Rights, together with the applicable payment for each Series Right exercised (e.g., 150%, 200% or 250% of the Unit Subscription Price for the Series A Rights, Series B Rights and Series C Rights, respectively) to the subscription agent, on or prior to the applicable expiration date. If at the expiration date of each of the Series Rights, the exercise price as determined above is lower than the initial price paid any excess subscription amount paid by a holder will be promptly returned to the holder, without interest or penalty.

Additionally, if the shares of common stock issued pursuant the exercise of the Series Rights are to be issued in a name other than that of the registered holder, or sent to an address other than that shown on the front of the Non-Transferable Series Rights Certificate, please complete Form 2 of the Non-Transferable Series Right Certificate being exercised and obtain a signature guarantee on Form 4 prior to mailing the applicable Non-Transferable Series Rights Certificate to the subscription agent, prior to the applicable expiration date. Payment of the initial exercise price will be held in escrow by an escrow agent retained by the subscription agent, on our behalf, in a segregated account.

(a) Method of Execution

(i) *Execution by Registered Holder.* Your signature on the applicable Non-Transferable Series Rights Certificate must correspond with the name of the registered holder exactly as it appears on the face of the Non-Transferable Series Rights Certificate without any alteration or change whatsoever. Persons who sign the Non-Transferable Series Rights Certificate in a representative or other fiduciary capacity must indicate their capacity when signing and, unless waived by the subscription agent in its sole and absolute discretion, must present to the subscription agent satisfactory evidence of their authority to so act.

(ii) *Execution by Person Other than Registered Holder.* If the Non-Transferable Series Rights Certificate is executed by a person other than the holder named on the face of the Non-Transferable Series Rights Certificate, proper evidence of authority of the person executing the Non-Transferable Series Rights Certificate must accompany the same unless, for good cause, the subscription agent dispenses with proof of authority.

(iii) *Signature Guarantees.* If you completed any part of Form 4 of the Non-Transferable Series Rights Certificate to provide that the common stock issued pursuant to your exercise of the applicable Series Rights to be (x) issued in a name other than that of the registered holder, or (y) sent to an address other than that shown on the front of the Non-Transferable Series Rights Certificate, your signature in Form 3 must be guaranteed in Form 4 by an "Eligible Guarantor Institution," as such term is defined in Rule 17Ad-15 of the Securities Exchange Act of 1934, such as a member firm of a registered national securities exchange or a member of the Financial Industry Regulatory Authority, Inc., or a commercial bank or trust company having an office or correspondent in the United States, or by a member of a Stock Transfer Association approved medallion program such as STAMP, SEMP or MSP, subject to standards and procedures adopted by the subscription agent.

(b) Method of Payment and Delivery

Registered holders may send to the subscription agent (a) payment of the full initial exercise price for the Series Rights being exercised (e.g., 150%, 200% or 250% of the Unit Subscription Price for the Series A Rights, Series B Rights and Series C Rights, respectively) (b) a properly completed and duly executed Non-Transferable Series Rights Certificate for the applicable Series Rights being exercised, which must be received by the subscription agent at the subscription agent's offices set forth herein, at or prior to 5:00 p.m., Eastern time, on the applicable expiration date. A properly completed and duly executed Non-Transferable Series Rights Certificate for the Series Rights being exercised and full payment of the initial exercise price must be received by the subscription agent at or prior to 5:00 p.m., Eastern time, on the applicable expiration date unless the expiration date is extended by us.

All payments by a registered holder must be in U.S. dollars by certified check payable to the order of “Continental Stock Transfer & Trust Company, as the subscription agent for FlexShopper, Inc.” Payment also may be made by wire transfer to the account maintained by an escrow agent retained by Continental Stock Transfer & Trust Company, as subscription agent, for purposes of accepting subscriptions in this offering, with reference to the registered holder’s name. The subscription agent will deposit all funds received by it prior to the final payment date in escrow in a segregated account maintained by an escrow agent retained by the subscription agent on our behalf, pending pro-rata and distribution of the shares of common stock. If at the expiration date of each of the respective Series Rights, the final exercise price is lower than the initial exercise price, any excess amount paid by a registered holder, will be promptly returned to the registered holder, without interest or penalty.

Beneficiary Account Name: Continental Stock Transfer & Trust Company  
Account Number: \_\_\_\_\_  
ABA/Routing number: \_\_\_\_\_  
Bank: \_\_\_\_\_  
For Further Credit: FlexShopper, Inc.  
Account Number: \_\_\_\_\_

Each Non-Transferable Series Rights Certificate and payments of the applicable exercise price (e.g., 150%, 200% or 250% of the Unit Subscription Price for the Series A Rights, Series B Rights and Series C Rights, respectively) must be delivered to the subscription agent by hand, or overnight courier or by first class mail to the below:

Continental Stock Transfer & Trust Company  
1 State Street, 30th Floor  
New York, NY 10004  
Attn: Corporate Actions – FLEXSHOPPER, INC.

**Delivery to an address or by a method other than those above will not constitute valid delivery.**

## **2. Issuance of Common Stock**

The following deliveries and payments will be made and/or issued to the address shown on the face of your Non-Transferable Series Rights Certificate, unless you provide instructions to the contrary in your Non-Transferable Series Rights Certificate.

