

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

FORM 10-K

(Mark One)

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

For the fiscal year ended **December 31, 2023**

OR

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

For the transition period from _____ to _____

Commission File Number: 001-37893

FLUENT, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0688094
(I.R.S. Employer
Identification No.)

300 Vesey Street, 9th Floor
New York , New York 10282
(Address of principal executive offices) (Zip Code)
Registrant's telephone number, including area code: (646) 669-7272

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0005 par value per share	FLNT	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

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

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

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

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

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

On June 30, 2023, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value (based on the closing per share sales price of its common stock on that date) of the voting stock held by non-affiliates of the registrant was approximately \$ 52.8 million.

The number of shares outstanding of the registrant's common stock, as of March 28, 2024, was 81,571,864 .

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement relating to its 2024 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission ("SEC") within 120 days after the end of the fiscal year ended December 31, 2023 are incorporated herein by reference in Part III of this Annual Report on Form 10-K.

FLUENT, INC.
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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K for the fiscal year ended December 31, 2023 contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements contain information about our expectations, beliefs or intentions regarding our product development and commercialization efforts, business, financial condition, results of operations, strategies or prospects, and other similar matters. These forward-looking statements are based on management's current expectations and assumptions about future events, which are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict. These statements may be identified by words such as "expects," "plans," "projects," "will," "may," "anticipates," "believes," "should," "intends," "estimates," "will likely result," "could," and other words of similar meaning.

Actual results could differ materially from those contained in forward-looking statements. Many factors could cause actual results to differ materially from those in forward-looking statements, including those matters discussed below, as well as those listed in Item 1A. Risk Factors.

Other unknown or unpredictable factors that could also adversely affect our business, financial condition, and results of operations may arise from time to time. Given these risks and uncertainties, the forward-looking statements discussed in this report may not prove to be accurate. Accordingly, you should not place undue reliance on these forward-looking statements, which only reflect the views of Fluent's management as of the date of this report. We undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results or expectations, except as required by law.

PART I

Item 1. Business.

This business description should be read in conjunction with our audited consolidated financial statements and accompanying notes thereto appearing elsewhere in this Annual Report on Form 10-K for the year ended December 31, 2023 (the "2023 Form 10-K"), which are incorporated herein by this reference.

Company Overview

Fluent, Inc. ("we," "us," "our," "Fluent," or the "Company") is an industry leader in digital marketing services. We primarily perform customer acquisition services by operating highly scalable digital marketing campaigns, through which we connect our advertiser clients with consumers they are seeking to reach. We access these consumers through both our owned and operated digital media properties and our auxiliary syndicated performance marketplace products. In 2023 we delivered data and performance-based customer acquisition services for over 500 consumer brands, direct marketers, and agencies across a wide range of industries, including Media & Entertainment, Financial Products & Services, Health & Life Sciences, Retail & Consumer, and Staffing & Recruitment.

We attract consumers at scale to our owned and operated digital media properties primarily through promotional offerings where they are rewarded for completing activities within our platforms. When registering on our sites, consumers provide their names, contact information, and opt-in permission to present them with relevant offers on behalf of our clients. Approximately 90% of these users engage with our media on their mobile devices or tablets.

Once users have registered on our sites, we integrate our proprietary direct marketing technologies to engage them with surveys, polls, and other experiences, through which we gather information about their lifestyles, preferences, and purchasing histories, among other matters. Based on these insights, we serve targeted, relevant offers to them on behalf of our clients. As new users register and engage on our sites and existing registrants re-engage, the enrichment of our database expands our addressable client base and improves the effectiveness of our performance-based campaigns.

We also operate syndicated performance marketplaces on partner sites where we utilize our proprietary ad-serving technology to identify and acquire additional consumers for our advertiser clients. Our technology is integrated at key moments in the consumer experience to capitalize on high engagement and improve conversion. For example, Adflow, our post-sale e-commerce business, connects our advertisers to consumers on e-commerce websites after check-out. These syndicated solutions generate meaningful income for our partners, while driving additional growth for our advertiser clients. We typically remunerate our syndication partners on a revenue share or impression basis.

Additionally, the company operates a call center performance marketplace that provides live-call-based performance campaigns to help clients increase engagement. The call solutions marketplace serves clients across an array of industries but has a heavy focus on the health insurance sector.

Since our inception, we have amassed a large, proprietary database of first-party, self-declared user information and preferences. We solicit our users' consent to be contacted by us and/or our advertisers via various contact methods including email, telephone, SMS/text, and push messaging. We then leverage their self-declared data in our performance offerings primarily in two ways: (1) to serve advertisements that we believe will be relevant to users based on the information they provide when they engage on our sites or other partner sites through our syndicated performance marketplaces and (2) to provide our clients with users' contact information so that such clients may communicate with them directly. We may also leverage our existing technology and database to drive new revenue streams, including utilization-based models (e.g., programmatic advertising).

We generate revenue by delivering measurable marketing results to our clients. We differentiate ourselves from other marketing alternatives by our abilities to provide clients with a cost-effective and measurable return on advertising spend ("ROAS"), a measure of profitability of sales compared to the money spent on ads, and to manage highly targeted and highly fragmented online media sources. We are predominantly paid on a negotiated or market-driven "per click," "per lead," or other "per action" basis that aligns with the customer acquisition cost targets of our clients. We bear the costs of acquiring traffic from publishers for our performance marketplaces that ultimately generate qualified clicks, leads, calls, app downloads, or customers for our clients.

