

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

FORM 10-Q
(Mark One)

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

For the quarterly period ended June 30, 2024
or

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from [] to []
Commission File Number: 001-38640



AudioEye, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or
organization)

20-2939845

(I.R.S. Employer Identification No.)

**5210 East Williams Circle , Suite 750 ,
Tucson , Arizona**
(Address of principal executive offices)

85711

(Zip Code)

Registrant's telephone number, including area code: **866 - 331-5324**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.00001 per share	AEYE	The Nasdaq Capital Market

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See 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 Accelerated filer
Non-accelerated filer Smaller reporting company
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.

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

As of July 25, 2024, 11,879,116 shares of the registrant's common stock were issued and outstanding.

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PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

The financial information set forth below with respect to the consolidated financial statements as of June 30, 2024 and December 31, 2023 and for the three- and six-month periods ended June 30, 2024 and 2023 is unaudited. This financial information, in the opinion of our management, includes all adjustments consisting of normal recurring entries necessary for the fair presentation of such data. The results of operations for the three- and six-month periods ended June 30, 2024 are not necessarily indicative of results to be expected for any subsequent period. Our fiscal year end is December 31. The Company presents its unaudited consolidated financial statements, notes, and other financial information rounded to the nearest thousand United States Dollars ("U.S. Dollar"), except for per share data.

AUDIOEYE, INC.
CONSOLIDATED BALANCE SHEETS
(unaudited)

(in thousands, except per share data)	June 30, 2024	December 31, 2023
ASSETS		
Current assets:		
Cash	\$ 5,086	\$ 9,236
Accounts receivable, net of allowance for doubtful accounts of \$ 436 and \$ 496 , respectively	5,420	4,828
Prepaid expenses and other current assets	1,050	712
Total current assets	<u>11,556</u>	<u>14,776</u>
Property and equipment, net of accumulated depreciation of \$ 301 and \$ 251 , respectively	222	218
Right of use assets	474	611
Intangible assets, net of accumulated amortization of \$ 8,489 and \$ 7,423 , respectively	5,628	5,783
Goodwill	4,001	4,001
Other	123	106
Total assets	<u><u>\$ 22,004</u></u>	<u><u>\$ 25,495</u></u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	\$ 2,688	\$ 2,339
Operating lease liabilities	211	312
Finance lease liabilities	—	7
Deferred revenue	7,050	6,472
Contingent consideration	—	2,399
Total current liabilities	<u>9,949</u>	<u>11,529</u>
Long term liabilities:		
Term loan, net	6,773	6,727
Operating lease liabilities	319	417
Deferred revenue	1	10
Other	105	105
Total liabilities	<u>17,147</u>	<u>18,788</u>
Stockholders' equity:		
Preferred stock, \$ 0.00001 par value, 10,000 shares authorized		
Common stock, \$ 0.00001 par value, 50,000 shares authorized, 11,808 and 11,711 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively	1	1
Additional paid-in capital	97,912	96,182
Accumulated deficit	(93,056)	(89,476)
Total stockholders' equity	<u>4,857</u>	<u>6,707</u>
Total liabilities and stockholders' equity	<u><u>\$ 22,004</u></u>	<u><u>\$ 25,495</u></u>

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)

(in thousands, except per share data)	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Revenue	\$ 8,470	\$ 7,836	\$ 16,553	\$ 15,608
Cost of revenue	1,764	1,787	3,525	3,489
Gross profit	6,706	6,049	13,028	12,119
Operating expenses:				
Selling and marketing	2,971	3,253	5,974	6,496
Research and development	1,221	2,033	2,543	3,779
General and administrative	3,011	2,791	5,639	5,926
Total operating expenses	7,203	8,077	14,156	16,201
Operating loss	(497)	(2,028)	(1,128)	(4,082)
Interest income (expense), net	(238)	55	(436)	98
Net loss	\$ (735)	\$ (1,973)	\$ (1,564)	\$ (3,984)
Net loss per common share-basic and diluted	\$ (0.06)	\$ (0.17)	\$ (0.13)	\$ (0.34)
Weighted average common shares outstanding-basic and diluted	<u>11,703</u>	<u>11,738</u>	<u>11,706</u>	<u>11,688</u>

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
THREE AND SIX MONTHS ENDED JUNE 30, 2024 AND 2023
(unaudited)

(in thousands)	Common stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance, December 31, 2023	11,711	\$ 1	\$ 96,182	\$ (89,476)	\$ 6,707
Common stock issued upon settlement of restricted stock units	235	—	—	—	—
Issuance of common stock for services	7	—	—	—	—
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(25)	—	(160)	—	(160)
Common stock repurchased for retirement	(266)	—	—	(1,686)	(1,686)
Stock-based compensation	—	—	883	—	883
Net loss	—	—	—	(829)	(829)
Balance, March 31, 2024	<u>11,662</u>	<u>\$ 1</u>	<u>\$ 96,905</u>	<u>\$ (91,991)</u>	<u>\$ 4,915</u>
Issuance of common stock for cash, net of transaction expenses	40	—	563	—	563
Common stock issued upon exercise of options on a cashless basis	17	—	—	—	—
Common stock issued upon settlement of restricted stock units	141	—	—	—	—
Issuance of common stock for services	5	—	—	—	—
Common stock issued pursuant to employee stock purchase plan	4	—	53	—	53
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(28)	—	(584)	—	(584)
Common stock repurchased for retirement	(33)	—	—	(330)	(330)
Stock-based compensation	—	—	975	—	975
Net loss	—	—	—	(735)	(735)
Balance, June 30, 2024	<u>11,808</u>	<u>\$ 1</u>	<u>\$ 97,912</u>	<u>\$ (93,056)</u>	<u>\$ 4,857</u>
(in thousands)	Common stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance, December 31, 2022	11,551	\$ 1	\$ 93,070	\$ (82,482)	\$ 10,589
Common stock issued upon settlement of restricted stock units	192	—	—	—	—
Issuance of common stock for services	10	—	—	—	—
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(56)	—	(258)	—	(258)
Stock-based compensation	—	—	1,118	—	1,118
Net loss	—	—	—	(2,011)	(2,011)
Balance, March 31, 2023	<u>11,697</u>	<u>\$ 1</u>	<u>\$ 93,930</u>	<u>\$ (84,493)</u>	<u>\$ 9,438</u>
Common stock issued upon settlement of restricted stock units	108	—	—	—	—
Issuance of common stock for services	14	—	—	—	—
Common stock issued pursuant to employee stock purchase plan	9	—	36	—	36
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(31)	—	(188)	—	(188)
Stock-based compensation	—	—	1,031	—	1,031
Net loss	—	—	—	(1,973)	(1,973)
Balance, June 30, 2023	<u>11,797</u>	<u>\$ 1</u>	<u>\$ 94,809</u>	<u>\$ (86,466)</u>	<u>\$ 8,344</u>

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)

(in thousands)	Six months ended June 30,	
	2024	2023
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (1,564)	\$ (3,984)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,168	1,103
Loss on disposal or impairment of long-lived assets	4	147
Stock-based compensation expense	1,858	2,149
Amortization of deferred commissions	16	36
Amortization of debt discount and issuance costs	47	—
Amortization of right of use assets	137	199
Change in fair value of contingent consideration	(12)	214
Provision for accounts receivable	111	(1)
Changes in operating assets and liabilities:		
Accounts receivable	(703)	739
Prepaid expenses and other assets	(372)	119
Accounts payable and accruals	(447)	(82)
Operating lease liability	(199)	(271)
Deferred revenue	569	(559)
Net cash provided by (used in) operating activities	613	(191)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of equipment	(75)	(57)
Software development costs	(947)	(999)
Patent costs	(13)	—
Net cash used in investing activities	(1,035)	(1,056)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from common stock offering, net of transaction costs	663	—
Proceeds from employee stock purchase plan	53	36
Payments related to settlement of employee shared-based awards	(744)	(446)
Settlement of contingent consideration	(1,677)	(908)
Repurchase of common stock	(2,016)	—
Repayments of finance leases	(7)	(22)
Net cash used in financing activities	(3,728)	(1,340)
Net decrease in cash	(4,150)	(2,587)
Cash-beginning of period	9,236	6,904
Cash-end of period	\$ 5,086	\$ 4,317
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Common stock offering costs included in accounts payable	\$ 100	\$ —

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 1 — BASIS OF PRESENTATION

The accompanying unaudited interim consolidated financial statements of AudioEye, Inc. and its wholly-owned subsidiary, Springtime, Inc. ("we", "our" or the "Company") have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP" or "GAAP") and the rules of the Securities and Exchange Commission (the "SEC"), and should be read in conjunction with the audited consolidated financial statements and notes thereto contained in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the "2023 Form 10-K"), as filed with the SEC on March 7, 2024.

In the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of financial position and the results of operations for the interim periods presented have been reflected herein. The results of operations for the interim periods are not necessarily indicative of the results to be expected for the full year. Certain information and disclosures normally contained in the audited consolidated financial statements as reported in the Company's Annual Report on Form 10-K have been condensed or omitted in accordance with the SEC's rules and regulations for interim reporting.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Our significant accounting policies are presented in "Note 2 – Significant Accounting Policies" in the 2023 Form 10-K. Users of financial information for interim periods are encouraged to refer to the footnotes to the consolidated financial statements contained in the 2023 Form 10-K when reviewing interim financial results.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses, and the related disclosures at the date of the consolidated financial statements and during the reporting period. On an ongoing basis, management evaluates its estimates and judgments, including those related to stock-based compensation, allowance for doubtful accounts, and intangible assets. Actual results may differ from these estimates.

