

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

SilverSun Technologies, Inc.

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **November 10, 2021**

SILVERSUN TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-50302
(Commission File Number)

16-1633636
(IRS Employer
Identification No.)

120 Eagle Rock Ave
East Hanover, NJ 07936
(Address of Principal Executive Offices)

(973) 396-1720
Registrant's telephone number, including area code

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

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.00001 per share	SSNT	The NASDAQ Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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



Item 1.01 Entry into a Material Definitive Agreement.

On November 10, 2021 (the “Effective Date”), SWK Technologies, Inc. (“SWK”), a wholly-owned subsidiary of SilverSun Technologies, Inc., entered into an Asset Purchase Agreement (the “Asset Purchase Agreement”) with Net@Work, Inc. (“NAW”) pursuant to which NAW acquired from SWK certain assets (the “Acquired Assets”) related to the component of SWK’s business devoted to selling and supporting the Sage X3 software application published by Sage Software, Inc. for small and middle market companies in North America (the “Business”).

In consideration for the Acquired Assets, NAW paid SWK \$250,000 in cash and entered into a Revenue Share Agreement (“RSA”) with SWK. Pursuant to the RSA, NAW agreed to pay to SWK, for limited periods of time ranging from 12 to 60 months, transitional compensation measured by reference to gross revenues or gross profits (as applicable) generated by NAW from its sales of products or services after the Effective Date to customers of the Business. In consideration for such transitional compensation, SWK agreed to assist NAW for a period of time after the Effective Date with such transitional services as may be reasonably requested by NAW and reasonably acceptable to SWK or otherwise required for the operation of the Business, including (a) implementing a smooth and orderly transfer of the Business and the Acquired Assets from SWK to NAW, (b) making introductions to customers of the Business as and when requested by NAW, (c) familiarizing NAW with the files of each of the customers as may be reasonably required, and (d) acclimating NAW to the Business. The specific products and services giving rise to transitional compensation payments under the RSA include (i) annual maintenance renewals by customers, (ii) software, cross-sell software and migration software sales to customers, (iii) consulting services performed for customers, (iv) annual managed services contracts sold to customers, (v) hosting contracts sold to customers, (vi) e-commerce projects sold to customers, and (vii) new customer referrals.

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

On November 11, 2021, the Company and Mark Meller, the Company’s Chief Executive Officer, executed an amendment to Mr. Meller’s employment agreement to extend his term of employment through September 14, 2028. Other than the foregoing extension, the terms of Mr. Meller’s employment agreement remain unchanged. Prior thereto, the Board of Directors of the Company approved the foregoing change to Mr. Meller’s employment agreement.

Item 8.01 Other Events.

On November 9, 2021, the Company issued a press release announcing the Company’s third quarter 2021 results. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
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10.1*	Asset Purchase Agreement, dated November 10, 2021, by and between SWK Technologies, Inc., and Net@Work, Inc.
10.2*	First Amendment to Amended and Restated Employment Agreement between Mark Meller and SilverSun Technologies, Inc., dated November 11, 2021
99.1*	Press Release dated November 9, 2021

*Filed herewith

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SILVERSUN TECHNOLOGIES, INC.

Date: November 12, 2021

By: /s/ Joseph P. Macaluso
Joseph P. Macaluso
Principal Financial Officer

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of November 10, 2021, is entered into between SWK Technologies, Inc., a Delaware corporation (“**Seller**”), and Net@Work, Inc., a New Jersey corporation (“**Buyer**”).

RECITALS

WHEREAS, Seller is engaged in, among other activities, the business of selling and supporting the Sage X3 software application published by Sage Software, Inc. for small and middle market companies in North America (the “**Business**”); and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase from Seller, certain specified assets (excluding certain Excluded Assets (as defined below)) related to the Business, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Defined Terms. The following terms have the meanings specified or referred to below:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

“**Agreement**” has the meaning set forth in the preamble.

“**Bill of Sale**” has the meaning set forth in **Section 3.02(a)(i)**.

“**Books and Records**” has the meaning set forth in **Section 2.01(d)**.

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, NY are authorized or required by Law to be closed for business.

“**Business Employees**” means persons who are employees, independent contractors or consultants who work for the Business as of the Closing Date.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Indemnitees**” has the meaning set forth in **Section 7.02**.

“**Closing**” has the meaning set forth in **Section 3.01**.

“**Closing Date**” has the meaning set forth in **Section 3.01**.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, insertion orders, purchase orders, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether or not written.

“**CRM**” means Customer Relationship Management.

“**Customers**” has the meaning set forth in **Section 2.01(a)**.

“**Direct Claim**” has the meaning set forth in **Section 7.04(c)**.

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

“**Encumbrance**” means any charge, order, judgment, decree, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**Excluded Assets**” has the meaning set forth in **Section 2.02**.

“**Excluded Liabilities**” has the meaning set forth in **Section 2.03**.

“**Existing Contracts**” has the meaning set forth in **Section 2.06**.

“**Existing Customers**” means those Customers who are active Customers of the Business as of the Closing Date.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Indemnified Party**” has the meaning set forth in **Section 7.04**.

“**Indemnifying Party**” has the meaning set forth in **Section 7.04**.