Through AdParlor, LLC ("AdParlor"), we conduct our non-core business which offers clients various social media strategies through the planning and buying of media on different platforms.

Market Opportunity

According to the Dentsu 2024 Forecast, global advertising spend is projected to reach \$752 billion, defining the Total Addressable Market ("TAM") for companies operating in this space. The performance marketing sector, a subset of TAM excluding brand advertising and top-of-the-funnel budget considerations, maintains a Serviceable Available Market ("SAM") of \$300 billion. This delineates the scope and potential for Fluent within the dynamic and ever-expanding digital marketing landscape.

According to eMarketer reports, digital marketing has grown steadily since 2021 and is anticipated to continue growing at 9.3% annually through 2027. The overall landscape is experiencing a significant transformation with the emergence of commerce media which combines media impressions and commerce transactions for informed ad placements on a retailer's e-commerce platform and the broader retail media network, which seeks to provide a unified approach to data-informed advertising on-site, off-site, and in-store. Projections suggest that by 2027, this evolution could offer a substantial opportunity, surpassing \$109 billion in the digital advertising space.

The industry is undergoing further transformations as publishers increasingly invest in proprietary media networks (a collection of digital channels owned by a retail company), foster direct engagements with brands, and emphasize the value of first-party data. This shift is particularly noteworthy considering growing concerns about data privacy, with 86% of Americans expressing apprehension, according to KPMG research. As the use of cookies becomes more limited, marketers and businesses must realign their operations with this evolving landscape and Fluent is poised to assist.

Key Challenges Facing our Clients

Digital marketing professionals face a trio of challenges: cookie deprecation, rising acquisition costs, and the quest for reliable reporting. As Google and Apple phase out third-party cookie tracking, marketers grapple with the complexities of customer acquisition within this privacy-first world. With Fluent's experience in building performance marketing engines for brands and advertisers, we believe we are uniquely positioned to help our clients with key challenges.

Cookie deprecation

Marketers have been struggling to acquire customers as privacy regulations, customer sentiment, and browser restrictions constrain them from gathering customer insights and building effective, personalized experiences. As Google and Apple wind down the era of third-party cookie tracking, only 33% of marketers think they are prepared, according to a survey by YouGov. Under these conditions, advertisers will be compelled to spend only with media partners that hold existing relationships with consumers (i.e. retail media networks and social media networks) and those with privacy-safe customer relationship management ("CRM").

Rising costs

According to a report published by Semrush, the highest percentage of marketers (41%) listed "generating high-quality leads cost-effectively" as their biggest challenge. As advertising costs continue to rise, so do the challenges associated with capturing the attention of potential customers in an oversaturated digital marketplace. To meet these mounting pressures, marketers are pushed to rethink their strategy and find "new" marketing channels & tactics.

Unreliable Reporting

Tracking advertising campaign performance continues to challenge marketers. 54% of customer experience professionals say their teams are unable to prove ROI for their projects according to Forrester. Less than 40% of companies can easily ascertain the effectiveness of their marketing. Finding the right balance between cost-effectiveness, scalability, and predictability can be a challenge, yet all are needed to properly measure the true impact of ads on the purchase decision. Brands struggle to connect the dots and meet their key performance indicators ("KPI") while staying within budget.

Our Offerings and Solutions to Clients

We primarily provide performance marketing solutions to our clients based on their desired outcomes, or specific actions in their marketing funnels, including the submission of a registration form, an app installation, or a completed transaction. Our owned and operated media properties include Flash Rewards, The Smart Wallet, and Careers & Jobs, among others. We believe our solutions are well-aligned with the needs and objectives of our clients, notably, due to our ability to provide them with measurability of return on ad spend ("ROAS"), scalability, and flexibility within our owned and operated properties and beyond. By using the data consumers provide when they register on our sites, our advertiser clients are able to reach the precise audiences they are targeting through the modes of contact these consumers prefer and at the times they are most receptive to being contacted.

- ***Performance Campaigns***

For clients who seek the completion of certain actions by consumers, such as the submission of a registration form, the installation of a mobile app, or a trial subscription of a good or service, we provide performance campaigns that meet the criteria specified by the client.

We bear the cost and risk of paying various media sources to generate consumer traffic to our owned and operated digital media properties or to media properties operated by our clients, without the assurance of a subsequent revenue-generating event from such activity. In the case of our syndicated marketplaces, we have long-term contracts with site owners that provide additional opportunities to generate performance events for our clients. By leveraging our scale and expertise in acquiring consumer traffic, we work with our clients to define billable events and pricing tolerances that meet both our and our clients' profitability objectives, the latter of which may be difficult for them to achieve themselves economically, if at all.

- ***Consumer Data***

We also generate revenue by providing clients with qualifying data of consumers who have opted to be marketed to directly, on our owned and operated media properties, through means such as direct mail, email, telephone, messaging, and other channels. Our clients then use this customer data to conduct their own marketing campaigns.

The data records we provide contain varying depths of user profiles depending on what consumers self-declare to us, ranging from basic contact information to detailed preferences and behaviors. Because consumers directly provide us with their information, we believe the scale and depth of information captured on our websites and reflected in our data profiles is a competitive advantage within the industry. Many other providers of consumer data offer data or information that is inferred from a consumer's behavior but not directly observed or otherwise provided by a consumer. We believe our first-party data is more reliable and reflective of consumers' current interests and preferences.