Revenue Recognition

We derive our revenue primarily from the sale of internally developed software by a software-as-a-service ("SaaS") delivery model, as well as from professional services, through our direct sales force or through third-party resellers. Our SaaS fees include support and maintenance.

We recognize revenue in accordance with Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers* ("ASC 606"). The core principle of ASC 606 is that an entity recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

We determine revenue recognition through the following five steps:

- Identify the contract with the customer;
- Identify the performance obligations in the contract;
- Determine the transaction price;
- Allocate the transaction price to the performance obligations in the contract; and
- Recognize revenue when, or as, the performance obligations are satisfied.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Performance obligations are the unit of accounting for revenue recognition and generally represent the distinct goods or services that are promised to the customer. If we determine that we have not satisfied a performance obligation, we will defer recognition of the revenue until the performance obligation is deemed to be satisfied. SaaS agreements are generally non-cancelable, although clients typically have the right to terminate their contracts for cause if we fail to perform material obligations.

Our SaaS revenue is comprised of fixed subscription fees from customer accounts on our platform related to our software products. Our support revenue is comprised of subscription fees for customers for periodic auditing, human-assisted technological remediations, legal support, and other professional support services. SaaS and support (also referred to as "subscription") revenue is recognized on a ratable basis over the contractual subscription term of the arrangement beginning on the date that our service is made available to the customer. Certain SaaS and support fees are invoiced in advance on an annual, semi-annual, or quarterly basis. Any funds received for services not provided yet are held in deferred revenue and are recorded as revenue when the related performance obligations have been satisfied.

Non-subscription revenue consists primarily of PDF remediation and one-time website and mobile application reporting services, and is recognized upon delivery. Consideration payable under PDF remediation arrangements is based on usage. Consideration payable under non-subscription website and mobile application reporting services arrangements is based on fixed fees.

The following table presents our revenues disaggregated by sales channel:

(in thousands)	Six months ended June 30,	
	2024	2023
Partner and Marketplace	\$ 9,704	\$ 8,760
Enterprise	6,849	6,848
Total revenues	\$ 16,553	\$ 15,608

The Company records accounts receivable for amounts invoiced to customers for which the Company has an unconditional right to consideration as provided under the contractual arrangement. Deferred revenue includes payments received in advance of performance under the contract and is reported on an individual contract basis at the end of each reporting period. Deferred revenue is classified as current or noncurrent based on the timing of when we expect to recognize revenue.

The table below summarizes our deferred revenue as of June 30, 2024 and December 31, 2023:

(in thousands)	June 30, 2024	December 31, 2023
	\$ 7,050	\$ 6,472
Deferred revenue — current	\$ 7,050	\$ 6,472
Deferred revenue — noncurrent	1	10
Total deferred revenue	\$ 7,051	\$ 6,482

In the six-month period ended June 30, 2024, we recognized \$ 4,922,000 , or 76 %, in revenue from deferred revenue outstanding as of December 31, 2023.

We had one customer (including the customer's affiliates reflecting multiple contracts and a partnership with the Company) which accounted for approximately 16 % of our total revenue in each of the three and six months ended June 30, 2024 and 2023.

One major customer represented 15 % and 16 % of total accounts receivable as of June 30, 2024 and December 31, 2023, respectively.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Deferred Costs (Contract acquisition costs)

We capitalize initial and renewal sales commissions in the period the commission is earned, which generally occurs when a customer contract is obtained, and amortize deferred commission costs on a straight-line basis over the expected period of benefit, which we have deemed to be the contract term. As a practical expedient, we expense sales commissions as incurred when the amortization period of related deferred commission costs would have been one year or less.

The table below summarizes the deferred commission costs as of June 30, 2024 and December 31, 2023, which are included in Prepaid expenses and other current assets on our consolidated balance sheets:

(in thousands)	June 30, 2024	December 31, 2023
Deferred costs — current	\$ 35	\$ 20
Deferred costs — noncurrent	44	2
Total deferred costs	\$ 79	\$ 22

Amortization expense associated with sales commissions was included in Selling and marketing expenses on the consolidated statements of operations and totaled \$ 6,000 and \$ 16,000 for the three- and six-month periods ended June 30, 2024, respectively, and \$ 17,000 and \$ 36,000 for the three- and six-month periods ended June 30, 2023, respectively.

Debt Discount and Debt Issuance Costs

Costs related to the issuance of debt due to the lender (debt discount) or to third parties (debt issuance costs) are capitalized and amortized to interest expense based on the effective interest method over the term of the related debt. Debt discount and debt issuance costs are presented on the Company's consolidated balance sheets as a direct deduction from the carrying amount of our term loan.

Employee Stock Purchase Plan

In May 2022, the stockholders of the Company approved the Company's Employee Stock Purchase Plan (the "ESPP"), which provides for the issuance of up to 500,000 shares of common stock. Eligible employees may elect to have a percentage of eligible compensation withheld to purchase shares of our common stock at the end of each purchase period. The Company expects each purchase period to be the six month periods ending on June 30 or December 31 of each calendar year. The purchase price per share is expected to equal 85 % of the fair market value of our common stock on the last trading day of the purchase period. Under the ESPP, a participant may not be granted rights to purchase more than \$ 25,000 worth of common stock for each calendar year and no participant may purchase more than 1,500 shares of our common stock (or such other number as the Compensation Committee may designate) on any one purchase date. As of June 30, 2024, 18,960 shares had been issued under the ESPP and 481,040 shares remained available under the plan.

Stock-Based Compensation

The Company periodically issues options, restricted stock units ("RSUs"), and shares of its common stock as compensation for services received from its employees, directors, and consultants. The fair value of the award is measured on the grant date. The fair value amount is then recognized as expense over the requisite vesting period during which services are required to be provided in exchange for the award. We recognize forfeitures as they occur. Stock-based compensation expense is recorded in the same expense classifications in the consolidated statements of operations as if such amounts were paid in cash.

The fair value of options awards is measured on the grant date using a Black-Scholes option pricing model, which includes assumptions that are subjective and are generally derived from external data (such as risk-free rate of interest) and historical data (such as volatility factor and expected term).

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

We estimate the fair value of restricted stock unit awards with time- or performance-based vesting using the value of our common stock on the grant date. We estimate the fair value of market-based restricted stock unit awards as of the grant date using the Monte Carlo simulation model.

We expense the compensation cost associated with time-based options and RSUs as the restriction period lapses, which is typically a one- to three-year service period with the Company. Compensation expense related to performance-based RSUs is recognized on a straight-line basis over the requisite service period, provided that it is probable that performance conditions will be achieved, with probability assessed on a quarterly basis and any changes in expectations recognized as an adjustment to earnings in the period of the change. Compensation cost is not recognized for service- and performance-based awards that do not vest because service or performance conditions are not satisfied, and any previously recognized compensation cost is reversed. Compensation costs related to awards with market conditions are recognized on a straight-line basis over the requisite service period regardless of whether the market condition is satisfied and is not reversed provided that the requisite service period derived from the Monte-Carlo simulation has been completed. If vesting occurs prior to the end of the requisite service period, expense is accelerated and fully recognized through the vesting date.

The following table summarizes the stock-based compensation expense recorded for the three and six months ended June 30, 2024 and 2023:

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Options	\$ 1	\$ 39	\$ 5	\$ 116
RSUs	853	900	1,666	1,887
Unrestricted shares of common stock	112	86	178	140
Employee stock purchase plan	9	6	9	6
Total	\$ 975	\$ 1,031	\$ 1,858	\$ 2,149

As of June 30, 2024, the unrecognized stock-based compensation expense related to outstanding RSUs totaled \$ 4,443,000 , which may be recognized through April 2027, subject to achievement of service, performance, and market conditions.

Earnings (Loss) Per Share ("EPS")

Basic EPS is calculated by dividing net income (loss) available to common stockholders by the weighted average number of shares of the Company's common stock outstanding during the period. Diluted EPS is calculated based on the net income (loss) available to common stockholders and the weighted average number of shares of common stock outstanding during the period, adjusted for the effects of all potential dilutive common stock issuances related to options and restricted stock units. The dilutive effect of our stock-based awards is computed using the treasury stock method, which assumes all stock-based awards are exercised and the hypothetical proceeds from exercise are used to purchase common stock at the average market price during the period. The incremental shares (i.e., the difference between shares assumed to be issued versus purchased), to the extent they would have been dilutive, are included in the denominator of the diluted EPS calculation. However, when a net loss exists, no potential common stock equivalents are included in the computation of the diluted per-share amount because the computation would result in an anti-dilutive per-share amount.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Potentially dilutive securities outstanding as of June 30, 2024 and 2023, which were excluded from the computation of basic and diluted net loss per share for the periods then ended, are as follows:

(in thousands)	June 30,	
	2024	2023
Options	80	134
Restricted stock units	1,470	1,903
Total	1,550	2,037

The following table summarizes the stock option and RSUs activity for the six months ended June 30, 2024:

	Options	RSUs
Outstanding at December 31, 2023	112,279	1,707,258
Granted	—	200,170
Exercised/Settled	(25,642)	(376,176)
Forfeited/Expired	(6,740)	(61,481)
Outstanding at June 30, 2024	79,897	1,469,771
Vested at June 30, 2024	79,897	447,117
Unvested at June 30, 2024	—	1,022,654

Stock Repurchases

In the fourth quarter of 2023, the Board of Directors of the Company approved a program to repurchase up to \$ 5 million of its outstanding shares of common stock through December 31, 2025. In 2023, we used \$ 1.12 million of the program to repurchase shares. In the six months ended June 30, 2024, we used \$ 2.02 million of the program to repurchase shares. As of June 30, 2024, we had \$ 1.86 million remaining for the repurchase of shares.