“**Knowledge of Seller**” or “**Seller’s Knowledge**” or any other similar knowledge qualification, means the actual or constructive knowledge of any director or officer of Seller, after due inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Liabilities**” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Losses**” means any and all losses, Liabilities, claims, settlement payments, awards, Actions, judgments, deficiencies, fines, interest, penalties, damages (including incidental and consequential damages), costs, expenses (including costs of investigation and defense and reasonable attorneys’ and other professional advisors’ fees), diminution in value and other charges of whatever kind, including the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise), prospects or assets of the Business, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Post-Closing Tax Period**” means any tax period which begins after the Closing Date.

“**Pre-Closing Tax Period**” means any tax period which ends on or before the Closing Date.

“**Prospect List**” has the meaning set forth in **Section 4.05(b)**.

“**Publisher**” means Sage Software, Inc.

“**Purchase Price**” has the meaning set forth in **Section 2.04**.

“**Purchased Assets**” has the meaning set forth in **Section 2.01**.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Restricted Period**” has the meaning set forth in **Section 6.03(a)**.

“**Revenue Share Agreement**” has the meaning set forth in **Section 3.02(a)(ii)**.

“**Securities Laws**” means all Laws under or relating to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended

“**Seller**” has the meaning set forth in the preamble.

“**Seller Benefit Plans**” means, collectively, all pension, welfare benefit, retirement, compensation, profit-sharing, deferred compensation, incentive, performance award, equity (or equity-based), profit interests, stock or stock-based, change-in-control, retention, severance, salary continuation, employment, vacation, paid time off, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), which is or has been maintained, sponsored, contributed to by, or required to be contributed to by, or otherwise obligating Seller or its Affiliates for the benefit of any current or former employee, officer, director, independent contractor or consultant of the Business or any spouse, domestic partner or dependent of such individual.

“**Seller Indemnitees**” has the meaning set forth in **Section 7.03**.

“**Specified Representations**” means (a) with respect to Seller, the representations and warranties given or made by Seller in **Section 4.01** “Organization and Qualification of Seller,” **Section 4.02** “Authority of Seller,” **Section 4.03** “No Conflicts; Consents,” **Section 4.06** “Title to Purchased Assets,” **Section 4.10** “Taxes” and **Section 4.11** “Brokers,” and (b) with respect to Buyer, the representations and warranties given or made by Buyer in **Section 5.01** “Organization of Buyer,” **Section 5.02** “Authority of Buyer” and **Section 5.03** “Brokers.”

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Territory**” means North America.

“**Third Party Claim**” has the meaning set forth in **Section 7.04(a)(i)**.

“**Transaction Documents**” means this Agreement, the Bill of Sale, the Revenue Share Agreement and the other agreements, instruments and documents required to be delivered at the Closing.

ARTICLE II TRANSACTIONS

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, Seller hereby sells, assigns, transfers, conveys and delivers to Buyer, and Buyer hereby purchases from Seller, free and clear of any Encumbrances, all of Seller’s right, title and interest in, to and under each of the following assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the “**Purchased Assets**”):

(a) all information relating to past, present and prospective customers of the Business (“**Customers**”), including Customer lists, purchasing histories, maintenance records, Customer complaints and inquiry files, lists of applications installed, list of licenses, and maintenance renewal amounts and dates, all of which shall be provided by means of a CRM database, the Publishers’ portal and any other relevant means of providing such information;

(b) all “Reseller of Record” designations and records for the Publisher including those in the Publisher’s portal, and including all of the foregoing in respect of leads, prospects and opportunities identified on the lead grid in the Publisher’s portal or in Seller’s CRM database;

(c) all revenues associated with the renewal of annual maintenance Contracts with Customers with expiration dates on or after the Closing Date that are renewed on or after the Closing Date;

(d) all books and records, including any files to the extent relating to the Business (“**Books and Records**”);

(e) all of Seller’s rights under warranties, indemnities and all similar rights against third parties and all agreements with third parties not to compete with the Business or solicit any of the employees, clients, Customers or suppliers of the Business, including the right to enforce Contracts with Business Employees who have agreed not to compete with the Business or solicit any of the employees, clients, Customers or suppliers of the Business (and Seller shall enforce such rights as and when requested by Buyer at Buyer’s sole cost and expense); and

(f) all rights to any Actions of any nature available to or being pursued by Seller to the extent related to the Business or the Purchased Assets, whether arising by way of counterclaim or otherwise.

Section 2.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets do not include any other assets or rights of the Seller to the extent not relating to the Business (collectively, the “**Excluded Assets**”).

Section 2.03 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer is not assuming and will not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever, all of which are excluded (the “**Excluded Liabilities**”). Seller will, and will cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, if Buyer makes any payment to the Publisher on account of amounts owing by Seller to the Publisher in respect of the Customers, or pays any other Excluded Liability on behalf of Seller, Buyer shall be entitled to deduct such amount actually paid and offset it against any payments which may become due and payable to Seller hereunder or under the Revenue Share Agreement.

Section 2.04 Purchase Price. The aggregate purchase price in consideration for the sale and assignment of the Purchased Assets shall be two hundred and fifty thousand dollars (\$250,000) (the “**Purchase Price**”), to be allocated as set forth in **Section 2.05**.