- (a) *Series Rights.* As soon as practicable following the expiration of each of the Series Rights and the valid exercise of the Series Rights, we will issue to each holder exercising their Series Rights one share of common stock for each Series Right exercised in book-entry, or uncertificated form representing the shares of common stock purchased pursuant to the Series Rights.
- (b) *Excess Cash Payments.* As soon as practicable following the expiration date of each of the Series Rights and after all prorations and adjustments contemplated by the terms of the rights offering have been effected, any excess payments received in payment of the initial price will be mailed by the subscription agent to each holder of the Series Rights, without interest or penalty.

### **3. No Sale or Transfer of Series Rights**

The Series Rights granted to you are non-transferable and, therefore, you may not sell, transfer or assign your Series Rights to anyone.

### **4. Special Provisions Relating to the Delivery of Series Rights through the Depository Trust Company**

Banks, trust companies, securities dealers and brokers that hold shares of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock on the Record Date as nominee for more than one beneficial owner may, upon proper showing to the subscription agent, exercise such beneficial owner's Series Rights through DTC on the same basis as if the beneficial owners were stockholders on the Record Date. Such nominee may exercise the Series Rights on behalf of the exercising beneficial owner through DTC's PSOP Function on the "agents subscription over PTS" procedure by (1) providing a certification as to the aggregate number of Series Rights exercised by the beneficial owner on whose behalf such nominee is acting, and (2) instruct DTC to charge the nominee's applicable DTC account for the subscription payment for the new units to facilitate the delivery of the full subscription payment to the subscription agent. DTC must receive the subscription instructions and payment for the Series Rights exercised no later than the applicable expiration date for each of the Series Rights exercised.

### **5. Form W-9**

Each Series Rights holder who elects to exercise their Series Rights should provide the subscription agent with a correct Taxpayer Identification Number (TIN) on IRS Form W-9. See "Material U.S. Federal Income Tax Consequences — Information Reporting and Backup Withholding" in the Prospectus. Failure to provide the information on the form may subject such holder to a \$50 penalty for each such failure and to 24% federal income tax withholding with respect to dividends (including deemed dividends) that may be paid by the Company on shares of its common stock, series 1 convertible preferred stock and series 2 convertible preferred stock. Foreign Persons are generally required to provide an appropriate IRS Form W-8 rather than IRS Form W-9 and may be subject to withholding on dividends (including deemed dividends) at a rate of up to 30%.

**FORM OF LETTER TO STOCKHOLDERS WHO ARE RECORD HOLDERS  
FLEXSHOPPER, INC.**

35,000,000 Units  
Offered Pursuant to Subscription Rights  
Distributed to Stockholders  
of FlexShopper, Inc.

\_\_\_\_\_, 2024

Dear Stockholders:

Enclosed are materials relating to the rights offering being conducted by FlexShopper, Inc., a Delaware corporation, including the prospectus dated \_\_\_\_\_, 2024 (the "Prospectus"). Please carefully review the Prospectus, which describes how you can participate in the rights offering. You will be receiving and will be able to exercise your non-transferable subscription rights (the "Subscription Rights") to purchase units of securities at a subscription price equal to \$\_\_\_\_ (the "Unit Subscription Price"). The Subscription Rights will expire if not exercised prior to 5:00 p.m., Eastern time, on the date that is 30 days following the date of the Prospectus, unless we extend or terminate the subscription offering.

Each unit consists of a share of our common stock, one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights"). The Series Rights are exercisable commencing on their date of issuance at an exercise price equal to the *higher* of (x) the Unit Subscription Price or (y) (i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent. Answers to some frequently asked questions about the offering can be found under the heading "Questions and Answers Relating to This Offering" in the Prospectus. Any prospective purchaser of units pursuant to the exercise of the Subscription Rights or shares of our common stock pursuant to the exercise of the Series Rights should read the Prospectus, including without limitation the risk factors contained therein, prior to making any decision to invest in the company.

As described in the Prospectus, you will receive two Subscription Rights for each share of our common stock beneficially owned by you or issuable upon the conversion of our preferred stock owned by you as of the record date of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 (the "Record Date"). Each Subscription Right consists of a basic right, which entitles holders to purchase one unit and an over-subscription privilege which will be exercisable only if holder exercises his or her basic right in full and will entitle the holder to purchase additional units for which other holders do not subscribe.

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We expect that there will be a sufficient number of units available to honor your basic rights in full. As a result, if the subscription offering is completed, you will receive whole units to the full extent you have properly exercised your basic rights in whole or in part for such whole units. Sufficient units may not be available to honor your request for additional units pursuant to your over-subscription privilege. If exercises of the over-subscription privileges exceed the number of units available, we will allocate the available units pro-rata among rights holders who over-subscribed based on the number of over-subscription units for which the holders have subscribed.

The maximum number of shares of our common stock available for issuance in this offering is 70,000,000 shares. If at any time the issuance of shares pursuant to the exercise of the Subscription Rights or the Series Rights exceeds such share limitation, no additional shares will be issued, the offering will be terminated and any outstanding rights will immediately expire and the amount subscribed for by each holder will be proportionally reduced.