- ***Programmatic Data Offerings***

Since 2018, we have been offering modeled data sets pertaining to certain audience segments in programmatic environments, thereby enabling advertisers, such as those in the healthcare industry, to leverage the modeled data in an anonymized, privacy-minded manner to target high-intent prospects for their offerings. The programmatic data offering has grown considerably since its inception. Although representing a small percentage of our overall revenue, we believe it represents a strategically significant and incremental revenue stream.

- **Social Media Campaigns**

Through AdParlor, we offer clients a sophisticated suite of social media strategy, planning and buying, along with highly tailored creative services.

- **Call Solutions Marketplace**

Through our Call Solutions service, we maintain a contact center operation, which serves as a marketplace to connect consumers we have sourced with our advertising clients. We offer clients a high-value source of live call transfers of phone verified prospective customers for their businesses or in some cases direct sales transactions. Through this capability, we provide a positive and high-quality consumer experience enabling us to capture greater value from the leads we initially source.

Our Competitive Strengths

We believe our competitive strengths will continue to enable us to provide a compelling value proposition to our clients and drive differentiation of our offerings in the marketplace.

- **Scale and Experience in Purchasing Media and Creating Content** - Our ability to effectively access, at scale, channels and sources of media that supply consumer traffic and build meaningful experiences and relationships with those consumers has been critical to our growth. Since our inception, we have deployed more than \$2 billion in media spend to our owned and operated media properties and those of our clients. Our team has gained knowledge and experience in creating content that we believe allows us to generate higher levels of profitability from given media sources, thereby enabling us to acquire media more competitively than others. This capability allows us to run thousands of campaigns simultaneously and cost-effectively for our clients, at acceptable media costs and margins to us.
- **Proprietary and Innovative Technology Platform** - Our internally developed technology platforms are unique in the industry, having been purpose-built for performance marketing and developed with a mobile-first user experience in mind. Our platforms use our robust consumer data and proprietary machine-learning capabilities to optimize the performance of our digital marketing campaigns for our advertisers.
- **Database of First-Party Consumer Information** - We attract hundreds of thousands of consumers to our owned and operated media properties on a daily basis and collect demographic, behavioral and other data as they engage with our direct marketing experiences. This data is generated in real-time, as consumers respond to dynamically populated survey questions, thereby enabling targeted ads to be served in response. This data is also stored and analyzed and can be further enhanced as consumers return to our sites and declare and exhibit preferences and behaviors through additional surveying, allowing for the development of deeper insights and additional monetization opportunities.

Our Growth Strategy

We believe that the performance marketing industry has significant opportunities for growth. Elements of our strategy include:

- **Increasing High Quality Traffic to Our Owned and Operated Digital Media Properties.** As our business has grown, we have attracted larger and more sophisticated clients to our platform. To further increase our value proposition to clients and to fortify our leadership position in relation to the evolving regulatory landscape of our industry, we implemented a Traffic Quality Initiative ("TQI") in 2020 to remove lower quality customer traffic, including traffic that did not consistently meet regulatory standards from our marketplaces. By improving the quality of consumer traffic sourced to our media properties, we have increased user participation and conversion rates, ultimately, increased revenue from more "name brand" advertiser clients and created a more sustainable foundation for our business.

In an effort to source more high quality traffic, we have also built out an influencer marketing platform. This platform allows us to diversify our current media buys on social media platforms and capture available scale in the influencer market. According to Aspire's 2024 State of Influencer Marketing report, influencer marketing is estimated to grow to approximately \$24 billion in 2024 and is expected to account for an increasing share of most companies' marketing spend. By operating our own influencer marketing platform, we can ensure compliant operations, effectively manage our media spend by eliminating middlemen, and offer our clients direct access to our network of influencers.
- **Increasing Monetization of Our Traffic.** By presenting consumers with a broad array of offers curated to their preferences, as informed by their responses to our surveys and our platform's ad serving logic, we seek to facilitate transactions that are beneficial for the advertiser, the consumer and us. As we continue to improve consumer engagement on our platform, we will continue to strengthen our relationships with existing advertisers and build relationships with new advertisers. We continuously seek to enhance our product offerings for consumers and targeting capabilities for advertisers to ensure we are optimizing the value of our traffic.
- **Expanding our Network through Development of Syndicated Performance Marketplaces.** We have developed and launched syndicated performance marketplaces that utilize our existing technology to extend our ad network for our clients. Adflow, our post-sale e-commerce solution to access a new pool of users for our advertiser clients. We deploy an "ad module" primarily on the transaction confirmation page of the e-commerce website that offers a series of curated offers to users after check-out. We compensate our e-commerce partners by either sharing revenue proceeds or by remunerating them on an impression basis. Adflow affords our advertiser clients exposure to a pool of users with strong buying power who having just completed a transaction and are in a purchase mode. And it opens up a new range of advertisers to our customer acquisition services. Adflow has been operating for the majority of 2023, with growth during the second half.
- **Developing and Enhancing Products to Increase the Quality of Our Offerings.** Our product development efforts are intended to attract consumers, drive traffic, increase monetization and increase affiliate and partner opportunities. Examples of some areas where our product development team is currently focused include designing new consumer-facing creative concepts, enhancing site experiences, developing mobile app products to expand our media footprint beyond our mobile web presence, and improving the reputation of our domains.

Sales and Marketing

We generate new client sales primarily through our in-house sales team. We service established clients through our in-house account directors and managers, who seek to optimize results for and expand our business with these clients.