Section 2.05 Allocation of Payments. Seller and Buyer agree that the Purchase Price shall be allocated to goodwill for tax purposes.

Section 2.06 Existing Contracts.

(a) Section 2.06 of the Disclosure Schedules contains a list as of the date hereof of (a) all services engagements and work-in-progress for which Seller has received a deposit or prepayment in respect thereof and for which services are currently being performed for Customers (inclusive of projects in progress) and all other existing Contracts with any Customer of the Business for ongoing projects, maintenance or support (collectively, the “**Existing Contracts**”), (b) the amount of any deposit or prepayment received in respect thereof, and (c) a description of the services to be performed or support provided under each such Existing Contract. Seller and Buyer agree that Buyer is not assuming any of Seller’s obligations or liabilities under the Existing Contracts. In furtherance thereof, immediately following the date of this Agreement, Seller shall (i) notify all applicable Customers to the Existing Contracts of the purchase and sale of the Business under this Agreement, (ii) advise each such Customer that the Existing Contract will be terminated, (iii) either (x) complete the remaining project or provide the remaining services or support thereunder or (y) refund any prepayments or deposits provided by the applicable Customer to Seller for the projects, services or support which will not be provided to the applicable Customer by the Seller after the Closing, and (iv) recommend that each Customer enter into a new Contract with Buyer for any required projects, services or support. For the avoidance of doubt, Buyer shall not be responsible for any of Seller’s obligations (whether for payment or performance) under the Existing Contracts (all of which shall be Excluded Liabilities), and Buyer’s only obligations to the Customers shall be pursuant to any new Contracts entered into between Buyer and such Customers from and after Closing.

(b) No later than thirty (30) days after the Closing Date, Seller shall provide Buyer with an updated schedule of all Existing Contracts as of the Closing Date and any other evidence reasonably satisfactory to the Buyer to demonstrate that all Existing Contracts as of the Closing Date have been fully performed or terminated, that all deposits, prepayments or other refunds owing to the Customer thereunder have been paid in full and that all other liabilities or obligations thereunder have been satisfied or discharged in full.

Section 2.07 Post-Closing Expenses and Receivables. In the event that Buyer receives on or after the Closing Date an invoice with respect to any Excluded Liabilities, (a) if such invoice relates entirely to an Excluded Liability, then Buyer shall promptly deliver such invoice to Seller and Seller shall settle such invoice in a timely manner and in any event prior to the date on which such invoice is due and payable, and (b) if such invoice relates in part to an Excluded Liability and in part to a Liability of Buyer, then Buyer shall (i) settle such invoice in a timely manner and (ii) notify Seller of the amount thereof that relates to an Excluded Liability, and Seller shall remit funds to Buyer in respect of that portion of such invoice that relates to an Excluded Liability within five (5) Business Days after receipt of notice thereof. If Seller or any of its Affiliates receives or collects on or after the Closing Date any funds relating to any Purchased Assets or to any services or products that will be provided on or after the Closing Date, unless such revenues are Excluded Assets, Seller or its Affiliate shall remit such funds to Buyer within five (5) Business Days after receipt thereof. If Buyer or any of its Affiliates receives or collects on or after the Closing Date any funds relating to any Excluded Assets, Buyer or its Affiliates shall remit such funds to Seller within ten (10) Business Days after receipt thereof. Buyer will use commercially reasonable efforts to segregate (by book entry or otherwise) cash receipts from Customers in order to track accounts receivable that are Excluded Assets to be paid over to Seller.

Section 2.08 Third Party Consents. To the extent that any Purchased Asset may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer.

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "Closing") shall take place remotely via the exchange of documents, signatures and other closing deliverables as of the date hereof. The date on which the Closing is to occur is herein referred to as the "Closing Date". For purposes of determining whether an act or event occurred on or prior to the Closing Date, the Closing shall be deemed to have occurred at 12:01 a.m. (prevailing Eastern time) on and as of the Closing Date.

Section 3.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer, against delivery of the items in **Section 3.02(b)**, the following:

(i) a bill of sale in the form of Exhibit A hereto (the “**Bill of Sale**”) duly executed by Seller, transferring the Purchased Assets to Buyer;

(ii) a Revenue Share Agreement (“**Revenue Share Agreement**”) duly executed by Seller, providing for the sharing between Buyer and Seller of certain revenues generated from sales by the Buyer to the Customers following the Closing Date;

(iii) all approvals, consents and waivers that are listed on Section 4.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing;

(iv) the Prospect List;

(v) a letter of instruction to the Publisher, whereby all of Seller’s Customers are transferred to Buyer and Buyer is designated as “Reseller of Record” with respect thereto, which letter of instruction shall be in form and substance acceptable to Buyer and which shall be countersigned by the Publisher if applicable;

(vi) a current account statement from the Publisher stating that Seller is paid in full (other than for payments not yet due and payable) as of the Closing Date; and

(vii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; (ii) that attached thereto are true and complete copies of the certificate of incorporation and bylaws of Seller; and (iii) the names and signatures of the officers of Seller authorized to sign this Agreement, the other Transaction Documents and the other documents to be delivered hereunder and thereunder.