Shares repurchased by the Company are immediately retired. The Company made an accounting policy election to charge the excess of repurchase price over par value entirely to retained earnings.

Recent Accounting Pronouncements

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires public entities, on an annual basis, to provide disclosure of specific categories in the rate reconciliation, as well as disclosure of income taxes paid disaggregated by jurisdiction. The ASU is effective for annual periods beginning after December 15, 2024, with early adoption permitted. We plan to adopt ASU 2023-09 in our fiscal year 2025 annual financial statements. The adoption of this ASU will not affect the Company's consolidated results of operations, financial position or cash flows.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 3 — ACQUISITIONS

Bureau of Internet Accessibility Inc.

On March 9, 2022, we entered into a Stock Purchase Agreement ("Purchase Agreement") to acquire all the outstanding equity interests of Bureau of Internet Accessibility Inc. ("BOIA"), a Delaware corporation which provides web accessibility services including audits, training, remediation and implementation support. The aggregate consideration for the purchase of BOIA was approximately \$ 7.5 million (at fair value), consisting of \$ 5.1 million cash payment at closing, \$ 0.2 million cash received in the third quarter of 2022 resulting from net working capital adjustments, and an estimated \$ 2.6 million in aggregate contingent consideration to be paid in cash following the one- and two-year anniversary of the closing date. Actual aggregate cash consideration was based on BOIA's revenues for 2022 and 2023. In the first quarter of 2023, we made a \$ 974,000 cash payment towards the contingent consideration liability. In the second quarter of 2024, we made a \$ 2,387,000 cash payment to settle the contingent consideration associated with the BOIA acquisition in full.

We accounted for the acquisition of BOIA as business combination in accordance with FASB ASC 805, "Business Combinations" ("ASC 805"). Accordingly, under the acquisition method of accounting, we allocated the purchase price to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values, and recognized goodwill for the excess of purchase price over the estimated fair value of net tangible and intangible assets acquired.

Acquired intangible assets are amortized on a straight-line basis over their estimated useful lives of 2 to 7 years. In the six months ended June 30, 2024 and 2023, amortization expense associated with acquired intangible assets totaled \$ 349,000 and \$ 357,000, respectively.

For the six months ended June 30, 2024 and 2023, we recorded \$ 12,000 and \$(214,000), respectively, in income (expense) related to the change in the fair value of contingent consideration, which is included in General and administrative in the accompanying Consolidated Statements of Operations.

NOTE 4 — LEASE LIABILITIES AND RIGHT OF USE ASSETS

We determine whether an arrangement is a lease at inception. Right-of-use assets represent our right to use an underlying asset for the lease term, and lease liabilities represent our obligation to make lease payments arising from the lease.

Finance Leases

The Company had finance leases to purchase computer equipment that expired in the second quarter of 2024. The amortization expense of the leased equipment is included in depreciation expense. As of June 30, 2024 and December 31, 2023, the Company's outstanding finance lease obligations totaled zero and \$ 7,000, respectively. The effective interest rate of the finance leases was estimated at 6.0 % based on the implicit rate in the lease agreements.

Operating Leases

Operating lease right-of-use assets and liabilities are recognized at commencement date based on the present value of lease payments over the expected lease term. Since our lease arrangements do not provide an implicit rate, we use our estimated incremental borrowing rate for the expected remaining lease term at commencement date in determining the present value of future lease payments. Operating lease expense is recognized on a straight-line basis over the lease term.

The Company has operating leases for office space in Tucson, Arizona, and New York, New York. The lease for the principal office located in Tucson consists of 627 square feet and ends in October 2024. The lease for the New York office, which consists of approximately 5,000 square feet, commenced in January 2022 and will expire in December 2026.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 4 — LEASE LIABILITIES AND RIGHT OF USE ASSETS (continued)

In the second quarter of 2024, Company entered into a agreement to sublease office space in Miami Beach, Florida, on a month-to-month basis. In addition, the Company entered into membership agreements to occupy shared office space in Lehi, Utah, Tucson, Arizona, and Portland, Oregon. Because these agreements do not qualify as a lease under ASC 842, we expense the related rent and membership fees as they are incurred.

In the first quarter of 2023, we closed our Marietta, Georgia office. As a result of abandoning the office space prior to its lease expiration in August 2024, we wrote off the associated right-of-use asset in full and recognized a \$ 146,000 loss on impairment, which is included in General and administrative in the accompanying Consolidated Statement of Operations. As of June 30, 2024, the lease liability related to the Marietta, GA office was \$ 21,000 .

The Company made operating lease payments in the amount of \$ 227,000 and \$ 271,000 during the six months ended June 30, 2024 and 2023, respectively.

The following summarizes the total lease liabilities and remaining future minimum lease payments at June 30, 2024 (in thousands):

Year ending December 31,	Operating Leases
2024 (6 months remaining)	\$ 127
2025	219
2026	225
Total minimum lease payments	571
Less: present value discount	(41)
Total lease liabilities	530
Current portion of lease liabilities	211
Long term portion of lease liabilities	\$ 319

The following summarizes expenses associated with our finance and operating leases for the six months ended June 30, 2024 and 2023:

(in thousands)	Six months ended June 30,	
	2024	2023
Finance lease expenses:		
Depreciation expense	\$ 6	\$ 20
Interest on lease liabilities	—	1
Total Finance lease expense	6	21
Operating lease expense	165	266
Short-term lease and related expenses	204	117
Total lease expenses	\$ 375	\$ 404

The following table provides information about the remaining lease terms and discount rates applied as of June 30, 2024 and 2023:

	June 30,	
	2024	2023
Weighted average remaining lease term (years)		
Operating Leases	2.42	2.84
Finance Leases	—	0.78
Weighted average discount rate (%)		
Operating Leases	6.00	6.00
Finance Leases	—	6.00

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2024
(Unaudited)

NOTE 5 — DEBT

On November 30, 2023, the Company entered into a Loan and Security Agreement (the “Loan Agreement”) with SG Credit Partners, Inc., a Delaware corporation (the “Lender”). The Loan Agreement provides for a \$ 7.0 million term loan, which is due and payable on the maturity date of November 30, 2026. The interest rate is 6.25 % in excess of the base rate, which is defined as the greater of the prime rate and 7.00 % per annum. Interest is payable in cash on a monthly basis.

The Company paid a commitment fee equal to \$ 105,000 on the closing date and is required to pay an exit fee equal to \$ 105,000 upon the earlier of repayment in full of the obligations, the maturity date and the occurrence of a liquidity event. The commitment and exit fees payable to the lender were recorded as debt discount. The exit fee was included within long term liabilities on our consolidated balance sheet as of June 30, 2024. The Company also incurred \$ 71,000 in third-party expenses in connection with the term loan, which were recorded as debt issuance costs. Debt discount and debt issuance costs are presented as a direct deduction from the carrying amount of our term loan and are amortized to interest expense over the term of the loan using the effective interest method. In the six months ended June 30, 2024, amortization of debt discount and debt issuance costs totaled \$ 35,000 and \$ 12,000, respectively.

The Loan Agreement secured by substantially all of our assets and contains certain customary financial covenants, including the requirements that the Company maintain (i) minimum liquidity of \$ 2.0 million and (ii) minimum monthly recurring revenue levels measured on a trailing three month average basis as of the last day of each calendar month. The minimum monthly recurring revenue levels commence at \$ 2.3 million and increase for each month after the month ending November 30, 2024 to the greater of \$ 2.3 million and 105 % of Borrowers’ monthly recurring revenue for the applicable month in the prior year. The Company was in compliance with all applicable covenants at June 30, 2024.

As of June 30, 2024, outstanding principal balance of the term loan totaled \$ 7,000,000 and accrued interest thereon totaled \$ 86,000 .

NOTE 6 — COMMITMENTS AND CONTINGENCIES

Litigation

We may become involved in various routine disputes and allegations incidental to our business operations. While it is not possible to determine the ultimate disposition of these matters, management believes that the resolution of any such matters, should they arise, is not likely to have a material adverse effect on our financial position or results of operations.

NOTE 7 — SUBSEQUENT EVENTS

We have evaluated subsequent events occurring after June 30, 2024, and based on our evaluation we did not identify any events that would have required recognition or disclosure in these consolidated financial statements.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A, should be read in conjunction with our consolidated financial statements and related notes in Part I, Item 1 of this report.

As used in this quarterly report, the terms "we," "us," "our" and similar references refer to AudioEye, Inc., unless otherwise indicated.

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In some cases, you may be able to identify forward-looking statements by terms such as "may," "should," "will," "forecasts," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "projects," "potential" or "continue," the negative of these terms and other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements relate to our future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements, and are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions and speak only as of the date on which they are made.