Our Competition

Our traditional competitors have been digital marketing and database marketing services providers, online and traditional media companies, and advertising agencies. We believe the competitive landscape is changing and becoming more complex, but we believe our data and our ad serving and customer acquisition technologies enable our clients to better target, engage, qualify, and communicate with relevant consumers, in a more measurable and profitable manner than our competitors.

Some of our competitors have substantially greater financial, technical, sales and marketing resources, better name recognition and a larger customer base.

Concentration

We have an extensive list of clients across a wide range of industries. For the year ended December 31, 2023, a single long-standing advertiser client of the Company accounted for 18.1% of consolidated revenue. For the year ended December 31, 2022, this same client accounted for 22.1% of the Company's consolidated revenue.

Acquisitions

- On July 1, 2019, we completed the acquisition of substantially all of the assets of AdParlor Holdings, Inc.
- On April 1, 2020, we acquired a fifty percent (50%) interest in Winopoly, LLC, and acquired the remaining fifty percent (50%) interest on September 1, 2021.
- On January 1, 2022, we acquired a one hundred percent (100%) interest in True North Loyalty, LLC.

Our Intellectual Property

We rely on trade secret, trademark and copyright law, confidentiality agreements, and technical measures to protect our intellectual property rights. We maintain a portfolio of perpetual common law and federally registered trademark rights across several brands and domains relating to our business units, products, services, and solutions. We claim copyright protection in our original content that is published on our websites and included in our marketing materials.

Regulatory Matters

Our business is subject to a significant number of federal, state, local and international laws, rules, and regulations applicable to online or digital advertising, commercial email marketing, telemarketing, and text messaging. We are also subject to laws, rules, and regulations regarding data collection, privacy and data security, intellectual property ownership and infringement, sweepstakes and promotions and taxation, among others. Some of our clients operate in regulated industries, such as financial services, credit repair, gambling, consumer and mortgage lending, healthcare and medical services, health insurance including Medicare Advantage and related Medicare insurance plans and secondary education, and, to the extent applicable, we must comply with the laws, rules, and regulations applicable to marketing activities in those industries. Outside of the United States, we own and operate consumer facing websites in the United Kingdom, Canada, and Australia and are subject to the laws, rules, and regulations of those countries as they impact our operations.

These laws, rules, and regulations, which generally are designed to regulate and prevent deceptive practices in advertising, online marketing, and telemarketing, protect individual privacy rights and prevent the misuse and unauthorized disclosure of personal information, are complex, change frequently and have tended to become more stringent over time. In addition, the application and interpretation of these laws, rules, and regulations are often uncertain, particularly in the rapidly evolving industry in which we operate.

We were involved in investigations with federal and state regulators over our practices including the Federal Trade Commission ("FTC") and the Pennsylvania Office of the Attorney General ("PAAG"). These investigations and claims have all been settled as of December 31, 2023. As part of the FTC settlement, we have made additional changes to our business practices that adversely affected our results of operations for the year ended December 31, 2023. See Item 1A. Risk Factors - Risks Relating to Legal and Regulatory Matters and Item 3. Legal Proceedings for further discussion of the impacts of these proceedings and various laws, rules, and regulations on our business.

Human Capital

Fluent is dedicated to certain core principles and values which include continuous learning, efficiency, collaboration, and high performance. Fluent is committed to providing our employees with opportunities to grow and develop in their careers, supported by competitive compensation and comprehensive medical and wellness benefits. We embrace challenges and welcome opportunities to make improvements in our corporate culture and employee benefits. We are proud to have been the recipients of many awards for our corporate culture including regularly being listed on *Crain's Best Places to Work*.

As of December 31, 2023, we had 277 employees, of which 274 were full-time employees. This represents an increase of 0.7% over the number of employees as of December 31, 2022. None of our employees are represented by a labor organization, and none are party to any collective bargaining agreement with us. We have not experienced any work stoppages and strive to maintain a positive relationship with our team. While we believe we adapted well to a work-from-home model, we continue to operate under a hybrid strategy based around flexibility and collaboration. See Item 1A. Risk Factors — "We have transitioned to a hybrid in-office/remote model, which may adversely affect our ability to attract and retain employees." and "Our failure to recruit or the loss of management and highly trained and qualified personnel could adversely affect our business." for further information about the risks of our hybrid work model.

Competition in the recruitment of top talent within our industry remains constant and our future success will depend in part on our continued ability to hire, motivate, and retain exceptional colleagues across the business. As the business evolves, we continue to source talent to complement the existing team with different strengths, experience, and ideas.

Investing in our People

As a performance-based organization, Fluent offers generous and competitive salaries and bonus/commission plans to both attract, reward, and retain our employees. We match up to 4% of employees' contributions in their 401(k) to help our employees plan for their futures. We also prioritize the health and well-being of our people, offering multiple health insurance plans to choose from, on-demand wellness sessions, and mental health resources like virtual and in-person therapy, coaching, mental wellness screenings, and self-help exercises. To ensure our people take time to recharge, we offer discretionary time off that provides vacation days throughout the year in addition to our 13 paid company holidays. Our goal is to create a flexible work environment that fuels creativity and results.

We encourage curiosity and provide our people with the tools and resources to learn and grow. From internal Fluent University courses to company-wide workshops and memberships to corporate networking organizations, such as She Runs It, we offer continuous opportunities for personal and professional development. In 2023 through these courses, we created approximately 1,000 hours of learning for our employees. Additionally, over the past few years, we have worked to support internal mobility for those who have excelled in their roles and are looking to gain new experience in other areas of the business that align with their individual career goals. We reward positive performance and celebrate our employees for their persistent drive to succeed.