(b) At the Closing, Buyer shall deliver to Seller, against delivery of the items in **Section 3.02(a)**, the following:

(i) the Purchase Price

(ii) the Bill of Sale, duly executed by Buyer; and

(iii) the Revenue Share Agreement, duly executed by Buyer.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as expressly set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this **ARTICLE IV** are true and correct as of the date hereof and, except as otherwise indicated, as of the Closing Date.

Section 4.01 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

Section 4.02 Authority of Seller. Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer), this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer or similar Laws affecting the enforcement of creditors' rights generally or general principles of equity (whether considered in a proceeding at law or in equity). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer or similar Laws affecting the enforcement of creditors' rights generally or general principles of equity (whether considered in a proceeding at law or in equity).

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Business or the Purchased Assets, (c) except as set forth on Section 4.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject, or (d) result in the imposition or creation of any Encumbrance upon or with respect to any of the Purchased Assets. No consent, approval, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the

execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, other than any disclosure obligations promulgated under the Securities Laws or any listing agreement with or rules promulgated by a national securities exchange.

Section 4.04 Absence of Certain Changes and Events. Since December 31, 2020, there has not been a Material Adverse Effect, and no event has occurred or circumstance exists that may reasonably be expected to result in a Material Adverse Effect. Since December 31, 2020, Seller has conducted the Business in the ordinary course of business, consistent with past practice.

Section 4.05 Customers and Vendors; Existing Contracts.

(a) The Customers set forth on Section 4.05(a) of the Disclosure Schedules represent all Customers of the Business (whether for Publisher products and services or otherwise). Seller has not received notice of, and to the Knowledge of Seller, no Customers have indicated that they are dissatisfied with Seller's services as they relate to the Business or that they intend to stop, or materially decrease the amount or rate of, buying products or services from Seller. Seller has no outstanding dispute with any Customer.

(b) Section 4.05(b) of the Disclosure Schedules sets forth a list of Seller's ten (10) largest Customer prospects that are currently in progress (the "**Prospect List**");

(c) The Existing Contracts listed on Section 2.06 of the Disclosure Schedules reflect all Contracts with Existing Customers in relation to the Business for ongoing projects, maintenance or support or pursuant to which Seller is required to provide any service. Following the Closing Date, Buyer shall not have any liability or obligation under any such Existing Contracts.

(d) There are no existing Contracts, options, commitments or rights with, to or in any Person to acquire any of the assets or properties used in the Business or rights or any interest therein, except for those contracts entered into in the ordinary course of business consistent with past practice for the sale of the products and services of the Business.

Section 4.06 Title to Purchased Assets. Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances.

Section 4.07 Legal Proceedings. There are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the Business or the Purchased Assets; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action. There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business.

Section 4.08 Compliance With Laws; Permits. Seller has complied and is currently in compliance with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets. All Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained

by Seller and are valid and in full force and effect, and Seller is and has been in compliance therewith. All fees and charges with respect to such Permits as of the Closing Date have been paid in full.

Section 4.09 Employment Matters.

(a) **Business Employees.** Section 4.09(a) of the Disclosure Schedules contains a list of all Business Employees and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; and (v) commission, bonus or other incentive-based compensation. Seller is not a party to or bound by any collective bargaining or other agreement with a labor organization representing any of the Business Employees.

(b) **No Complaints or Notices.** To the Knowledge of Seller, there are no pending or threatened notices or complaints from or on behalf of any of the Business Employees as to any conduct or situation which, if established, could reasonably be expected to constitute a violation of federal, state or local law by Seller.

(c) **No Stoppage.** During the past three (3) years, Seller has not experienced any organized slowdown, work interruption, strike or work stoppage by the Business Employees.

(d) **Benefit Plans.** Section 4.09(d) of the Disclosure Schedules contains a list of each material Seller Benefit Plan applicable to the Business Employees. The Seller Benefit Plans have been operated and administered in compliance in all material respects with the provisions of applicable Law, including ERISA and the Code. No Seller Benefit Plan is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, and no Seller Benefit Plan is subject to Title IV of ERISA.

Section 4.10 Taxes. There is no dispute or claim concerning any Taxes of Seller with respect to the Business or the Purchased Assets. Seller has timely and properly withheld, in all material respects, (a) amounts required to be withheld from payments to the Business Employees, and (b) sales, use, and value added Taxes in respect of the Purchased Assets and the Business, and to the extent required, Seller has remitted all such withheld Taxes to the proper Governmental Authority. Seller has no liability for Taxes of any person (other than Seller) as a transferee or successor by Contract or otherwise.

Section 4.11 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

Section 4.12 Full Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this **ARTICLE V** are true and correct as of the date hereof and, except as otherwise indicated, as of the Closing Date.

Section 5.01 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of New Jersey and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it.

Section 5.02 Authority of Buyer. Buyer has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer or similar Laws affecting the enforcement of creditors' rights generally or general principles of equity (whether considered in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer or similar Laws affecting the enforcement of creditors' rights generally or general principles of equity (whether considered in a proceeding at law or in equity).

Section 5.03 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

**ARTICLE VI
COVENANTS**

Section 6.01 Employees.

(a) Seller shall terminate the employment of all Business Employees on the Closing Date, and Buyer shall consider certain Business Employees for employment and, at Buyer's sole discretion, may offer employment, on an "at will" basis, to any of such Business Employees. Seller shall bear any and all obligations and liability in respect thereof resulting from any liability or payments owing to any of the Business Employees as a result of their termination in accordance

with this **Section 6.01** (including severance, paid time off, accrued bonuses, accrued salary, reimbursements or other payments resulting from or arising out of their termination).