Because these forward-looking statements involve known and unknown risks and uncertainties, there are important factors that could cause actual results, events or developments to differ materially from those expressed or implied by these forward-looking statements, including our plans, objectives, expectations and intentions and other factors discussed in "Part I, Item 1A. Risk Factors" contained in our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q. Risk factors that could cause actual results to differ from those contained in the forward-looking statements include but are not limited to risks related to:

- the uncertain market acceptance of our existing and future products;
- our need for, and the availability of, additional capital in the future to fund our operations and the development of new products;
- the success, timing and financial consequences of new strategic relationships or licensing agreements we may enter into;
- rapid changes in Internet-based applications that may affect the utility and commercial viability of our products;
- the timing and magnitude of expenditures we may incur in connection with our ongoing product development activities;
- judicial applications of accessibility laws to the internet;
- the level of competition from our existing competitors and from new competitors in our marketplace; and
- the regulatory environment for our products and services.

Readers of this report are cautioned not to rely on these forward-looking statements, since there can be no assurance that these forward-looking statements will prove to be accurate. Forward-looking statements speak only as of the date they are made, and we expressly disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. This cautionary note is applicable to all forward-looking statements contained in this report.

AudioEye Solutions

At its core, AudioEye's offering provides an always-on testing, remediation, and monitoring solution that continually improves conformance with Web Content Accessibility Guidelines ("WCAG"). This in turn helps businesses and organizations comply with WCAG standards as well as applicable U.S. and foreign accessibility laws. Our technology is capable of immediately identifying and fixing most of the common accessibility errors and addresses a wide range of disabilities including dyslexia, color blindness, epilepsy and more. AudioEye also offers additional solutions to provide for enhanced compliance and accessibility, including periodic auditing, human assisted technological remediations and legal support services. Our solutions may be purchased through a subscription service on a month-to-month basis or with one or multi-year terms. We also offer PDF remediation services and mobile application and audit reporting services to help our customers with their digital accessibility needs.

Intellectual Property

Our intellectual property is primarily comprised of copyrights, trademarks, trade secrets, issued patents and pending patent applications. We have a patent portfolio comprised of twenty-three (23) issued patents in the United States and three (3) pending US patent applications. The commercial value of these patents is unknown.

We plan to continue to invest in research and development and expand our portfolio of proprietary intellectual property.

Our Annual Report filed on Form 10-K for the year ended December 31, 2023 as filed with the SEC on March 7, 2024 provides additional information about our business and operations.

Legal and Regulatory Framework Update

On April 24, 2024, the U.S. Department of Justice ("DOJ") published a rule to add specific requirements about web and mobile application accessibility under Title II of the ADA that would apply to state and local governments. On May 9, 2024, the U.S. Department of Health and Human Services ("HHS") published a rule to add, among other things, specific requirements about web and mobile application accessibility under Section 504 of the Rehabilitation Act that would apply to recipients of Federal financial assistance.

Executive Overview

AudioEye is an industry-leading digital accessibility platform delivering Americans with Disabilities Act ("ADA") and WCAG compliance at scale. Our solutions advance accessibility with patented technology that reduces barriers, expands access for individuals with disabilities, and enhances the user experience for a broader audience. In the three months ended June 30, 2024, we continued to focus on product innovation, expanding revenue and managing expenses.

We have two sales channels to deliver our product, the Partner and Marketplace channel and the Enterprise channel. AudioEye continues to focus on recurring revenue growth in both channels, while still offering our mobile application reporting services and PDF remediation services that provide non-recurring revenue. For the six months ended June 30, 2024, total revenue increased by 6% over the prior year comparable period. As of June 30, 2024, Annual Recurring Revenue ("ARR") was approximately \$33.3 million, which represented an increase of 12% year-over-year. Refer to Other Key Operating Metrics below for details on how we calculate ARR.

As of June 30, 2024, AudioEye had approximately 121,000 customers, a 16% increase from 104,000 customers at June 30, 2023. The increase in customer count is attributed to both our Partner and Marketplace and Enterprise channels.

In the six months ended June 30, 2024, revenue from our Partner and Marketplace channel grew 11% over the prior year comparable period. This channel represented about 60% of ARR at the end of June 2024. In six months ended June 30, 2024, total Enterprise channel revenue remained consistent with the prior year comparable period. The Enterprise channel represented about 40% of ARR at the end of June 2024.

We had one customer (including the customer's affiliates reflecting multiple contracts and a partnership with the Company) which accounted for approximately 16% of our total revenue in each of the six months ended June 30, 2024 and 2023.

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The Company continued to invest in research and development in the second quarter of 2024. Total research and development cost, as defined under Research and Development Expenses section in the Results of Operations below, was 21% of total revenue in the six months ended June 30, 2024. Total research and development cost decreased from the prior year comparable period primarily due to the completion of significant initiatives in research and development.

While revenue increased 6% in the six months ended June 30, 2024, selling and marketing expense and general and administrative expense decreased from the prior year comparable period. This decrease was mainly driven by efficiencies in selling and marketing and lower stock compensation expense.

We provide further commentary on our Results of Operation below.

Results of Operations

Our unaudited consolidated financial statements are stated in United States Dollars and are prepared in accordance with United States Generally Accepted Accounting Principles ("U.S. GAAP" or "GAAP"). The discussion of the results of our operations compares the three and six months ended June 30, 2024 with the three and six months ended June 30, 2023.

Our results of operations in these interim periods are not necessarily indicative of the results which may be expected for any subsequent period. Due to rounding, numbers presented throughout this document may not add up precisely to the totals provided and percentages may not precisely reflect the absolute figures.

(in thousands)	Three months ended June 30,		Change	
	2024	2023	\$	%
Revenue	\$ 8,470	\$ 7,836	\$ 634	8 %
Cost of revenue	(1,764)	(1,787)	23	(1)%
Gross profit	6,706	6,049	657	11 %
Operating expenses:				
Selling and marketing	2,971	3,253	(282)	(9)%
Research and development	1,221	2,033	(812)	(40)%
General and administrative	3,011	2,791	220	8 %
Total operating expenses	7,203	8,077	(874)	(11)%
Operating loss	(497)	(2,028)	1,531	(75)%
Interest income (expense), net	(238)	55	(293)	(533)%
Net loss	\$ (735)	\$ (1,973)	\$ 1,238	(63)%

(in thousands)	Six months ended June 30,		Change	
	2024	2023	\$	%
Revenue	\$ 16,553	\$ 15,608	\$ 945	6 %
Cost of revenue	(3,525)	(3,489)	(36)	1 %
Gross profit	13,028	12,119	909	8 %
Operating expenses:				
Selling and marketing	5,974	6,496	(522)	(8)%
Research and development	2,543	3,779	(1,236)	(33)%
General and administrative	5,639	5,926	(287)	(5)%
Total operating expenses	14,156	16,201	(2,045)	(13)%
Operating loss	(1,128)	(4,082)	2,954	(72)%
Interest income (expense), net	(436)	98	(534)	(545)%
Net loss	\$ (1,564)	\$ (3,984)	\$ 2,420	(61)%

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Revenue

The following tables present our revenues disaggregated by sales channel:

(in thousands)	Three months ended June 30,		Change	
	2024	2023	\$	%
Partner and Marketplace	\$ 4,970	\$ 4,417	\$ 553	13 %
Enterprise	3,500	3,419	81	2 %
Total revenues	\$ 8,470	\$ 7,836	\$ 634	8 %

(in thousands)	Six months ended June 30,		Change	
	2024	2023	\$	%
Partner and Marketplace	\$ 9,704	\$ 8,760	\$ 944	11 %
Enterprise	6,849	6,848	1	— %
Total revenues	\$ 16,553	\$ 15,608	\$ 945	6 %

Partner and Marketplace channel consists of our CMS partners, platform & agency partners, authorized resellers and the Marketplace. This channel serves small & medium sized businesses that are on a partner or reseller's web-hosting platform or that purchase our solutions from our Marketplace.

Enterprise channel consists of our larger customers and organizations, including those with non-platform custom websites, who generally engage directly with AudioEye sales personnel for custom pricing and solutions. This channel also includes federal, state and local government agencies.

For the three and six months ended June 30, 2024, total revenue increased by 8% and 6%, respectively, over the prior year comparable periods. The increase in Partner and Marketplace channel revenue was the result of continued expansion with existing partners and execution of new partnerships agreements in the period. The increase in Enterprise channel revenue for the three months ended June 30, 2024 was driven primarily by an increase in Enterprise customers.

Cost of Revenue and Gross Profit

(in thousands)	Three months ended June 30,		Change	
	2024	2023	\$	%
Revenue	\$ 8,470	\$ 7,836	\$ 634	8 %
Cost of Revenue	(1,764)	(1,787)	23	(1)%
Gross profit	\$ 6,706	\$ 6,049	\$ 657	11 %

(in thousands)	Six months ended June 30,		Change	
	2024	2023	\$	%
Revenue	\$ 16,553	\$ 15,608	\$ 945	6 %
Cost of Revenue	(3,525)	(3,489)	(36)	1 %
Gross profit	\$ 13,028	\$ 12,119	\$ 909	8 %

Cost of revenue consists primarily of compensation and related benefits costs for our customer experience team, as well as a portion of our technology operations team that supports the delivery of our services, fees paid to our managed hosting and other third-party service providers, amortization of capitalized software development costs and patent costs, and allocated overhead costs.

For the three and six months ended June 30, 2024, cost of revenue remained consistent with the prior year comparable periods.

For the three and six months ended June 30, 2024, gross profit increased by 11% and 8% over the prior year comparable periods. The increase in gross profit was a result of increased revenue.