You will be required to submit payment in full for all the units you wish to buy in the subscription offering and for all of the Series Rights you wish to exercise in the offering. If you wish to maximize the number of units you may purchase pursuant to your over-subscription privilege, you will need to deliver payment in an amount equal to the aggregate price for the maximum number of units available to you, assuming that no shareholder other than you has purchased any units pursuant to the basic rights and over-subscription privilege. The company will eliminate fractional units resulting from the exercise of the over-subscription privilege by rounding down to the nearest whole number, with the total subscription payment being adjusted accordingly. Any excess subscription payments received by the subscription agent will be promptly returned, without interest or penalty, after the expiration of this offering.

The company can provide no assurances that you will actually be entitled to purchase (i) the number of units subscribed for pursuant to the exercise of your over-subscription privilege in full at the expiration of the subscription offering or (ii) the number of shares of common stock you elect to purchase pursuant to the exercise of your Series Rights in full at the expiration of the Series Rights. The company will not be able to satisfy your exercise of the over-subscription privilege if all of our stockholders exercise their basic rights in full, and we will only honor an over-subscription privilege to the extent sufficient units are available following the exercise of basic right.

To the extent your aggregate subscription payment for the actual number of unsubscribed units available to you pursuant to the over-subscription privilege is less than the amount you actually paid in connection with the exercise of the over-subscription privilege, you will be allocated only the number of unsubscribed units available to you, and any excess subscription payment will be promptly returned to you, without interest or penalty, after the expiration of this offering.

You are not required to exercise any or all of your Subscription Rights or Series Rights. If you do not exercise your Subscription Rights or Series Rights and the offering is completed, the number of shares of our common stock you own will not change but your percentage ownership of our total outstanding voting stock may decrease because shares may be purchased by other stockholders in the offering. Your percentage ownership of our voting stock may also decrease if you do not exercise your Subscription Right or Series Rights in full. Please see the discussion of risk factors related to the rights offering, including dilution, under the heading “Risk Factors — “Your interest in our company may be diluted as a result of the offering” in the Prospectus.



The Subscription Rights and the Series Rights will be evidenced by a Non-Transferable Subscription Rights Certificate and Non-Transferable Series Rights Certificate and will cease to have any value after the respective expiration dates of the Subscription Rights and the Series Rights.

Enclosed are copies of the following documents:

1. Prospectus;
2. Non-Transferable Subscription Rights Certificate;
3. Non-Transferable Series A Rights Certificate;
4. Non-Transferable Series B Rights Certificate;
5. Non-Transferable Series C Rights Certificate;
6. Instruction as to Use of FlexShopper Non-Transferable Subscription Rights Certificate;
7. Instruction as to Use of FlexShopper Non-Transferable Series Rights Certificate; and
8. A return envelope addressed to Continental Stock Transfer & Trust Company, the subscription agent.

Your prompt action is requested. To exercise your Subscription Rights and Series Rights, as indicated in the Prospectus, you should deliver to the subscription agent the properly completed and signed (i) Non-Transferable Subscription Rights Certificate with payment of Unit Subscription Price for each unit subscribed for and (ii) Non-Transferable Series Rights Certificate for the applicable Series Rights exercised with payment of the applicable exercise price (e.g., 150%, 200% or 250% of the Unit Subscription Price for Series A Rights, Series B Rights, and Series C Rights, respectively). The subscription agent must receive the Non-Transferable Subscription Rights Certificate with payment of the initial price for the units and the Non-Transferable Series Rights Certificate for the applicable Series Rights exercised with payment of the applicable exercise price prior to their respective expiration dates. If at the respective expiration date of the Subscription Rights or Series Rights, the initial price paid is higher than the final price, the excess amount paid by a holder will be promptly returned to the holder, without interest or penalty.

If you send your Non-Transferable Subscription Rights Certificates and Unit Subscription Price payment or the Non-Transferable Series Rights Certificates and initial exercise price payment by mail, we recommend that you send them by registered mail, properly insured, with return receipt requested. We will not be required to sell units or shares of common stock to you if the subscription agent receives your Non-Transferable Subscription Rights Certificate (or your subscription payment) or Non-Transferable Series Rights Certificate (or your exercise price payment) after their respective expiration date, regardless of when the Non-Transferable Subscription Rights Certificate and subscription payment or Non-Transferable Series Rights Certificate and exercise payment were sent. See the discussion under the heading “This Offering—Expiration of Offer” in the Prospectus.

Once you have exercised your Subscription Rights or Series Rights, such exercise may not be revoked, even if you later learn information that you consider to be unfavorable to the exercise of your Subscription Rights or Series Rights.

Additional copies of the enclosed materials may be obtained from MacKenzie Partners, Inc., the Information Agent for this offering, by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com). Any questions or requests for assistance concerning the rights offering should be directed to the Information Agent.

Very truly yours,

FlexShopper, Inc.

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Title: H. Russell Heiser Jr.  
Name: Chief Executive Officer

**FORM OF LETTER TO BROKERS AND OTHER NOMINEE HOLDERS  
FLEXSHOPPER, INC.**

35,000,000 Units  
Offered Pursuant to Subscription Rights  
Distributed to Stockholders  
of FlexShopper, Inc.