(b) Seller shall be solely responsible, and Buyer shall have no obligations whatsoever, for any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time on or prior to the Closing Date and Seller shall pay all such amounts to all entitled persons on or prior to the Closing Date. Buyer shall be liable for the wages and other compensation owing from and after Closing to the Business Employees of Seller that are hired as employees of Buyer from and after the Closing.

(c) Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date. Seller also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring on or prior to the Closing Date. Seller shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(d) This **Section 6.01** shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this **Section 6.01**, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this **Section 6.01**. The parties hereto acknowledge and agree that the terms set forth in this **Section 6.01** shall not create any right in any Business Employee or any other Person to any continued employment with Seller or Buyer or compensation or benefits of any nature or kind whatsoever.

Section 6.02 Confidentiality. From and after the Closing, Seller shall, and shall cause its Affiliates to, hold, and shall use its best efforts to cause its or their respective Representatives to hold, in confidence, and Seller shall not, and shall cause its Affiliates not to, and shall use its best efforts to cause its or their respective Representatives not to, use, any and all non-public, confidential and/or proprietary information, whether written or oral, concerning the Business (including any of the information described in **Section 2.01(a)**). If Seller or any of its Affiliates or its or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which Seller is advised by its counsel in writing is legally required to be disclosed; *provided* that Seller shall use best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 6.03 Non-competition; Non-solicitation.

(a) For a period of five (5) years commencing on the Closing Date (the "**Restricted Period**"), Seller shall not, and shall cause its Affiliates not to, directly or indirectly, in the Territory, (i) engage in or assist others in engaging in any business that sells, markets, distributes, services or supports Sage X3 products and/or services, or (ii) have an interest in any Person that

sells, markets, distributes, services or supports Sage X3 products and/or services, in each case in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant.

(b) During the Restricted Period, neither Seller nor any of its Affiliates may directly or indirectly hire or solicit any employee of Buyer directly or indirectly engaged in the Business, or encourage any such employee to leave such employment or hire any such employee who has left such employment within three (3) months of such termination date, except pursuant to a general solicitation which is not directed specifically to any such employees.

(c) During the Restricted Period, neither Seller nor any of its Affiliates may cause, induce or encourage any client, customer, supplier or licensor of the Business (including any existing or former client, customer, supplier or licensor of Seller and any Person that becomes a client, customer, supplier or licensor of the Business after the Closing), or any other Person who has a business relationship with the Business, to terminate or modify any such relationship.

(d) Seller acknowledges that the restrictive covenants in this **Section 6.03** are reasonable and are necessary to protect and preserve the value of the Purchased Assets and to prevent any unfair advantage being conferred on Seller. If any of the restrictive covenants set forth herein are held to be unreasonable, arbitrary, or against public policy, the Restricted Period will be deemed to be the longest period permissible by law under the circumstances and the restrictive geographical area herein will be deemed to comprise the largest territory permissible by law under the circumstances. In the event of a breach of any covenant set forth herein, the Restricted Period will be extended by the period of the duration of such breach.

(e) Seller acknowledges that a material breach or threatened material breach of this **Section 6.03** would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a material breach or a threatened material breach by Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such material breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond), and Seller shall not unreasonably object to Buyer's request for such equitable relief.

Section 6.04 Books and Records. In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of three (3) years following the Closing, Seller shall retain the books and records (including personnel files) of Seller which relate to the Business and its operations for periods prior to the Closing and upon reasonable notice, afford Buyer's Representatives reasonable access (including the right to make photocopies), during normal business hours, to such books and records.

Section 6.05 Public Announcements. Unless required by (i) applicable law, including the disclosure obligations promulgated under the Securities Laws, (ii) any listing agreement with or rules promulgated by a national securities exchange or (iii) generally accepted accounting principles (in each of which cases under (i), (ii), and (iii), Seller shall provide Buyer prior notice thereof and an opportunity to review such disclosure, but not approval rights thereof), neither

Buyer nor Seller shall issue any public announcement or statement regarding this Agreement or the transactions contemplated hereby without the other party's prior consent or without using the mutually agreed upon wording of the press release that has been approved by the parties prior to their execution and delivery of this Agreement. The foregoing shall not restrict Seller from informing the Publisher of the proposed transaction in order to obtain "Reseller of Record" designation for Buyer from the Publisher, so long as a public announcement is not made by Seller in connection therewith.

Section 6.06 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 6.07 Tax Matters.

(a) Seller shall prepare and file any Tax Return in respect of the Purchased Assets and the Business for any period that includes a Pre-Closing Tax Period, and shall have the sole right to control all proceedings with respect to such Tax Returns, and Seller shall be responsible for any Taxes relating to the Purchased Assets and the Business for any Pre-Closing Tax Period. Buyer shall prepare and file all Tax Returns in respect of the Purchased Assets and the Business for any Post-Closing Tax Period, and shall have the sole right to control all proceedings with respect to such Tax Returns, and Buyer shall be responsible for any Taxes relating to the Purchased Assets and the Business for any Post-Closing Tax Period.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne by Seller. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Section 6.08 Maintenance of Corporate Existence. Seller shall, and Seller shall cause its owners to agree to, maintain the corporate existence of Seller for a period of at least five (5) years following the Closing Date. The foregoing shall not restrict Seller from engaging in a merger, sale or other business combination transaction so long as the entity resulting from or surviving such transaction does not terminate its existence within such five (5) year-period.