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Selling and Marketing Expenses

(in thousands)	Three months ended June 30,		Change	
	2024	2023	\$	%
Selling and marketing	\$ 2,971	\$ 3,253	\$ (282)	(9)%

(in thousands)	Six months ended June 30,		Change	
	2024	2023	\$	%
Selling and marketing	\$ 5,974	\$ 6,496	\$ (522)	(8)%

Selling and marketing expenses consist primarily of compensation and benefits related to our sales and marketing staff, as well as third-party advertising and marketing expenses.

For the three and six months ended June 30, 2024, selling and marketing expenses decreased by 9% and 8%, respectively, over the prior year comparable periods. The decrease in selling and marketing expenses resulted primarily from a reduction in online media and third-party marketing expenses and a reduction to stock compensation expense.

Research and Development Expenses

(in thousands)	Three months ended June 30,		Change	
	2024	2023	\$	%
Research and development expense	\$ 1,221	\$ 2,033	\$ (812)	(40)%
Plus: Capitalized research and development cost	457	526	(69)	(13)%
Total research and development cost	\$ 1,678	\$ 2,559	\$ (881)	(34)%

(in thousands)	Six months ended June 30,		Change	
	2024	2023	\$	%
Research and development expense	\$ 2,543	\$ 3,779	\$ (1,236)	(33)%
Plus: Capitalized research and development cost	947	999	(52)	(5)%
Total research and development cost	\$ 3,490	\$ 4,778	\$ (1,288)	(27)%

Research and development ("R&D") expenses consist primarily of compensation and related benefits, independent contractor costs, and an allocated portion of general overhead costs related to our employees involved in research and development activities. Total research and development cost includes the amount of research and development expense reported within operating expenses as well as development cost that was capitalized during the fiscal period.

For the three and six months ended June 30, 2024, research and development expense decreased by 40% and 33%, respectively, over the prior year comparable periods. This decrease was driven by lower personnel cost associated with a realignment in our product and development teams following the completion of significant initiatives in R&D. For the three and six months ended June 30, 2024, capitalized research and development cost decreased by 13% and 5%, respectively, over the prior year comparable periods. The decrease to capitalized research cost was the result of engineering personnel spending less time on product development than in the prior year comparable periods. For the three and six months ended June 30, 2024, total research and development cost, which includes both R&D expenses and capitalized R&D costs, decreased by 34% and 27%, respectively, over the prior year comparable periods.

General and Administrative Expenses

(in thousands)	Three months ended June 30,		Change	
	2024	2023	\$	%
General and administrative	\$ 3,011	\$ 2,791	\$ 220	8%

(in thousands)	Six months ended June 30,		Change	
	2024	2023	\$	%
General and administrative	\$ 5,639	\$ 5,926	\$ (287)	(5)%

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General and administrative expenses consist primarily of compensation and benefits related to our executives, directors and corporate support functions, general corporate expenses including legal fees, and occupancy costs.

For the three months ended June 30, 2024, general and administrative expenses increased by 8% over the prior year comparable period. The increase in general and administrative expenses was due primarily to higher stock compensation expense and litigation expenses, partially offset by lower personnel costs and the absence of valuation adjustments to contingent consideration in the second quarter of 2024.

For the six months ended June 30, 2024, general and administrative expenses decreased by 5% over the prior year comparable periods. The decrease in general and administrative expenses was due primarily to lower personnel costs and a reduction in valuation adjustments to contingent consideration, partially offset by an increase in litigation expenses.

Interest Income (Expense)

(in thousands)	Three months ended June 30,		Change	
	2024	2023	\$	%
Interest income (expense), net	\$ (238)	\$ 55	\$ (293)	(533)%
<hr/>				
(in thousands)	Six months ended June 30,		Change	
	2024	2023	\$	%
Interest income (expense), net	\$ (436)	\$ 98	\$ (534)	(545)%

For the three and six months ended June 30, 2024, interest expense, net consisted primarily of interest on our term loan borrowed in the fourth quarter of 2023, which was partially offset by interest income from investment in money market funds. For the three and six months ended June 30, 2023, interest income, net consisted primarily of income from investment in money market funds.

Other Key Operating Metrics

We consider annual recurring revenue ("ARR") as a key operating metric and a key indicator of our overall business. We also use ARR as one of the primary methods for planning and forecasting overall expectations and for evaluating, on at least a quarterly and annual basis, actual results against such expectations.

We define ARR as the sum of (i) for our Enterprise channel, the total of the annualized recurring fee at the date of determination under each active contract, plus (ii) for our Partner and Marketplace channel, the annual or monthly recurring fee for all active customers at the date of determination, in each case, assuming no changes to the subscription, multiplied by 12 if applicable. Recurring fees are defined as revenues expected to be generated from services typically offered as a subscription service such as our automation and platform, periodic auditing, human-assisted technological remediations, legal support and professional service offerings and other services that reoccur on a multi-year contract. This determination includes both annual and monthly contracts for recurring products. Some of our contracts are terminable prior to the expected term, which may impact future ARR. ARR excludes non-recurring fees, which are defined as revenue expected to be generated from services typically not offered as a subscription service such as our PDF remediation services business, one-time mobile application reports, and other miscellaneous services that are offered as non-subscription services or are expected to be one-time in nature. As of June 30, 2024, ARR was \$33.3 million, which represents an increase of 12% year-over-year, driven by growth in both our Partner and Marketplace channel and Enterprise channel.

Liquidity and Capital Resources

Working Capital

(in thousands)	June 30, 2024	December 31, 2023
Current assets	\$ 11,556	\$ 14,776
Current liabilities	(9,949)	(11,529)
Working capital	\$ 1,607	\$ 3,247

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As of June 30, 2024, we had \$5,086,000 in cash and working capital of \$1,607,000. The \$1.6 million decrease in working capital in the six months ended June 30, 2024 was primarily due to the use of \$2.02 million in cash to repurchase 299,371 shares of our common stock.

In November 2023, the Board of Directors adopted a share repurchase program authorizing the repurchase of up to \$5 million of our common stock through December 31, 2025. The stock repurchase program may be suspended or discontinued at any time and does not commit the Company to repurchase any dollar amount or particular number of shares of stock. Shares repurchased under the program are subsequently retired and restored to the status of authorized but unissued shares of common stock. As of June 30, 2024, we had \$1.86 million remaining for the repurchase of shares.

In the second quarter of 2024, the Company initiated an At The Market offering ("ATM offering"), under which we issued 39,646 shares of our common stock and raised \$663,000, net of transaction expenses. As of June 30, 2024, offering costs included in accounts payable totaled \$100,000.

In the second quarter of 2024, we made the \$2.4 million cash payment to settle the contingent consideration associated with the BOIA acquisition in full. As of June 30, 2024, we had \$7.0 million in noncurrent term loan which matures on November 30, 2026.

As of June 30, 2024, we had no off-balance sheet arrangements, and we believe that the Company has sufficient liquidity to continue as a going concern through the next twelve months.

While the Company has been successful in raising capital, there is no assurance that it will be successful at raising additional capital in the future. Additionally, if the Company's plans are not achieved and/or if significant unanticipated events occur, the Company may have to further modify its business plan, which may require us to raise additional capital or reduce expenses.

Cash Flows

(in thousands)	Six months ended June 30,	
	2024	2023
Net cash provided by (used in) operating activities	\$ 613	\$ (191)
Net cash used in investing activities	(1,035)	(1,056)
Net cash used in financing activities	(3,728)	(1,340)
Net decrease in cash	<u>\$ (4,150)</u>	<u>\$ (2,587)</u>

For the six months ended June 30, 2024, in relation to the prior year comparable period, cash provided by operating activities increased primarily due to cost efficiencies associated with lower personnel cost following a realignment in our product and development teams, as well as lower online media and third-party marketing expenses.

For the six months ended June 30, 2024, in relation to the prior year comparable period, cash used in investing activities decreased primarily due to lower software development costs.

For the six months ended June 30, 2024, in relation to the prior year comparable period, cash used in financing activities increased primarily due to common stock repurchases totaling \$2.02 million, as well as higher payouts towards the contingent consideration in connection with the acquisition of BOIA. In the six months ended June 30, 2024, payments towards our contingent consideration totaled \$2,387,000, of which \$1,677,000 and \$710,000 are classified as cash used in financing and operating activities, respectively. In the six months ended June 30, 2023, payments towards our contingent consideration totaled \$974,000, of which \$908,000 and \$66,000 are classified as cash used in financing and operating activities, respectively.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with the accounting principles generally accepted in the United States. The preparation of consolidated financial statements requires management to make estimates and assumptions that affect the amounts reported and disclosed in our consolidated financial statements and the accompanying notes. Actual results could differ materially from these estimates under different assumptions or conditions.

Our critical accounting estimates, as described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, relate to stock-based compensation and goodwill, intangible assets and contingent consideration recognized in connection with a business combination. There have been no material changes to our critical accounting policies and estimates as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that there is reasonable assurance that the information required to be disclosed in the Company's reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Principal Executive Officer and Principal Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based on the definition of "disclosure controls and procedures" in Exchange Act Rules 13a-15(e) and 15d-15(e). In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, projections of any evaluation of effectiveness of our disclosure controls and procedures to future periods are subject to the risk that controls or procedures may become inadequate because of changes in conditions, or that the degree of compliance with the controls or procedures may deteriorate.

As of the end of the period covered by this report, an evaluation was performed under the supervision and with the participation of the Company's senior management, including the Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), of the effectiveness of the design and operation of the Company's disclosure controls and procedures to provide reasonable assurance of achieving the desired objectives of the disclosure controls and procedures. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of June 30, 2024.