\_\_\_\_\_, 2024

To Securities Dealers, Commercial Banks, Trust Companies and Other Nominees:

This letter is being distributed to securities dealers, commercial banks, trust companies and other nominees in connection with the rights offering being conducted by FlexShopper, Inc., a Delaware corporation (the "Company"), of non-transferable subscription rights (the "Subscription Rights") distributed to holders of our common stock, series 1 convertible preferred stock and series 2 convertible preferred stock at 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 (the "Record Date") to purchase units of securities at a subscription price equal to \$\_\_\_\_ (the "Unit Subscription Price"). Each unit consists of a share of common stock, one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights"). The Subscription Rights will expire if not exercised prior to 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 unless we extend or terminate the subscription offering.

The Series Rights are exercisable commencing on their date of issuance at an exercise price equal to the *higher* of (x) the Unit Subscription Price or (y) (i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent. The Subscription Rights, units and Series Rights are described in the prospectus dated \_\_\_\_\_, 2024 (the "Prospectus"). Any prospective purchaser of units pursuant to the exercise of the Subscription Rights or shares of common stock pursuant to the exercise of the Series Rights should read the Prospectus, including without limitation the risk factors contained therein, prior to making any decision to invest in the Company.

As described in the Prospectus, each holder of common stock registered in your name or the name of your nominee is receiving, at no charge, two Subscription Rights for each share of common stock beneficially owned or issuable upon the conversion of our preferred stock, entitling the holders to purchase one unit at the Unit Subscription Price. Fractional Units will not be sold.

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In the event that the holder purchases all units available to it pursuant to its basic Subscription Rights, holders may also exercise an over-subscription privilege to purchase a portion of units that are not purchased by other holders through the exercise of their basic Subscription Rights, subject to availability. If the number of units remaining after the exercise of all basic Subscription Rights is not sufficient to satisfy all requests for units pursuant to over-subscription privilege, we will allocate the available units pro rata among rights holders in proportion to the number of over-subscription units for which they have subscribed. The subscription agent will determine the over-subscription allocation based on the formula described above.

The maximum number of shares of our common stock available for issuance in this offering is 70,000,000 shares. If at any time the issuance of shares pursuant to the exercise of the Subscription Rights or the Series Rights exceeds such share limitation, no additional shares will be issued, the offering will be terminated and any outstanding rights will immediately expire and the amount subscribed for by each holder will be proportionally reduced.

Each holder will be required to submit payment in full for all the units it wishes to buy with its over-subscription privilege. Because we will not know the total number of unsubscribed units prior to the expiration of the Subscription Rights, if holders wish to maximize the number of units they may purchase pursuant to the over-subscription privilege, they will need to deliver payment in an amount equal to the aggregate initial price for the maximum number of units available to holders, assuming that no holders other than the holder has purchased any units pursuant to the basic Subscription Rights and over-subscription privilege. To the extent the amount paid by holders in connection with the exercise of the over-subscription privilege is higher than the aggregate subscription payment of the number of unsubscribed units actually received by holders pursuant to the over-subscription privilege, holder will be allocated only the number of unsubscribed units available to the holder, and any excess subscription payment will be promptly returned to holder, without interest or penalty, after the expiration of this offering.

Only whole numbers of shares of common stock and Series Rights exercisable for whole numbers of shares will be issuable to you in this offering; any right to a fractional share to which you would otherwise be entitled will be terminated, without consideration to you.

The Company can provide no assurances that each holder will actually be entitled to purchase the number of units subscribed for pursuant to the exercise of its over-subscription privilege in full at the expiration of the offering. While we will seek to honor over-subscription requests in full, if the over-subscription requests exceed the number of units available, we will allocate the available units pro rata among the rights holders in proportion to the number of over-subscription units for which they have subscribed. Continental Stock Transfer & Trust Company will act as the subscription agent in connection with this offering and will determine the over-subscription allocation.

The Subscription Rights and Series Rights will be evidenced by a Non-Transferable Subscription Rights Certificate and Non-Transferable Series Rights Certificate registered in the holder's name or its nominee and will cease to have any value after their respective expiration dates.

We are asking persons who hold shares of common stock beneficially or issuable upon the conversion of our preferred stock and who have received the Subscription Rights or Series Rights distributable with respect to those shares through a broker, dealer, custodian bank or other nominee (including any mobile investment platform), as well as persons who hold the shares of common stock directly and prefer to have such institutions effect transactions relating to the Subscription Rights or Series Rights on their behalf, to contact the appropriate institution or nominee and request it to effect the transactions for them.

All commissions, fees and other expenses (including brokerage commissions and transfer taxes), other than fees and expenses of the subscription agent, the information agent and the dealer-manager, incurred in connection with the exercise of the Subscription Rights or Series Rights will be for the account of the holder of the Subscription Rights or Series Rights, and none of such commissions, fees or expenses will be paid by the Company or the subscription agent.

Enclosed are copies of the following documents:

1. Prospectus;
2. Instructions as to Use of FlexShopper, Inc. Non-Transferable Subscription Rights;
3. Instructions as to Use of FlexShopper, Inc. Non-Transferable Series Rights;
4. A form of letter which may be sent to your clients for whose accounts you hold shares of our common stock registered in your name or the name of your nominee;
5. Beneficial Owner Election; and
6. Nominee Holder Certificate.