Section 6.09 Cooperation. Each party shall use its commercially reasonable efforts to consummate the transactions contemplated by this Agreement. Each party shall use its commercially reasonable efforts to secure all consents and approvals required to carry out the transactions contemplated by this Agreement and to satisfy all other conditions to the obligations of the parties hereunder. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

Section 6.10 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VII INDEMNIFICATION

Section 7.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is twenty-four (24) months after the Closing Date (other than as set forth in **Section 7.08** and the Specified Representations, as to which the survival limitation herein provided for shall not apply). All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

Section 7.02 Indemnification by Seller. Subject to the other terms and conditions of this **ARTICLE VII**, Seller shall indemnify and defend Buyer and its Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement;

(c) any Excluded Asset or any Excluded Liability, including any Liability under the Existing Contracts;

(d) any Taxes attributable to Seller, the Business, or any of the Purchased Assets for any Pre-Closing Tax Period or with respect to any property or business activities of Seller not related to the Business, whether or not attributable to a taxable period ending before the Closing Date; and

(e) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates conducted, existing or arising on or prior to the Closing Date.

Section 7.03 Indemnification by Buyer. Subject to the other terms and conditions of this **ARTICLE VII**, Buyer shall indemnify and defend each of Seller and its Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and

against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;

(c) any Taxes attributable to Buyer, the Business, or any of the Purchased Assets for any Post-Closing Tax Period; or

(d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or any of its Affiliates conducted, existing or arising after the Closing Date (in each case, so long as such Third Party Claim did not directly or indirectly arise from or relate to any actions or inactions of Seller, or otherwise result from a breach by Seller of any representation, warranty, covenant or agreement contained herein).

Section 7.04 Indemnification Procedures. The party making a claim under this **ARTICLE VII** is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this **ARTICLE VII** is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.**

(i) If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that rights or defenses are forfeited by, or are unavailable to, the Indemnifying Party by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party.

(ii) The Indemnifying Party shall have the right to participate in, or (unless the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such Third Party Claim and provide indemnification with respect to such Third Party Claim) by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnified Party, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x)

is asserted directly by or on behalf of a Person that is a supplier or Customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party.

(iii) In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 7.04(b)**, it shall have the right to take such action as it deems reasonably necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it, subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; *provided*, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required.

(iv) If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to reasonably promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 7.04(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Indemnified Party and the Indemnifying Party shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(v) Notwithstanding the foregoing, (x) the Indemnified Party may, at the sole cost and expense of the Indemnified Party, at any time prior to the Indemnifying Party's delivery of the notice referred to in the first sentence of **Section 7.04(a)(ii)**, file any motion, answer or other pleadings or take any other action that the Indemnified Party reasonably believes to be necessary or appropriate to protect its interests and (y) the Indemnified Party may take over the control of the defense or settlement of a Third Party Claim at any time if it irrevocably waives its right to indemnity under this **ARTICLE VII** in all respects with respect to such claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party except as provided in this **Section 7.04(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of the Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within twenty (20) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such

Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 7.04(a)**, it shall not agree to any settlement without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that rights or defenses are forfeited by, or are unavailable to, the Indemnifying Party by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim. If an Indemnifying Party delivers to the Indemnified Party a timely response notice, or if the Indemnifying Party is otherwise deemed to have rejected such claim, then the Indemnifying Party and the Indemnified Party shall meet as promptly as practicable to attempt to resolve the dispute. If the Indemnifying Party and the Indemnified Party are unable to resolve the dispute within twenty (20) days thereafter, then such parties may pursue all available legal remedies to enforce their rights under this **ARTICLE VII**.

Section 7.05 Payments; Setoff.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **ARTICLE VII**, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to 5.0%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

(b) Notwithstanding the foregoing, if Buyer is the Indemnified Party, Buyer may, at its sole option and upon written notice to Seller, offset any due and payable indemnification

obligations of Seller pursuant to this **ARTICLE VII** against any amount owing to Seller under the Revenue Share Agreement.

Section 7.06 Limitations. For purposes of calculating the amount of Losses to which an Indemnified Party is entitled under this **ARTICLE VII** in respect of the breach of any representation or warranty contained herein, the terms “material”, “materiality”, “Material Adverse Effect” and other similar qualifications contained in or otherwise applicable to such representation or warranty will be disregarded.

Section 7.07 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party’s right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate.