Diversity, Equity, & Inclusion ("DEI")

We are constantly striving to make Fluent a more inclusive and compassionate place to work. We make a concerted effort to post roles and source top candidates to present a diverse candidate slate for our hiring teams, and our dedicated DEI team is designed to create opportunities for connection, education, and service. Fluent continues to invest in our colleagues by providing DEI trainings and creating opportunities to connect to discuss current events. In 2023, our Women Leader's Group sponsored their third year of the mentorship program and increased by 37% to 74 participants. We are proud to foster a learning and coaching culture to support the development and growth for all of our employees.

Available Information

Fluent's principal executive offices are located at 300 Vesey Street, 9th Floor, New York, New York 10282, and our telephone number is (646) 669-7272. Our internet website is www.fluentco.com. The website address provided in this 2023 Form 10-K is not intended to function as a hyperlink and information obtained on the website is not and should not be considered part of this 2023 Form 10-K and is not incorporated by reference in this 2023 Form 10-K or any filing with SEC. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are available, free of charge, on our Investor Relations website at investors.fluentco.com/ as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Our periodic reports are filed or furnished electronically with the SEC under SEC File Number 001-37893 and can be accessed at the SEC's website at www.sec.gov, and specifically at www.sec.gov/edgar/browse/?CIK=1460329.

Item 1A. Risk Factors.

Summary of Risk Factors

Investing in our common stock involves a high degree of risk. The following summary identifies certain material risks and uncertainties facing our business, many of which are beyond our control. A more complete discussion of each these and other risks and uncertainties is set forth under "Risk Factors." Our business, financial condition, results of operations, and cash flows may be impacted by a number of factors, including those set forth below and elsewhere in this 2023 Form 10-K, the occurrence of any one of which could have a material adverse effect on our actual results.

Risks Related to Our Business

Risks Related to Our Industry

- *Operate in a competitive, rapidly evolving industry*
- *High concentration associated with the gaming industry*
- *Unfavorable publicity and perception of our industry*
- *Reduction in online marketing spend*
- *Credit risk from our clients*

Risks Related to Our Publishers

- *Supply and cost of media*
- *Need to connect with users in specific media channels*
- *Limitations on our ability to collect user data*

Risks Related to Our Owned and Operated Media Properties

- *Need to connect with users through mobile apps*
- *Rewards fulfillment costs and detection of fraud*

Other Business Risks

- *Growth of operations, effective management, and ability to scale*
- *Economic or political instability*
- *Increased challenges of international operations*
- *Impact of acquisitions, investments, and divestitures on operations*
- *Failure to recruit or the loss of management and highly trained personnel*
- *Ability to attract and retain employees*
- *Dependence on third-party service providers*

Risks Relating to Legal and Regulatory Matters

- *Impact of telemarketing governmental laws and regulations*
- *Impact of e-mail marketing laws and rules*
- *Laws and regulations regarding privacy, data protection, and personal information*
- *Litigation, inquiries, investigations, examinations, or other legal proceedings*
- *Sales and use and other taxes*

Risks Relating to Data Security and Intellectual Property

- *Need to safeguard personal information and other data*
- *Need to protect our intellectual property rights*
- *Third party claims from creation and use of digital media content*

Risks Related to Financial Matters

- *Restrictions on operations from covenants in Credit Agreement*
- *Impact of change of credit facility terms*
- *Need for additional capital*
- *Significant charges from impairment of goodwill and/or intangible assets*

Risks Related to Our Common Stock and the Securities Markets

- *Minimum Bid Price Rule and Nasdaq listing*
- *Fluctuations in stock price*
- *Concentration of stock ownership*
- *Dilution from future share issuances from acquisitions or stock incentive plans*
- *No cash dividends for foreseeable future*
- *Status as a "smaller reporting company"*

Risk Factors

Risks Relating to Our Business

Risks Related to Our Industry

We operate in a competitive, rapidly evolving industry, which makes it difficult to evaluate our business and prospects.

We derive substantially all of our revenue from digital marketing services, which is an intensely competitive industry characterized by rapidly changing internet media and advertising technology, evolving industry standards, regulatory uncertainty, and changing user and client demands. Our future success depends on our ability to effectively respond to this constant change and cost effectively acquire media from our publishers.

We compete for advertiser clients against other digital marketing companies and online and traditional media companies based on many factors, including return on advertising spend ("ROAS"), price, and client service. Our clients may curtail their advertising spend with us or stop using our services altogether if we fail to meet their expectations in terms of their ROAS or the quality and convertibility of leads or otherwise fail to compete effectively against other online marketing and advertising companies. Conversion rates for leads can be impacted by factors outside our control, such as competition in our clients' industries and our clients' sales practices. Lower conversion rates could be even more likely as we expand our services and relationships with our clients by moving our conversion point further "down the funnel," closer to where our clients are able to monetize the leads we provide. To the extent we cannot meet the challenges from existing or new competitors or develop new product offerings to meet client preferences or needs, our revenues and profitability could be materially and adversely affected.

To remain competitive, we have invested in developing new products, markets, services, and technologies and expanded our workforce to enable us to upgrade our systems. However, based on our experience, new websites, systems, products, and services may be less predictable and have lower margins than more established websites, products and services and may be more prone to technological instability or failure. If we are unsuccessful in enhancing and upgrading our websites, products, services, and back-end systems, we may fail to maintain our profitability, attract new clients, or grow our revenue, or we may suffer service disruptions.