Changes in Internal Controls over Financial Reporting

During the quarter ended June 30, 2024, there were no material changes in our internal control over financial reporting during the most recently completed fiscal quarter that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

Item 5. Other Information

Rule 10b5-1 Trading Plans

During the three months ended June 30, 2024, no director or executive officer adopted, modified or terminated a "10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement", as each term is defined in Item 408(a) of Regulation S-K.

PART II — OTHER INFORMATION**Item 1. Legal Proceedings**

We may become involved in various routine disputes and allegations incidental to our business operations. While it is not possible to determine the ultimate disposition of these matters, our management believes that the resolution of any such matters, should they arise, is not likely to have a material adverse effect on our financial position or results of operations.

Item 1A. Risk Factors

You should carefully consider the factors discussed in Part I, Item 1A "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2023 ("2023 Form 10-K"), which could materially affect our business, financial condition and results of operations. There have been no material changes to the risk factors set forth in the 2023 Form 10-K. The risks described in our 2023 Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or results of operations.

Item 2. Issuer Purchases of Equity Securities

The following table sets forth information with respect to our repurchases of common stock during the three months ended June 30, 2024:

	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Number of Shares (or Approximate Dollar Value) that May Yet Be Purchased under the Plans or Programs (2)</u>
April 1 - April 30:				
Employee transactions (1)	2,817	\$ 11.44	—	\$ —
Share repurchase program (2)	33,401	9.87	33,401	1,862,000
May 1 - May 31:				
Employee transactions (1)	8,470	22.83	—	—
June 1 - June 30:				
Employee transactions (1)	17,366	20.29	—	—
Total:				
Employee transactions (1)	28,653	\$ 20.17	—	\$ —
Share repurchase program (2)	33,401	\$ 9.87	33,401	\$ 1,862,000

(1) Includes shares surrendered by employees to satisfy tax withholding obligations in connection with the settlement of restricted stock units, exercise of stock options, or issuance of unrestricted shares of common stock.

(2) In November 2023, the Board of Directors adopted a share repurchase program authorizing the repurchase of up to \$5 million of our common stock through December 31, 2025. Shares repurchased under the program are subsequently retired. The average price paid per share includes any broker commissions.

Item 6. Exhibits

Incorporation by Reference					
Exhibit No.	Description	Form	Date of Filing	Exhibit No.	Filed Herewith
3.1	Restated Certificate of Incorporation of AudioEye, Inc., dated as of May 24, 2024	8-K	May 24, 2024	3.3	
3.2	Certificate of Amendment to Restated Certificate of Incorporation of AudioEye, Inc., dated as of May 24, 2024	8-K	May 24, 2024	3.2	
3.3	By-Laws of AudioEye, Inc. (as amended as of May 22, 2024)				X
10.1	AudioEye, Inc. 2020 Equity Incentive Plan, as amended through May 24, 2024	8-K	May 24, 2024	10.1	
10.2	At The Market Offering Agreement, dated as of June 5, 2024, by and between the Company and Craig-Hallum Capital Group LLC	8-K	June 6, 2024	1.1	
31.1	Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				X
31.2	Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				X
32.1	Certification of the Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				X
101.INS	XBRL Instance Document				
101.SCH	XBRL Taxonomy Extension Schema Document				X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				X
104	Cover Page Interactive Data File - The cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				

SIGNATURES

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

AUDIOEYE, INC.

Date: July 29, 2024 _____ By: /s/ David Moradi _____

David Moradi
Principal Executive Officer

Date: July 29, 2024 _____ By: /s/ Kelly Georgevich _____

Kelly Georgevich
Principal Financial Officer

BY-LAWS
OF
AUDIOEYE, INC.
(a Delaware corporation)
(as amended as of May 22, 2024)

ARTICLE I

Offices

SECTION 1. Registered Office. The registered office of the Corporation within the State of Delaware shall be in the City of Dover, County of Kent.

SECTION 2. Other Offices. The Corporation may also have an office or offices other than said registered office at such place or places, either within or without the State of Delaware, as the Board of Directors shall from time to time determine or the business of the Corporation may require.

ARTICLE II

Stockholders

SECTION 1. Place of Meetings. All meetings of the stockholders for the election of directors or for any other purpose shall be held at any such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of meeting or in a duly executed waiver thereof. The Board of Directors may, in its sole discretion, alternatively determine that a meeting of stockholders (i)shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section211(a)(2)of the General Corporation Law of the State of Delaware or (ii)shall be held at such place so designated by the Board of Directors and also held by means of such remote communication.

SECTION 2. Annual Meeting. The annual meeting of stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of meeting. At such annual meeting, the stockholders shall elect, by a plurality vote, a Board of Directors and transact such other business as may properly be brought before the meeting.

SECTION 3. Special Meetings. Special meetings of stockholders, unless otherwise prescribed by statute, may be called at any time by the Board of Directors or the Chairman of the Board, if one shall have been elected, or the Chief Executive Officer, if one shall have been elected, or the President.

SECTION 4. Notice of Meetings. Except as otherwise expressly required by statute, written notice of each annual and special meeting of stockholders stating the date, place and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each stockholder of record entitled to vote thereat not less than ten nor more than sixty days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. Notice shall be given personally or by mail and, if by mail, shall be sent in a postage prepaid envelope, addressed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Notice by mail shall be deemed given at the time when the same shall be deposited in the United States mail, postage prepaid. Without limiting the manner by which notice may otherwise be given, notice may be given by a form of electronic transmission that satisfies the requirements of the General Corporation Law of the State of Delaware. Notice of any meeting shall not be required to be given to any person who attends such meeting, except when such person attends the meeting in person or by proxy for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, or who, either before or after the meeting, shall submit a signed written waiver of notice, in person or by proxy. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any written waiver of notice.

SECTION 5. List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city, town or village where the meeting is to be held, which place shall be specified in the notice of meeting, or, if not specified, at the place where the meeting is to be held.

SECTION 6. Quorum; Adjournments. The holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. The chairman of any meeting of stockholders shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, whether or not a quorum is present or represented by proxy. At such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the meeting as originally called. If the adjournment is for more than thirty days, or, if after adjournment a new record date is set, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 7. Organization. At each meeting of stockholders, the Chairman of the Board, if one shall have been elected, or, in his or her absence or if one shall not have been elected, the Chief Executive Officer, if one shall have been elected, or, in his or her absence or if one shall not have been elected, the President shall act as chairman of the meeting. The Secretary or, in his or her absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting shall act as secretary of the meeting and keep the minutes thereof.

SECTION 8. Order of Business; Rules of Conduct. The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting. The Board of Directors shall be entitled to make such rules and regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate, or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations, and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate, or convenient for the proper conduct of the meeting, including, without limitation, establishing rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies, and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants, and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot.

SECTION 9. Voting. Except as otherwise provided by statute or the Certificate of Incorporation, each stockholder of the Corporation shall be entitled at each meeting of stockholders to one vote for each share of capital stock of the Corporation standing in such stockholder's name on the record of stockholders of the Corporation:

(a) on the date fixed pursuant to the provisions of Section 7 of Article V of these By-Laws as the record date for the determination of the stockholders who shall be entitled to notice of and to vote at such meeting; or

(b) if no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given, or, if notice is waived, at the close of business on the date next preceding the day on which the meeting is held.

Each stockholder entitled to vote at any meeting of stockholders may authorize another person or persons to act for such stockholder by a proxy signed by such stockholder or such stockholder's attorney-in-fact, but no proxy shall be voted after three years from its date, unless the proxy provides for a longer period. Any such proxy shall be delivered to the secretary of the meeting at or prior to the time designated in the order of business for so delivering such proxies. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors. When a quorum is present at any meeting, the vote of the holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereon, present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate

of Incorporation or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless required by statute, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there by such proxy, and shall state the number of shares voted.

SECTION 10. Notice of Stockholder Business and Nominations.

(a) **Annual Meetings of Stockholders.**

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (A)pursuant to the Corporation's notice of meeting, (B)by or at the direction of the Board of Directors, or (C)by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section10, who is entitled to vote at the meeting and who complies with the procedures set forth in this Section 10.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C)of paragraph (a)(1)of this Section10, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the public announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice must set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i)all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including such person's written consent to being named in any proxy materials as a nominee and to serving as a director if elected, and (ii)information relating to any agreement, arrangement or understanding, including a voting commitment, between such person and the stockholder or any Stockholder Associated Person (as defined in Section10(c)(2)below) in connection with such nomination; provided, that the Corporation may also require any proposed nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director;

(B) as to any business, other than the nomination of a director or directors, that the stockholder proposes to bring before the meeting, (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and any Stockholder Associated Person in such business, (ii)a description of all agreements, arrangements and understandings between such stockholder and any Stockholder Associated Person and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, and (iii)if the proposal or business is to be included in the Corporation's proxy statement, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment); and

(C) as to the stockholder giving the notice and any Stockholder Associated Person, (i)the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the name and address, if different, of such Stockholder Associated Person, (ii)the class, series and number of all shares of stock of the Corporation that are held of record or are beneficially owned by such stockholder or by such Stockholder Associated Person, (iii)the nominee holder for, and the number of, shares owned beneficially but not of record by such stockholder or by such Stockholder Associated Person, (iv)any derivative position, including without limitation any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, directly or indirectly held or beneficially held by such stockholder or such Stockholder Associated Person, and whether and the extent to which any hedging, equity swap or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any short position or interest or any borrowing or lending of shares of stock) has been made by, such stockholder or such Stockholder Associated Person with respect to any shares of stock of the Corporation, or whether such stockholder or Stockholder Associated Person has an economic interest in the Corporation not reported as record or beneficial ownership, (v)any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or Stockholder Associated Person has a right to vote any shares of stock of the Corporation, (vi)any rights to dividends on the shares of the Corporation owned beneficially by such stockholder or Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation, (vii)a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or through a qualified representative at the meeting to propose such nomination or business, and (viii)as to any business, other than the nomination of a director or directors, a representation whether such stockholder or Stockholder Associated Person intends or is part of a group which intends (x)to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (y)otherwise to solicit proxies from stockholders in support of such proposal, and the information called for by this paragraph (2)(C)shall be supplemented by such stockholder and Stockholder Associated Person not later than 10 days after the record date for the meeting to disclose such information as of the record date.