Section 7.08 Other Actions. Notwithstanding anything to the contrary in this **ARTICLE VII**, any liabilities arising from a willful and material breach or fraud shall survive the periods set forth in **Section 7.01**.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 8.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 8.02**):

If to Seller:

SWK Technologies, Inc.,
120 Eagle Rock Avenue
East Hanover, NJ 07936
E-mail: mark.meller@swktech.com
Attention: Mark Meller, CEO

with a copy to:

Lucosky Brookman LLP
101 Wood Avenue South
Woodbridge, NJ 08830
E-mail: lmetelitsa@lucbro.com
Attention: Lawrence Metelitsa

If to Buyer:

Net@Work, Inc.
575 Eight Avenue
10th Floor
New York, NY 10018
E-mail: asolomon@netatwork.com and
esolomon@netatwork.com
Attention: Alex Solomon and Edward Solomon

with a copy to:

Katten Muchin Rosenman, LLP
575 Madison Avenue
New York, NY 10022
E-mail: evan.borenstein@katten.com
Attention: Evan S. Borenstein

Section 8.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 8.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.06 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party; *provided* that Buyer may, upon written notice to Seller, assign this Agreement in whole or in part to one or more of Affiliates of Buyer. No assignment shall relieve the assigning party of any of its obligations hereunder. Any assignment in contravention of this **Section 8.07** shall be null and void.

Section 8.08 No Third-Party Beneficiaries. Except as provided in **ARTICLE VII**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.10 Governing Law; Submission to Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would result in the application of the laws of any other jurisdiction.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF NEW YORK, IN EACH CASE LOCATED IN THE COUNTY OF NEW YORK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE

JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (II) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 8.10(c)**.

Section 8.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 8.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

SWK TECHNOLOGIES, INC.

By: /s/ Mark Meller
Name: Mark Meller
Title: President and Chief Executive Officer

BUYER:

NET@WORK, INC.

By: /s/ Alex Solomon
Name: Alex Solomon
Title: President

[Signature Page to SWK/NAW Asset Purchase Agreement]

**FIRST AMENDMENT
TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This AMENDMENT NO. 1 (the "Amendment") to the Amended and Restated Employment Agreement, dated February 4, 2016 (the "Employment Agreement"), by and between SilverSun Technologies, Inc., a Delaware corporation (the "Company"), and Mark Meller (the "Executive"), is hereby entered into this 11th day of November 2021.

WHEREAS, the Company and the Executive previously entered into the Employment Agreement; and

WHEREAS, the Company and the Executive desire to provide for the continued employment of the Executive on the terms and conditions contained in the Employment Agreement, as modified by this Amendment;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Section 2 of the Employment Agreement is replaced in its entirety by the following:

"2. Term. The term of the Executive's employment hereunder shall commence on the Effective Date and shall continue through September 14, 2028."

2. All remaining terms of the Employment Agreement shall continue in full force and effect, as amended hereby.

IN WITNESS WHEREOF, the Company has caused this Amendment to be signed by its duly authorized officer pursuant to the authority of its Board, and the Executive has executed this Amendment, as of the date set forth above.

SILVERSUN TECHNOLOGIES, INC.

By: /s/ Joseph Macaliso
Name: Joseph P. Macaluso
Principal Financial Officer

EXECUTIVE

By: /s/ Mark Meller
Name: Mark Meller
Dated: November 11, 2021

SILVERSUN TECHNOLOGIES REPORTS THIRD QUARTER 2021 RESULTS

EAST HANOVER, NJ – () – November 9, 2021 – SilverSun Technologies, Inc. (NASDAQ: SSNT), a national provider of transformational business technology solutions and services, today announced its third quarter results for the three and nine months ended September 30, 2021.

Financial Highlights for Three Months Ended September 30, 2021 Compared to Three Months Ended September 30, 2020:

- Revenues were \$10,109,164, decreasing 0.5% from \$10,159,151.
- Gross profit was \$3,939,308, decreasing 2.8% from \$4,051,991.
- Loss before interest, taxes, depreciation and amortization (“EBITDA”) plus share-based compensation was \$14,655, compared to income before earnings or \$273,195 in 2020.
- Net loss was \$240,029, or \$0.05 earnings per basic and diluted share, compared to net income of \$55,205 or 0.01 earnings per basic and diluted share.

Financial Highlights for the Nine Months Ended September 30, 2021 Compared to the Nine Months Ended September 30, 2020:

- Total revenues rose 4.4% to \$31,218,331 from \$29,911,619.
- Gross profit increased to \$12,956,525, increasing 9.4% from \$11,842,804.
- Earnings before interest, taxes, depreciation and amortization (“EBITDA”) plus share-based compensation were \$1,140,953, increasing \$859,129 from \$281,824.
- Net income totaled \$244,939, or \$0.05 per basic and diluted share, compared to net loss of (\$203,396), or (\$0.05) per basic and diluted share.
- As of September 30, 2021, the Company had \$7,252,236 in cash and cash equivalents; \$1,629,577 in accounts receivable; long term debt of \$815,030 (excluding the impact of operating lease liabilities), and total stockholders’ equity of \$9,393,696.

For more details on SilverSun’s third quarter results, please refer to the Company’s 10-Q filed today with the U.S. Securities Exchange Commission and accessible at www.sec.gov.

Commenting on the results, Mark Meller, Chairman and CEO of SilverSun, stated, “We remain on pace to deliver the best year in the history of the Company, despite the fact that this was a mediocre quarter for us. We regard it as a one-time event, as we continue to navigate the various market dynamics taking hold in the economy today. As the Covid pandemic continues to cause disruptions within supply chains, we saw more customers this quarter taking a wait-and-see approach to their technology investments than they had previously. While projects are not being cancelled per se, we are seeing more delays as our customers look to conserve cashflow until such time as they feel more confident about their short-term prospects. Similarly, we have seen a greater number of delays than usual as our customers confront more labor shortages in this challenging labor environment. We believe these dynamics are short-term, and will ease in the coming months.”