Your prompt action is requested. To exercise the Subscription Rights and Series Rights, as indicated in the Prospectus, holders should deliver to the subscription agent the properly completed and signed (i) Non-Transferable Subscription Rights Certificate with payment of the Unit Subscription Price for each unit subscribed for and (ii) Non-Transferable Series Rights Certificate for the applicable Series Rights exercised with payment of the applicable exercise price (e.g., 150%, 200% or 250% of the Unit Subscription Price for Series A Rights, Series B Rights, and Series C Rights, respectively). The subscription agent must receive the Non-Transferable Subscription Rights Certificate with payment of the initial price for the units and the Non-Transferable Series Rights Certificate for the applicable Series Rights exercised with payment of the applicable exercise price prior to their respective expiration dates. Once a holder has exercised its Subscription Right or Series Rights, such exercise may not be revoked, even if the holder later learns information that it considers to be unfavorable to the exercise of its Subscription Rights or Series Rights.

Additional copies of the enclosed materials may be obtained from MacKenzie Partners, Inc., the Information Agent, by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightsoffer@mackenziepartners.com](mailto:rightsoffer@mackenziepartners.com). Any questions or requests for assistance concerning the rights offering should be directed to the Information Agent.

FLEXSHOPPER, INC.

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

Name: H. Russell Heister Jr.  
Title: Chief Executive Officer

**FORM OF LETTER TO CLIENTS OF BROKERS AND OTHER NOMINEE HOLDERS  
FLEXSHOPPER, INC.**

35,000,000 Units  
Offered Pursuant to Subscription Rights  
Distributed to Stockholders  
of FlexShopper, Inc.

\_\_\_\_\_, 2024

To Our Clients:

Enclosed for your consideration are (i) a prospectus, dated \_\_\_\_\_, 2024 (the "Prospectus"), (ii) "Instructions as to Use of FlexShopper, Inc. Non-Transferable Subscription Rights" and (iii) "Instructions as to Use of FlexShopper, Inc. Non-Transferable Series Rights Certificates" relating to the rights offering being conducted by FlexShopper, Inc., a Delaware corporation (the "Company"), of non-transferable subscription rights (the "Subscription Right") entitling holders to purchase units of securities consisting of one share of common stock, one Series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right and, collectively with Series A Right and Series B Right, the "Series Rights") at a subscription price equal to \$\_\_\_\_\_ (the "Unit Subscription Price"). The Subscription Rights will expire if not exercised prior to 5:00 p.m., Eastern time, on the date that is 30 days following the date of the Prospectus, unless we extend or terminate the subscription offering.

The Series Rights are exercisable commencing on their date of issuance at an exercise price equal to the *higher* of (x) the Unit Subscription Price or (y) (i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent.

As described in the Prospectus, each holder of common stock (whether beneficially owned or issuable upon the conversion of our preferred stock) will receive two Subscription Rights. Each Subscription Right entitles holders as of the record date of 5:00 p.m., Eastern time, on \_\_\_\_\_, 2024 (the "Record Date"), to a basic right, which will allow such holder to purchase one unit, and an over-subscription privilege which will be exercisable only if holder exercises his or her basic right in full and will entitle holder to purchase additional units for which other rights holders do not subscribe.

You will be required to submit payment in full for all the units you wish to buy in the rights offering. If you wish to maximize the number of units you may purchase pursuant to your over-subscription privilege, you will need to deliver payment in an amount equal to the estimated Unit Subscription Price for the maximum number of units available to you, assuming that no shareholder other than you has purchased any units pursuant to the basic rights and over-subscription privilege. The Company will eliminate fractional units resulting from the exercise of the over-subscription privilege by rounding down to the nearest whole number, with the total subscription payment being adjusted accordingly. Any excess subscription payments received by the Continental Stock Transfer & Trust Company, which will act as the subscription agent for the offering, will be promptly returned, without interest or penalty.

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The Company can provide no assurances that you will actually be entitled to purchase the number of units subscribed for pursuant to the exercise of your over-subscription privilege in full at the expiration of the subscription offering. Subject to the ownership limitation described below, the Company will seek to honor the over-subscription requests in full. If over-subscription requests exceed the number of units available, however, the Company will allocate the available units pro rata among the rights holders in proportion to the number of over-subscription units for which they have subscribed. Continental Stock Transfer & Trust Company will determine the over-subscription allocation. To the extent the actual number of unsubscribed units available to the holder pursuant to the over-subscription privilege is less than the amount actually paid for in connection with the exercise of the over-subscription privilege, the holder will be allocated only the number of unsubscribed units available to the holder, and any excess subscription payment will be promptly returned to the holder, without interest or penalty, after the expiration of this offering.

The Subscription Rights are evidenced by a Non-Transferable Subscription Rights Certificate issued to shareholder of record and will cease to have any value after the expiration of the Subscription Rights. Each of the Series Rights will be evidenced by a Non-Transferrable Series Right Certificate issued to stockholders who exercised their Subscription Rights and will cease to have any value after the applicable expiration date for each Series Right.