(D) A stockholder who intends to solicit proxies in support of director nominees other than the Corporation's director nominees and who has delivered a notice of nomination pursuant to this Section10 shall promptly certify to the Corporation, and notify the Corporation in writing, that it has complied with or will comply with the requirements of Rule14a-19 under the Exchange Act, and upon request of the Corporation, shall, not later than five business days prior to the date of the applicable meeting of stockholders, deliver to the Corporation reasonable evidence of such compliance.

(3) Notwithstanding anything in the second sentence of paragraph (a)(2)of this Section10 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section10 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1)by or at the direction of the Board of Directors or (2)provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 10

and is a stockholder of record at the time of the special meeting, who is entitled to vote at the meeting and who complies with the procedures set forth in this Section10. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(2) of this Section10 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the public announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section10 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section10. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section10 and, if any proposed nomination or business is not in compliance with this Section 10, to declare that such defective nomination or proposal shall be disregarded. Notwithstanding the foregoing provisions of this Section10, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposal, such nomination or proposed business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Unless otherwise required by law, if any stockholder (i)provides notice pursuant to Rule14a-19 under the Exchange Act and (ii)subsequently (A)notifies the Corporation that such stockholder no longer intends to solicit proxies in support of director nominees other than the Corporation's director nominees in accordance with Rule14a-19, (B)fails to comply with the requirements of Rule14a-19, or (C)fails to provide reasonable evidence sufficient to satisfy the Corporation that such requirements have been met, then such stockholder's nominations shall be deemed null and void and the Corporation shall disregard any proxies or votes solicited for any nominee proposed by such stockholder.

(2) For purposes of this By-Law, (A)"public announcement" means disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section13, 14 or 15(d) of the Exchange Act; and (B) "Stockholder Associated Person" of any stockholder means (i)any person or entity controlling, controlled by or under common control with, and acting in concert with, such stockholder with respect to a particular nomination, proper business brought before an annual meeting of stockholders, or other activity involving the securities of the Corporation, (ii)any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder, and (iii)any person or entity controlling, controlled by or under common control with a Stockholder Associated Person as defined in the foregoing clauses (B)(i) or (B)(ii).

(3) Notwithstanding the foregoing provisions of this Section10, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder (including Rule14a-19) with respect to the matters set forth in this Section10. Nothing in this Section10 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule14a-8 under the Exchange Act or (B) of the holders of any series of Preferred Stock to elect directors under specified circumstances.

SECTION 11. Inspectors. The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting shall, or if inspectors shall not have been appointed, the chairman of the meeting may, appoint one or more inspectors. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

SECTION 12. Action by Consent. Whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, by any provision of statute or of the Certificate of Incorporation or of these By-Laws, the meeting and vote of stockholders may be dispensed with, and the action taken without such meeting and vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of stock of the Corporation entitled to vote thereon were present and voted.

ARTICLE III

Board of Directors

SECTION 1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

SECTION 2. Number, Qualifications, Election and Term of Office. The number of directors may be fixed, from time to time, by the affirmative vote of a majority of the entire Board of Directors. Any decrease in the number of directors shall be effective at the time of the next succeeding annual meeting of stockholders unless there shall be vacancies in the Board of Directors, in which case such decrease may become effective at any time prior to the next succeeding annual meeting to the extent of the number of such vacancies. Directors need not be stockholders. Except as otherwise provided by statute or these By-Laws, the directors shall be elected at the annual meeting of stockholders. Each director shall hold office until his or her successor shall have been elected and qualified, or until his or her death, or until he or she shall have resigned, or have been removed, as hereinafter provided in these By-Laws.

SECTION 3. Place of Meetings. Meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as shall be specified in the notice of any such meeting.

SECTION 4. Annual Meeting. The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such other time or place (within or without the State of Delaware) as shall be specified in a notice thereof given as hereinafter provided in Section 7 of this Article III.

SECTION 5. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as the Board of Directors may fix. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by statute or these By-Laws.

SECTION 6. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, if one shall have been elected, or by two or more directors of the Corporation, or by the Chief Executive Officer, if one shall have been elected, or by the President.

SECTION 7. Notice of Meetings. Notice of each special meeting of the Board of Directors (and of each regular meeting for which notice shall be required) shall be given by the Secretary as hereinafter provided in this Section 7, in which notice shall be stated the time and place of the meeting. Except as otherwise required by these By-Laws, such notice need not state the purposes of such meeting. Notice of each such meeting shall be mailed, postage prepaid, to each director, addressed to him or her at his or her residence or usual place of business, by first class mail, at least four days before the day on which such meeting is to be held, or shall be sent addressed to him or her at such place by email or other similar electronic means, or be delivered to him or her personally or be given to him or her by telephone or other similar means, at least twenty-four hours before the time at which such meeting is to be held. Notice of any such meeting need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice or who shall attend such meeting, except when he or she shall attend for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 8. Quorum and Manner of Acting. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and, except as otherwise expressly required by statute or the Certificate of Incorporation or these By-Laws, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum at any meeting of the Board of Directors, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of the time and place of any such adjourned meeting shall be given to all of the directors unless such time and place were announced at the meeting at which the adjournment was taken, in which case such notice shall only be given to the directors who were not present thereat. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The directors shall act only as a Board and the individual directors shall have no power as such.

SECTION 9. Organization. At each meeting of the Board of Directors, the Chairman of the Board, if one shall have been elected, or, in the absence of the Chairman of the Board or if one shall not have been elected, the Chief Executive Officer, or, in the absence of the Chief Executive Officer or if one shall not have been elected, the President (or, in his or her absence, another director chosen by a majority of the directors present) shall act as chairman of the meeting and preside thereat. The Secretary or, in his or her absence, any person appointed by the chairman shall act as secretary of the meeting and keep the minutes thereof.

SECTION 10. Resignations. Any director of the Corporation may resign at any time by giving written notice of his or her resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 11. Vacancies. Any vacancy in the Board of Directors, whether arising from death, resignation, removal (with or without cause), an increase in the number of directors or any other cause, may be filled by the vote of a majority of the directors then in office, though less than a quorum, or by the sole remaining director. Each director so elected shall hold office until his or her successor shall have been elected and qualified.

SECTION 12. Removal of Directors. Any director may be removed, either with or without cause, at any time, by the holders of a majority of the voting power of the issued and outstanding capital stock of the Corporation entitled to vote at an election of directors.

SECTION 13. Compensation. The Board of Directors shall have authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

SECTION 14. Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, including an executive committee, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Except to the extent restricted by statute or the Certificate of Incorporation, each such committee, to the extent

provided in the resolution creating it, shall have and may exercise all the powers and authority of the Board of Directors and may authorize the seal of the Corporation to be affixed to all papers which require it. Each such committee shall serve at the pleasure of the Board of Directors and have such name as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors.

SECTION 15. Action by Consent. Unless restricted by the Certificate of Incorporation, any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board of Directors or such committee, as the case may be.

SECTION 16. Telephonic Meeting. Unless restricted by the Certificate of Incorporation, any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV

Officers

SECTION 1. Number and Qualifications. The officers of the Corporation shall be elected by the Board of Directors and shall include the President, the Secretary, and the Chief Financial Officer. If the Board of Directors wishes, it may also elect or appoint any of the following, each of whom shall be deemed an officer, a Chief Executive Officer and one or more Vice-Presidents, a General Counsel or Chief Legal Officer, a controller and may elect other officers (including one or more assistant officers) as may be desirable for the business of the Corporation. In addition, the Board of Directors at any time and from time to time may authorize the Chief Executive Officer to appoint one or more officers to the extent provided in such authorization. Any two or more offices may be held by the same person, and no officer need be a director. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified, or until his or her death, or until he or she shall have resigned or have been removed, as hereinafter provided in these By-Laws.

SECTION 2. Resignations. Any officer of the Corporation may resign at any time by giving written notice of his or her resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon receipt. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

SECTION 3. Removal. Any officer of the Corporation may be removed, either with or without cause, at any time, by the Board of Directors at any meeting thereof. In addition, the Chief Executive Officer authorized by the Board of Directors to appoint a person to hold an office of the Corporation may also remove such person from such office with or without cause at any time, unless otherwise provided in the resolution of the Board of Directors providing such authorization.

SECTION 4. Chairman of the Board. The Chairman of the Board, if one shall have been elected, shall be a member of the Board, an officer of the Corporation (if so determined by the Board of Directors) and, if present, shall preside at each meeting of the Board of Directors or the stockholders. He or she shall advise and counsel with the Chief Executive Officer and the President, and in their absence with other executives of the Corporation, and shall perform such other duties as may from time to time be assigned to him or her by the Board of Directors.