“Despite these short term challenges, our focus on the digital transformation of our customers continues to bear fruit. We have been focusing on increasing our monthly recurring revenue (“MRR”), and on increasing recurring revenue as a percentage of total revenue. The products and services that we provide that generate MRR include our Software as a Service (SaaS) product offerings, Infrastructure as a Service (IaaS), cloud hosting for business applications, cybersecurity, business continuity and disaster recovery solutions. As a result, MRR is now approaching 50% of total revenue.”

“In order to more tightly align our product offerings with our strategic vision of providing cloud-based solutions and technologies, we are making some changes in our ERP product offerings. We are in the process of off-boarding some legacy on-premise solutions, and have recently signed agreements to become a reseller of Sage Intacct. Sage Intacct publishes cloud-based financial management and accounting applications for businesses and CPA firms, and will provide a nice complement to our large and growing Acumatica practice. We are confident that this realignment will both accelerate our growth, increase our MRR, and enhance our profitability.”

“As we scale our business, we continue to remain focused on improving our operating efficiency and reducing expenses. As a result of increased utilization and the sales of higher margin solutions, earnings before interest, taxes, depreciation, amortization and share-based compensation (EBITDA) was \$1,140,953 for the first 9 months of the year, increasing \$859,129 from \$281,824 for the first nine months of 2020. I expect we will see continued improvement in our operating margins in the coming quarters.”

In conclusion, Meller stated, “The Company continues to execute on its business plan. Our sales pipeline for the balance of the year is strong, our managed service provider (MSP) continues to aggressively on-board new customers for our Infrastructure-as-a-Service, application hosting, and cybersecurity offerings, and our pipeline for consulting project hours remains robust. As a result, we are confident about our prospects for the balance of the year, and for 2022 and beyond.”

About SilverSun Technologies, Inc.

We are a business application, technology and consulting company providing software and IT solutions to meet our clients’ information, technology and business management needs. Our services and technologies enable customers to manage, protect and monetize their enterprise assets whether on-premise or in the “cloud”. As a value-added reseller of business application software, we offer solutions for accounting and business management, financial reporting, Enterprise Resource Planning (“ERP”), Human Capital Management (“HCM”), Warehouse Management Systems (“WMS”), Customer Relationship Management (“CRM”), Business Intelligence (“BI”) and other business applications. Our value-added services focus on consulting and professional services, specialized programming, training, and technical support. We have a dedicated IT managed services practice that provides cybersecurity, cloud, application hosting, disaster recovery, business continuity, and other services. Our customers are nationwide, with concentrations in the New York/New Jersey metropolitan area, Chicago, Arizona, Southern California, North Carolina, Washington and Oregon.

Forward-Looking Statements

This news release includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended, regarding, among other things our plans, strategies and prospects -- both business and financial. Although we believe that our plans, intentions and expectations reflected in or suggested by these forward-looking statements are reasonable, we cannot assure you that we will achieve or realize these plans, intentions or expectations. Forward-looking statements are inherently subject to risks, uncertainties and assumptions. Many of the forward-looking statements contained in this news release may be identified by the use of forward-looking words such as "believe," "expect," "anticipate," "should," "planned," "will," "may," "intend," "estimated," and "potential," among others. Important factors that could cause actual results to differ materially from the forward-looking statements we make in this news release include market conditions and those set forth in reports or documents that we file from time to time with the United States Securities and Exchange Commission. All forward-looking statements attributable to SilverSun Technologies, Inc. or a person acting on its behalf are expressly qualified in their entirety by this cautionary language.

Contact:

Corporate

Mark Meller

SilverSun Technologies, Inc.

973-758-6108

meller@silversuntech.com

**Document And Entity
Information**

Nov. 10, 2021

Document Information Line Items

<u>Entity Registrant Name</u>	SILVERSUN TECHNOLOGIES, INC.
<u>Trading Symbol</u>	SSNT
<u>Document Type</u>	8-K
<u>Amendment Flag</u>	false
<u>Entity Central Index Key</u>	0001236275
<u>Document Period End Date</u>	Nov. 10, 2021
<u>Entity Emerging Growth Company</u>	false
<u>Entity Incorporation, State or Country Code</u>	DE
<u>Entity File Number</u>	000-50302
<u>Entity Tax Identification Number</u>	16-1633636
<u>Entity Address, Address Line One</u>	120 Eagle Rock Ave
<u>Entity Address, City or Town</u>	East Hanover
<u>Entity Address, State or Province</u>	NJ
<u>Entity Address, Postal Zip Code</u>	07936
<u>City Area Code</u>	(973)
<u>Local Phone Number</u>	396-1720
<u>Written Communications</u>	false
<u>Soliciting Material</u>	false
<u>Pre-commencement Tender Offer</u>	false
<u>Pre-commencement Issuer Tender Offer</u>	false
<u>Title of 12(b) Security</u>	Common Stock, par value \$0.00001 per share
<u>Security Exchange Name</u>	NASDAQ


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"Publish": "200",
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