Additionally, the introduction of new technologies and services, including voice assistance, artificial intelligence, internet-of-things and machine learning, and the emergence of new industry standards and practices related to these technological developments could render our existing technologies and services obsolete and unmarketable or require unanticipated investments in technology. In particular, as we continue to transition to cloud-based technology and migrate our database to a new environment, we may face new and additional costs to operate our business.

While we continually make enhancements and other modifications to our proprietary technologies, such changes may contain design or performance defects that are not readily apparent. If our proprietary technologies fail to achieve their intended purpose or are less effective than technologies used by our competitors, our business could be harmed.

A material percentage of our consolidated revenue is derived from gaming (apps) advertisers, so we are exposed to risks associated with the gaming industry in general and one gaming client in particular.

Approximately 38% of our consolidated revenue was derived from gaming advertisers in 2023. This revenue derives from app installations and app-related user actions. The stability and potential growth of this client base depends in part on the state of the app-based gaming industry, which is subject to numerous risks including:

- the relative availability and popularity of other gaming apps and forms of entertainment compared to those offered by our advertisers;
- changes in consumer demographics, tastes, spending habits, and preferences;
- social perceptions of gaming, especially those related to the impact of gaming on health and social development; and
- the introduction of legislation or other regulatory restrictions on gaming, such as restrictions addressing violence in video games and addiction to video games.

Moreover, one of our gaming advertiser clients accounted for 18.1% of consolidated revenue in 2023, a decrease from 22.1% of consolidated revenue in 2022. This client materially reduced its advertising spend in the second half of 2023, and there can be no assurance that we will be able to regain the pricing and performance levels that we had prior to this shift. If pricing and performance were to degrade further, our results of operations may continue to be adversely affected.

Unfavorable publicity and negative public perception about our industry or us may damage our reputation, which could harm our business, financial condition, and results of operations.

With the growth of online advertising and e-commerce, there is increasing awareness and concern regarding online marketing, advertising, telecommunications, and privacy matters, particularly as they relate to individual privacy interests. Our ability to attract potential users, and thereby clients, depends in part on users trusting us enough to provide self-declared registration data and other personal information. If we fail to maintain the quality and user expectations of our owned and operated websites, our reputation could be harmed and damage our ability to attract and retain users, which could adversely affect our business. There can be no assurance that we will be able to maintain or enhance our reputation, and failure to do so would harm our business growth prospects and operating results.

Heightened scrutiny on the part of the public or regulators and an increasing regulatory burden especially relating to data privacy may lead to general distrust of our industry, consumer reluctance to share and permit use of personal data and increased consumer opt-out rates, any of which could negatively influence, change, or reduce our current and prospective clients' demand for our products and services, and adversely affect our business, financial condition, and results of operations. As a large player in our niche of the industry, smaller competitors frequently design their websites to look like they are owned and operated by us. If these competitors engage in non-compliant activities, it could have a particularly damaging impact on all participants in our industry and on our relationships with our users and/or clients who are unaware that the non-compliant websites are not ours.

A sudden reduction in online marketing spend by our clients, a loss of clients or lower advertising yields may seriously harm our business.

Because the majority of our contracts with our advertiser clients do not require fixed commitments, these clients can unilaterally terminate their agreements with us, pause their campaigns, or materially reduce the amount of business they conduct with us at any time, with little or no prior notice. There is no guarantee that we will be able to retain or renew existing agreements with any of our clients on acceptable terms, or at all.

Additionally, because of the performance-based nature of our agreements, we typically bear the costs of purchasing media without the assurance of advertising spend by any particular advertiser client. To be profitable, we must be able to generate more revenue from our users than our costs to acquire such users. Our ability to do so is dependent on many factors, including having the right media sources to drive users who engage with our sites, providing content and experiences that retain users' attention and displaying relevant advertisements and other content to users.

Our results are also subject to fluctuation from seasonality and cyclicity in our and our clients' businesses. The Adflow business unit, which places ad modules on third-party e-commerce websites' transaction confirmation pages, and our call solutions business, which relies on Medicare open enrollment periods for a material portion of its revenue, are both subject to seasonality, with the fourth quarter being both units' strongest quarter. The costs to acquire media from our publishers are also subject to seasonal variability with media cost typically increasing in the fourth quarter. Our results of operations have in the past been adversely affected when we were unable to respond to the fluctuations in the price and availability of media, and similar effects may occur in the future.

Beyond these budgetary constraints and buying patterns of clients, macroeconomic conditions affecting the digital media industry and the various market verticals we serve may result in a decrease of our clients' advertising spending and, thereby, have a material adverse effect on our business and results of operations.

We are exposed to credit risk from our clients, and we may not be able to collect on amounts owed to us.

We regularly extend payment terms to our clients, which exposes us to risk of bad debt. Some of our clients are thinly capitalized and pose credit risks, and some of our clients may challenge the determination of amounts we believe they owe or may refuse to pay because of performance-related or other claims. In these circumstances, we may have difficulty collecting on amounts we believe are owed us. We are particularly exposed in certain verticals where there is a risk of tightening regulations or restrictions on sourcing consumer traffic. For example, if new regulations affect our clients such that their businesses are no longer viable, our clients may become insolvent or otherwise unable to pay amounts owed to us. In such circumstances, we may be exposed to risks of significant bad debt, which could have a material adverse effect on our results of operations.