SECTION 5. The Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer to serve as the chief executive officer of the Corporation. He or she shall, in the absence of the Chairman of the Board or if a Chairman of the Board shall not have been elected, preside at each meeting of the Board of Directors or the stockholders. The Chief Executive Officer, subject to the direction of the Board of Directors, shall have general charge of the business, affairs, and property of the Corporation and general supervision over its other officers and agents. In general, he or she shall perform all duties incident to the office of Chief Executive Officer and shall see that all orders and resolutions

of the Board of Directors are carried into effect. If there is no President, or in the case of his or her absence or inability to act, the Chief Executive Officer shall perform the duties of the President in addition to performing his or her duties as Chief Executive Officer. The Chief Executive Officer may sign, execute and deliver in the name of the Corporation all deeds, mortgages, bonds, contracts or other instruments, except in cases where the signing, execution or delivery thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation or where any of them shall be required by law otherwise to be signed, executed or delivered. The Chief Executive Officer may cause the seal of the Corporation to be affixed to any instrument which shall require it and shall perform such other duties as from time to time may be assigned to him or her by the Board of Directors.

SECTION 6. The President. The President shall be a general executive officer of the Corporation. He or she shall, in the absence of the Chairman of the Board or Chief Executive Officer or if a Chairman of the Board or Chief Executive Officer shall not have been elected, preside at each meeting of the Board of Directors or the stockholders. The President, subject to the direction of the Board of Directors and the Chief Executive Officer, shall have general charge of the business, affairs, and property of the Corporation and general supervision over its other officers and agents. If there is no Chief Executive Officer, or in case of his or her absence or inability to act, the President shall perform the duties of the chief executive officer of the Corporation, and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chief Executive Officer. The President shall see that all orders and resolutions of the Board of Directors are carried into effect and may sign, execute and deliver in the name of the Corporation all deeds, mortgages, bonds, contracts and other instruments authorized by the Board of Directors or the Chief Executive Officer, except in cases where the signing, execution or delivery thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer, officers, agent, or agents of the Corporation or where any of them shall be required by the law otherwise to be signed, executed or delivered. The President may cause the seal of the Corporation to be affixed to any instrument which shall require it and shall perform such other duties as from time to time may be assigned to him or her by the Board of Directors or the Chief Executive Officer.

SECTION 7. Vice President. Each Vice President shall perform all such duties as from time to time may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President. At the request of the President or in his or her absence or in the event of his or her inability or refusal to act, the Vice President, or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors (or if there be no such determination, then the Vice Presidents in the order of their election), shall perform the duties of the President, and, when so acting, shall have the powers of and be subject to the restrictions placed upon the President in respect of the performance of such duties.

SECTION 8. Treasurer. The Treasurer shall:

- (a) have charge and custody of, and be responsible for, all the funds and securities of the Corporation;
- (b) keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation;
- (c) deposit all moneys and other valuables to the credit of the Corporation in such depositaries as may be designated by the Board of Directors or pursuant to its direction;
- (d) receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever;
- (e) disburse the funds of the Corporation and supervise the investments of its funds, taking proper vouchers therefor;
- (f) render to the Board of Directors, whenever the Board of Directors may require, an account of the financial condition of the Corporation; and
- (g) in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

SECTION 9. Secretary. The Secretary shall:

- (a) keep or cause to be kept in one or more books provided for the purpose, the minutes of all meetings of the Board of Directors, the committees of the Board of Directors and the stockholders;
- (b) see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law;
- (c) be custodian of the records and the seal of the Corporation and affix and attest the seal to all certificates for shares of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal;
- (d) see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and
- (e) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors.

SECTION 10. The Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as from time to time may be assigned by the Board of Directors.

SECTION 11. The Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties as from time to time may be assigned by the Board of Directors.

SECTION 12. Officers' Bonds or Other Security. If required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of his or her duties, in such amount and with such surety as the Board of Directors may require.

SECTION 13. Compensation. The compensation of the officers of the Corporation for their services as such officers shall be fixed from time to time by the Board of Directors. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Corporation.

ARTICLE V

Stock Certificates and Their Transfer

SECTION 1. Stock Certificates. The shares of the Corporation may be either in certificated or in uncertificated form. Every holder of certificated shares in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman of the Board or the Chief Executive Officer or the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such holder in the Corporation. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restriction of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of the State of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

SECTION 2. Facsimile Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

SECTION 3. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or such holder's legal representative, to give the Corporation a bond in such sum as it may direct sufficient to indemnify it against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SECTION 4. Transfers of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its records; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

SECTION 5. Transfer Agents and Registrars. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

SECTION 6. Regulations. The Board of Directors may make such additional rules and regulations, not inconsistent with these By-Laws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

SECTION 7. Fixing the Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any chance, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 8. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments a person registered on its records as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VI

Indemnification of Directors and Officers

SECTION 1. General. The Corporation shall 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 he or she 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 him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she 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 reasonable cause to believe that his or her conduct was unlawful.

SECTION 2. Derivative Actions. The Corporation shall 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 or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she 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 him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, provided 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 of the State of Delaware 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 which the Court of Chancery or such other court shall deem proper.

SECTION 3. Indemnification in Certain Cases. To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this ArticleVI, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

SECTION 4. Procedure. Any indemnification under Sections 1 and 2 of this ArticleVI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such Sections 1 and 2. Such determination shall be made (a)by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b)if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the stockholders.

SECTION 5. Advances for Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall be ultimately determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article VI.

SECTION 6. Rights Not Exclusive. The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this ArticleVI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

SECTION 7. Insurance. The Corporation shall have power 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 him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article VI.

SECTION 8. Definition of Corporation. For the purposes of this ArticleVI, references to "the Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was

serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this ArticleVI with respect to the resulting or surviving corporation as he or she would if he or she had served the resulting or surviving corporation in the same capacity.

SECTION 9. Survival of Rights. The indemnification and advancement of expenses provided by, or granted pursuant to this ArticleVI shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VII

General Provisions

SECTION 1. Dividends. Subject to the provisions of statute and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting. Dividends may be paid in cash, in property or in shares of stock of the Corporation, unless otherwise provided by statute or the Certificate of Incorporation.

SECTION 2. Reserves. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors may, from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors may think conducive to the interests of the Corporation. The Board of Directors may modify or abolish any such reserves in the manner in which it was created.

SECTION 3. Seal. The seal of the Corporation shall be in such form as shall be approved by the Board of Directors.

SECTION 4. Fiscal Year. The fiscal year of the Corporation shall be fixed, and once fixed, may thereafter be changed, by resolution of the Board of Directors.

SECTION 5. Checks, Notes, Drafts, Etc. All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

SECTION 6. Execution of Contracts, Deeds, Etc. The Board of Directors may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 7. Voting of Stock in Other Corporations. Unless otherwise provided by resolution of the Board of Directors, the Chairman of the Board or the Chief Executive Officer or the President, from time to time, may (or may appoint one or more attorneys or agents to) cast the votes which the Corporation may be entitled to cast as a shareholder or otherwise in any other corporation, any of whose shares or securities may be held by the Corporation, at meetings of the holders of the shares or other securities of such other corporation. In the event one or more attorneys or agents are appointed, the Chairman of the Board or the Chief Executive Officer or the President may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent. The Chairman of the Board or the Chief Executive Officer or the President may, or may instruct the attorneys or agents appointed to, execute or cause to be executed in the name and on behalf of the Corporation and under its seal or otherwise, such written proxies, consents, waivers or other instruments as may be necessary or proper in the circumstances.

ARTICLE VIII

Amendments

These By-Laws may be amended or repealed or new by-laws adopted (a)by action of the stockholders entitled to vote thereon at any annual or special meeting of stockholders or (b)if the Certificate of Incorporation so provides, by action of the Board of Directors at a regular or special meeting thereof. Any by-law made by the Board of Directors may be amended or repealed by action of the stockholders at any annual or special meeting of stockholders.

CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Moradi, Principal Executive Officer of AudioEye, Inc. (the "Registrant"), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended June 30, 2024 of AudioEye, Inc. (the "Quarterly Report");

2. Based on my knowledge, this Quarterly Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Quarterly Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Quarterly Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Quarterly Report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiary, is made known to us by others within those entities, particularly during the period in which this Quarterly Report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this Quarterly Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Quarterly Report based on such evaluation; and

(d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: July 29, 2024

By: /s/ David Moradi

Name: David Moradi

Title: Principal Executive Officer

CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kelly Georgevich, Principal Financial Officer of AudioEye, Inc. (the "Registrant"), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended June 30, 2024 of AudioEye, Inc. (the "Quarterly Report");

2. Based on my knowledge, this Quarterly Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Quarterly Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Quarterly Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Quarterly Report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiary, is made known to us by others within those entities, particularly during the period in which this Quarterly Report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this Quarterly Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Quarterly Report based on such evaluation; and

(d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: July 29, 2024

By: */s/ Kelly Georgevich*

Name: Kelly Georgevich

Title: Principal Financial Officer

CERTIFICATION UNDER SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing by AudioEye, Inc. (the “Registrant”) of its Quarterly Report on Form 10-Q for the period ended June 30, 2024 (the “Quarterly Report”) with the Securities and Exchange Commission, we, David Moradi and Kelly Georgevich, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (i) The Quarterly Report fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

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

Date: July 29, 2024

By:/s/ *David Moradi*

Name: David Moradi

Title: Principal Executive Officer

Date: July 29, 2024

By:/s/ *Kelly Georgevich*

Name: Kelly Georgevich

Title: Principal Financial Officer