THE MATERIALS ENCLOSED ARE BEING FORWARDED TO YOU AS THE BENEFICIAL OWNER OF COMMON STOCK CARRIED BY THE COMPANY IN YOUR ACCOUNT BUT NOT REGISTERED IN YOUR NAME. THE SUBSCRIPTION RIGHTS AND SERIES RIGHTS MAY BE EXERCISED ONLY BY US AS THE RECORD OWNER AND PURSUANT TO YOUR INSTRUCTIONS.

Accordingly, we request instructions as to whether you wish us to elect to subscribe for any units to which you are entitled pursuant to the terms and subject to the conditions set forth in the Prospectus and whether you wish us to exercise the Series Rights. However, we urge you to read the document carefully before instructing us to exercise your Subscription Rights or Series Rights.

If you wish to have us, on your behalf, exercise the Subscription Rights for units or Series Rights for shares of common stock to which you are entitled, please so instruct us by completing, executing and returning to us the Beneficial Owner Election form.

Your Beneficial Owner Election form to us should be forwarded as promptly as possible in order to permit us to exercise your Subscription Rights or Series Right on your behalf in accordance with the provisions of the rights offering. The subscription offering will expire on \_\_\_\_\_ and the Series Rights will expire thereafter on each of their respective expiration dates. Please contact us for our deadline with respect to your submission of the Beneficial Owner Election form. Once you have exercised your Subscription Rights or Series Rights, such exercise may not be revoked, even if you later learn information that you consider to be unfavorable to the exercise of your Subscription Rights or Series Rights.

Additional copies of the enclosed materials may be obtained from MacKenzie Partners, Inc., the Information Agent, by telephone at (212) 929-5500 (bankers and brokers) or (800) 322-2885 (all others) or by email at [rightoffer@mackenziepartners.com](mailto:rightoffer@mackenziepartners.com). Any questions or requests for assistance concerning the rights offering should be directed to the Information Agent.

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THE TERMS AND CONDITIONS OF THE RIGHTS OFFERING ARE SET FORTH IN THE COMPANY'S PROSPECTUS DATED \_\_\_\_\_, 2024 (THE "PROSPECTUS") AND ARE INCORPORATED HEREIN BY REFERENCE. COPIES OF THE PROSPECTUS ARE AVAILABLE UPON REQUEST FROM MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, BY CALLING (212) 929-5500 (BANKERS AND BROKERS) OR (800) 322-2885 (ALL OTHERS) OR BY EMAIL AT [RIGHTSOFFER@MACKENZIEPARTNERS.COM](mailto:RIGHTSOFFER@MACKENZIEPARTNERS.COM).

**FLEXSHOPPER, INC.**  
**BENEFICIAL OWNER ELECTION FORM**

I (We), the beneficial owner(s) of shares of common stock, par value \$0.0001 per share, of FlexShopper, Inc., a Delaware corporation, acknowledge receipt of your letter, the prospectus dated \_\_\_\_\_, 2024 (the "Prospectus"), and the other enclosed materials relating to the offering of non-transferable subscription rights (the "Subscription Rights") to purchase units of securities at a subscription price equal to \$ \_\_\_\_ per unit (the "Unit Subscription Price").

In this form, I (we) instruct you whether to exercise Subscription Rights to purchase units and/or whether to exercise the Series Rights to purchase shares of common stock, pursuant to the terms and subject to the conditions set forth in the Prospectus and the related "Form of Instructions as to use of FlexShopper, Inc. Non-Transferable Subscription Rights Certificates" and "Form of Instructions as to use of FlexShopper, Inc. Non-Transferable Series Rights Certificates." Each unit will consist of one share of common stock, one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights"). Each of the Series Rights is exercisable commencing on their date of issuance at an exercise price equal to the *higher* of (x) the Unit Subscription Price or (y)(i) in the case of the Series A Rights, 90% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series A Rights, which is 30 days following the closing date of the subscription offering, but in any event not to exceed 150% of the Unit Subscription Price, (ii) in the case of the Series B Rights, 87.5% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series B Rights, which is 60 days following the closing date of the subscription offering, but in any event not to exceed 200% of the Unit Subscription Price, and (iii) in the case of the Series C Rights, 85% of the VWAP of our common stock over the last three trading days prior to the expiration date of the Series C Rights, which is 90 days following the closing date of the subscription offering, but in any event not to exceed 250% of the Unit Subscription Price, with the exercise price in each instance rounded down to the nearest whole cent.

The share of common stock and Series Rights comprising the units will separate upon the closing of the offering and will be issued separately; however, they may only be purchased as a unit and the unit will not trade as a separate security.

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**SUBSCRIPTION RIGHTS**

I (We) hereby instruct you as follows:

(CHECK THE APPLICABLE BOXES AND PROVIDE ALL REQUIRED INFORMATION)

**Box 1.**      Please DO NOT EXERCISE SUBSCRIPTION RIGHTS for units.  
*If you checked Box 1, please sign and date this form and mail it to your broker, custodian bank or your other nominee that holds your shares.*

**Box 2.**      Please EXERCISE SUBSCRIPTION RIGHTS for units as set forth below.  
*If you checked Box 2, please fill out the table shown below. Next, please check Box 3 and/or Box 4, as applicable, and fill out the information indicated under Box 3 and/or Box 4, as applicable. Please then sign and date this form and mail it to your broker, custodian bank or other nominee that holds your shares.*

The number of Subscription Rights for which the undersigned gives instructions for exercise under the subscription privilege should not exceed the number of Subscription Rights that the undersigned is entitled to exercise.