A small portion of our client business is sourced through advertising agencies and brokers. In many cases, agencies are not required to pay us unless and until they are paid by the underlying client. In addition, many agencies and brokers are thinly capitalized and have or may develop high-risk credit profiles. If an agency or broker becomes insolvent, or if an underlying client does not pay the agency or broker, we may be required to write off accounts receivable as bad debt.

Risks Related to Our Publishers

A decline in the supply of media available to us through third parties or an increase in the price of this media could increase the cost of attracting consumers and reduce our profitability.

Our success depends on our ability to attract users to our owned and operated websites and generate revenue from their activities thereon in a cost-effective manner. A substantial majority of our revenue on our websites is attributable to visitor traffic originating from third-party publishers, including ad networks, social media platforms, and search engines. Our ability to maintain the number of users who come to our and our third-party publishers' websites is not entirely within our control. If a third-party publisher decides not to make media inventory available to us, decides to demand higher pricing or a higher revenue share, or places significant restrictions on the use of such inventory, we may not be able to find media inventory from other media sources that satisfies our requirements in a timely and cost-effective manner.

There is substantial competition for web traffic among both established media buyers and smaller operators, and we expect this competition to continue to increase, given the limited barriers to entry into the market. As we have limited the volume of affiliate traffic to our websites as a result of the Traffic Quality Initiative ("TQI"), we have had to find other traffic sources that meet our quality standards at a cost and volume that meets our requirements. We have not, and do not expect, to increase our registration volume back to levels prior to 2020 when we first implemented the TQI.

We increasingly focus our media spend on social media platforms, which includes the use of influencers. Many of the influencers who drive users to our sites post their content on TikTok, which has been banned on federal and public sector employees' phones and on state employees' phones in the majority of states and on some college campuses in the U.S. Were the ban to become more widespread, our TikTok influencers would need to post their content on other social media platforms, which may not reach as many users as TikTok does and may come at a higher cost, thereby adversely affecting our results of operations.

Our business could be harmed if we or our third-party publishers are unable to contact users through specific channels.

We and our third-party publishers use email, text messages, telephone calls, push notifications, and social media, among other channels, to reach users for marketing purposes. The laws, rules, and regulations governing such usage continue to evolve, and changes in technology, the marketplace, or consumer preferences may lead to the adoption of or changes in laws, rules, or regulations. The Federal Communications Commission (the "FCC") recently adopted rules amending the Telephone Consumer Protection Act ("TCPA"), which will likely require us to alter our process for obtaining TCPA consent, which could limit our and our marketing partners' ability to contact users in a cost-effective manner. We use third parties, including mobile operating systems, internet service providers ("ISPs"), wireless carriers, aggregators, and internet browsers, to contact users via text messaging and to a lesser extent push notifications. These third-party providers or the wireless carriers may block our text messages or shut down our text message service providers' ability to send text messages. Some carriers will not approve our applications to lease short codes for our internal messaging campaigns, hampering our ability to re-engage with our users.

Additionally, email service providers ("ESPs") or ISPs may implement new or more restrictive email or content delivery or accessibility policies. For example, Google and Yahoo! have recently introduced new guidelines restricting senders from sending bulk emails and requiring the provision of one-click unsubscribe options. If ESPs materially limit or halt the delivery of emails advertising our websites, or if we fail to deliver emails to users in a manner compatible with email providers' handling or authentication technologies, our ability to contact users through email could be significantly restricted.

With a heightened aversion to calls, consumers increasingly screen or block their incoming telephone calls, texts, and emails, so users may not reliably receive our messaging. If we are unable to contact users effectively by email, telephone, text, or other means because of legislation, regulatory rules or interpretive positions, blockage, screening technologies or otherwise, our business, operating results and financial condition would be harmed. See also risk factor entitled "Our business is subject to a significant number of telemarketing laws and regulations."

Limitations on our or our third-party publishers' ability to collect and use data derived from user activities or deliver internet-based advertising could increase the cost of media and significantly diminish the value of our services.

The use of personal information provided by a consumer, including transactional data, is subject to evolving laws and regulations, regulatory scrutiny, litigation, and industry self-regulatory activities. We collect personal information and user survey responses in our targeted ad serving, lead generation and consumer data offerings. Interruptions, failures, or defects in our data collection systems or restrictions on collection could limit our ability to analyze and optimize data from our clients' marketing campaigns. If our or our clients' access to data is limited in the future, we may be unable to provide effective services to clients and may lose clients and revenue.

Moreover, the development and adoption of technologies, tools, software, and applications that can block online advertising or mask users' location could reduce the number of display and search advertisements that we or our third-party publishers are able to deliver, which could adversely affect our business and results of operations. Major web browsers such as Google Chrome and Apple Safari either block by default or permit users to block third-party cookies and user-level tracking. In general, while we rely on internally created identifiers to associate returning users with their user profile, we and our third-party advertisers use cookies to track user attributes and conversions. While the digital advertising industry has sought to mitigate the impact of the elimination of cookies by using other conversion tracking technologies, the impact of these changes on our business is uncertain.

More significantly, companies and new laws and regulations are moving to limit online user-level tracking including conversion data as part of the push for enhanced data privacy protection. Use of conversion data such as whether a user downloads and installs an app, may be limited, which may inhibit our clients' and our respective operations. For example, Apple's 2021 update to iOS defaults to blocking ad tracking, making it difficult for us and our advertiser clients to track conversions and ROAS. Google also plans to eliminate the use of third-party cookies for ad tracking, which may lead some advertisers to curtail their ad spend or other clients to stop online advertising altogether.