	<b>Number of Rights</b>		<b>Unit Subscription Price</b>		<b>Payment</b>
Basic Subscription Right:	\$ _____	x	\$ _____	=	\$ _____ (Line 1)
Over-Subscription Right:	\$ _____	x	\$ _____	=	\$ _____ (Line 2)
Total Payment Required:	\$ _____		\$ _____		\$ _____ (Sum of Lines 1 and 2)

**Box 3.**      Payment in the following amount is enclosed: \$ \_\_\_\_\_.

**Box 4.**      Please deduct payment of \$ \_\_\_\_\_ from the following account maintained by you:  
*The total of Box 3 and 4, together, must equal the sum of lines 1 and 2 from Box 2 above.*

Type of Account: \_\_\_\_\_ Account No.: \_\_\_\_\_



**SERIES RIGHTS**

I (We) hereby instruct you as follows:

(CHECK THE APPLICABLE BOXES AND PROVIDE ALL REQUIRED INFORMATION)

**Box 1.**  Please DO NOT EXERCISE SERIES RIGHTS for shares of common stock.  
*If you checked Box 1, please sign and date this form and mail it to your broker, custodian bank or your other nominee that holds your shares.*

**Box 2.**  Please EXERCISE SERIES RIGHTS for shares of common stock as set forth below.  
*If you checked Box 2, please fill out the table shown below. Next, please check Box 3 and/or Box 4, as applicable, and fill out the information indicated under Box 3 and/or Box 4, as applicable. Please then sign and date this form and mail it to your broker, custodian bank or other nominee that holds your shares.*

	<b>Number of Rights Exercised</b>		<b>Exercise Price</b>		<b>Payment</b>
Series A Right	_____	x	\$ _____	=	\$ _____ (Line 1)
Series B Right	_____	x	\$ _____	=	\$ _____ (Line 2)
Series C Right	_____		\$ _____	=	\$ _____ (Line 3)

**Box 3.**  Payment in the following amount is enclosed: \$ \_\_\_\_\_

**Box 4.**  Please deduct payment of \$ \_\_\_\_\_ from the following account maintained by you:  
*The total of Box 3 and 4, together, must equal the sum of lines 1, 2 and 3 from Box 2 above.*

Type of Account: \_\_\_\_\_ Account No.: \_\_\_\_\_

I (We) on my (our) behalf, or on behalf of any other person(s) on whose behalf, or under whose directions, I am (we are) signing this form:

- irrevocably elect to (i) purchase the number of units and (ii) exercise the Series Rights indicated above upon the terms and conditions specified in the Prospectus;
- agree that if I (we) fail to pay for the units or exercise of the applicable Series Right, I (we) have elected to purchase or exercise, you may exercise any remedies available to you under law.

\_\_\_\_\_

Name of beneficial owner(s): \_\_\_\_\_

Signature of beneficial owner(s): \_\_\_\_\_

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

If you are signing in your capacity as a trustee, executor, administrator, guardian, attorney-in-fact, agent, officer of a corporation or another acting in a fiduciary or representative capacity, please provide the following information:

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

Capacity: \_\_\_\_\_

Address (including Zip Code): \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

PLEASE MAKE SURE THAT YOU USE THE CORRECT ADDRESS. You may want to check this address with your broker.

THE TERMS AND CONDITIONS OF THE RIGHTS OFFERING ARE SET FORTH IN THE COMPANY'S PROSPECTUS DATED \_\_\_\_\_, 2024 (THE "PROSPECTUS") AND ARE INCORPORATED HEREIN BY REFERENCE. COPIES OF THE PROSPECTUS ARE AVAILABLE UPON REQUEST FROM MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, BY CALLING (212) 929-5500 (BANKERS AND BROKERS) OR (800) 322-2885 (ALL OTHERS) OR BY EMAIL AT [RIGHTSOFFER@MACKENZIEPARTNERS.COM](mailto:RIGHTSOFFER@MACKENZIEPARTNERS.COM).

**FLEXSHOPPER, INC.**

UNITS SUBSCRIBED FOR UPON  
EXERCISE OF SUBSCRIPTION RIGHTS AND  
SHARES OF COMMON STOCK SUBSCRIBED FOR UPON  
EXERCISE OF SERIES RIGHTS

**NOMINEE HOLDER CERTIFICATION**

The undersigned, a bank, broker, trustee, depository or other nominee holder of non-transferable subscription rights (the "Subscription Rights") to purchase units of securities consisting of one share of common stock of FlexShopper, Inc., a Delaware corporation (the "Company"), one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights") at a subscription price equal to \$\_\_\_\_ (the "Unit Subscription Price"), as described in the Company's prospectus dated \_\_\_\_\_, 2024 (the "Prospectus"), hereby certifies to the Company and Continental Stock Transfer & Trust Company, as subscription agent for the rights offering, that:

(1) the undersigned has exercised on behalf of the beneficial owners thereof (which may include the undersigned), Subscription Rights for the number of units specified below pursuant to the basic right (as described in the Prospectus), and on behalf of beneficial owners of Subscription Rights who have subscribed for the purchase of additional units pursuant to the over-subscription privilege (as described in the Prospectus), listing separately below a number of units corresponding to such beneficial owners' exercised basic right and a number of units corresponding to such beneficial owners' exercised over-subscription privilege (without identifying any such beneficial owner);

(2) to the extent any beneficial owner has exercised their oversubscription privilege, each such beneficial owner's basic right has been exercised in full; and

(3) the undersigned has exercised on behalf of the beneficial owners thereof (which may include the undersigned), the Series Rights for the number of common stock specified below pursuant to the Series Rights (as described in the Prospectus).

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NUMBER OF SHARES OWNED ON RECORD DATE	NUMBER OF UNITS SUBSCRIBED FOR PURSUANT TO BASIC RIGHT	NUMBER OF UNITS SUBSCRIBED FOR PURSUANT TO OVER-SUBSCRIPTION PRIVILEGE

NUMBER OF SERIES A RIGHTS EXERCISED	NUMBER OF SERIES B RIGHTS EXERCISED	NUMBER OF SERIES C RIGHTS EXERCISED

Name of Bank, Broker, Trustee, Depository or Other Nominee:

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

Provide the following information if applicable:

Depository Trust Company ("DTC") Participant Number

Participant:

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

DTC Subscription Confirmation Number(s)

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**FORM OF  
NOTICE OF IMPORTANT TAX INFORMATION  
FLEXSHOPPER, INC.**

This notice is provided in connection with the prospectus of FlexShopper, Inc. (the "Company") dated \_\_\_\_\_, 2024.

Under the U.S. federal income tax laws, distributions (including constructive distributions) that may be made by the Company of certain non-transferable subscription rights (the "Subscription Rights") entitling holders of common stock, series 1 convertible preferred stock and series 2 convertible preferred stock to purchase units, each unit of which will consist of one share of common stock, one series A common stock purchase right ("Series A Right"), one series B common stock purchase right ("Series B Right") and one series C common stock purchase right ("Series C Right" and, collectively with the Series A Right and Series B Right, the "Series Rights"), with each of the Series Rights entitling the holder to purchase one share of our common stock, may be subject to backup withholding. Generally such payments will be subject to backup withholding unless the holder (i) is exempt from backup withholding and timely and properly establishes an exemption from backup withholding or (ii) furnishes the payer with its correct taxpayer identification number ("TIN") and certifies, under penalties of perjury, that the number provided is correct and provides certain other certifications. Each holder that exercises subscription rights and wants to avoid backup withholding must, unless an exemption applies, provide the subscription agent, as the Company's agent in respect of the exercised subscription rights, with such holder's correct TIN and certain other certifications by completing the enclosed Form W-9 (Request for Taxpayer Identification Number and Certification). The TIN that must be provided is the TIN of the record owner of the subscription rights. If such record owner is an individual, the TIN is generally the taxpayer's social security number. For most entities, the TIN is the employer identification number. If the subscription rights are in more than one name or are not in the name of the actual owner, consult the enclosed Form W-9 (Request for Taxpayer Identification Number and Certification) for additional guidelines on which number to report. If the subscription agent is not provided with the correct TIN in connection with such payments, the holder may be subject to a penalty imposed by the Internal Revenue Service ("IRS").

Certain holders (including, among others, certain corporations and foreign persons) are not subject to these backup withholding rules. In general, in order for a holder that is a "U.S. person" for U.S. federal income tax purposes to qualify as an exempt recipient, that holder must timely submit a properly completed Form W-9 attesting to such holder's exempt status. See the enclosed Form W-9 (Request for Taxpayer Identification Number and Certification) for additional instructions. In general, in order for a holder that is not a "U.S. person" for U.S. federal income tax purposes to qualify as an exempt recipient, that holder must timely submit a properly completed Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), Form W-8BENE, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) or other appropriate Form W-8, signed under the penalties of perjury, attesting to such holder's foreign status. Such Form W-8BEN or Form W-8BEN-E may be obtained from the subscription agent. Although a foreign holder may be exempt from backup withholding, payments of dividends may be subject to withholding tax, currently at a 30% rate (or, if certain tax treaties apply, such applicable lower rate) or withholding tax at a rate of 30% under the Foreign Account Tax Compliance Act ("FATCA") unless an exemption from FATCA withholding is certified. Holders are urged to consult their own tax advisors to determine whether they are exempt from withholding and reporting requirements.

If backup withholding applies, the Company or the subscription agent, as the case may be, will be required to withhold (currently at a 24% rate) on any reportable payments made to a holder that exercises subscription rights. Backup withholding is not an additional tax. Rather, the amount of backup withholding can be credited against the U.S. federal income tax liability of the holder subject to backup withholding, provided that the required information is timely provided to the IRS. If backup withholding results in an overpayment of taxes, a refund may be obtained, provided that the required information is timely provided to the IRS.

**THIS DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. HOLDERS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE BACKUP WITHHOLDING RULES TO THEM.**