The move away from user level tracking may also adversely impact the efficiency of ad platforms such as those operated by Alphabet and Meta and other social media platforms which could lead to publishers reducing their spend on social media platforms or increases in the cost of media. Many of our publishers buy media on these platforms and may seek to pass along their increased media costs to us or be unable to supply us with media at the volume and price we require, either of which could adversely affect our results.

Risks Related to Our Owned and Operated Media Properties

An increasing number of people are accessing content on their mobile devices through mobile applications, and our ability to remain competitive with the shift to mobile apps is critical to maintaining our revenue and profitability.

Mobile devices are now the primary means by which people access online content, increasingly through mobile applications rather than browsers. While our websites are designed with a "mobile first" approach, mobile applications are not a primary driver of our business, which could place us at a competitive disadvantage in the marketplace. We may experience difficulties developing mobile apps or making them available in the Google Play and Apple App stores, and consumers may not install and use our apps. If we experience these difficulties or problems promoting our apps on social media platforms, our consumer acquisition capabilities and our growth may be impaired, making it more difficult for our mobile app initiatives to achieve profitability.

Our rewards fulfillment costs fluctuate, and we could lose clients if we fail to adequately detect fraud on advertisements.

Our rewards sites generate a large portion of our revenues and gross profit. Users who complete the program requirements and are verified during the claims process can earn valuable rewards such as gift cards and cash equivalents. However, we are exposed to the risk of fraudulent clicks or actions on our websites or our third-party publishers' websites, which could lead our clients to become dissatisfied with our campaigns and lead to a loss of clients and related revenue. Click-through fraud occurs when automated systems (sometimes called "bots") are used to create an individual click on an ad displayed on a website, rather than an individual user actually viewing the underlying content, with the intent of generating a payment to the publisher. Alternatively, publishers may seek to increase compensable actions by using bots or other fraudulent means to complete online forms with false or fictitious information. Our results could be adversely affected if users are successful in claiming rewards they are not entitled to or we deny rewards to users who we believe are not entitled to claim them. These users may seek to damage our reputation by filing complaints or posting negative online reviews, which could adversely affect our results of operations.

The risk of fraud may increase as bots become more sophisticated and difficult to detect. We do not charge our clients for fraudulent clicks or actions when they are detected, and we have terminated and may, in the future, terminate our relationships with publishers who we believe have engaged in fraud. However, we may not be able to replace them with new publishers, which could result in a reduction in traffic to our sites and registrations.

Other Business Risks

It may be difficult to effectively manage any future growth and scale our infrastructure and products quickly enough to meet the needs of our business while maintaining profitability.

Our future success depends in part on the efficient performance of our ad serving and lead generation platforms and technology infrastructure. As the number of websites and internet users and the amount of data collected increases, we have begun to revamp our technology infrastructure to accommodate this increased volume. For example, we rearchitected our database of consumer information to accommodate users' exercise of their privacy rights under new data privacy and data protection laws. Unexpected constraints on our technology infrastructure could lead to slower website response times or system failures and adversely affect the availability of our websites and the level of user responses received, which could result in the loss of clients or revenue.

We are continuously upgrading our systems, procedures, processes, and controls to support our future operations as we grow. We have incurred significant expenditures and have been forced to reallocate valuable management resources to facilitate these upgrades. We have incurred substantial costs to secure hosting, other technical services, and additional data storage and to upgrade our technology and network infrastructure to handle increased traffic on our owned-and-operated websites. We have also deployed new products and services and third-party solutions to respond to an increasing volume of data privacy requests. However, these upgrades and expansion in our technical capabilities are costly and complex and could result in inefficiencies or operational failures which could damage our reputation and cause us to lose current and potential users and clients and harm our operating results.

In the future, we directly or through our third-party provided information technology systems or software may incorporate artificial intelligence ("AI") capabilities into our business. As with many innovations, AI presents risks, challenges, and unintended consequences that could affect its adoption, and therefore our business. AI algorithms and training methodologies may be flawed, ineffective or inadequate. AI development or deployment practices by us or third-party providers could result in incidents that could increase the resources we need to implement cybersecurity measures to protect the security of our data. These deficiencies and other failures of any potential AI systems could subject us to competitive harm, regulatory action, legal liability, and brand or reputational harm.

Economic or political instability could adversely affect our business, financial condition, and results of operations.

Our results of operations could be adversely affected by general conditions in the global economy, including events or factors that are outside of our control. Such events or factors could include those resulting from such events, or the prospect of such events, including war, terrorism and other international conflicts, public health issues including health epidemics or pandemics, and natural disasters such as fire, hurricanes, earthquakes, tornados or other adverse weather and climate conditions, whether occurring in the United States or elsewhere. Such events or factors could decrease the spending of our existing and potential new customers, adversely affect demand for our products, cause one or more of our customers, vendors, and partners to file for bankruptcy protection or go out of business, impact expected spending and pricing levels from existing and potential new customers, and negatively impact collections of accounts receivable.

The full extent to which these factors may negatively affect our business and operations, results of operations, financial condition and cash flows will depend on future developments that are highly uncertain and cannot be predicted, including the scope, severity and duration of the Hamas-Israel conflict and Russia-Ukraine conflicts, other areas of geopolitical tension around the world and any economic downturns and the actions taken by governmental authorities and other third parties in response. In particular, our revenue is susceptible to developments in the Hamas-Israel conflict, as a significant portion of our customers in the Media & Entertainment industry are located in Israel.

Additionally, the Federal Reserve may further raise the Federal Funds Rate. These rate increases, coupled with a strong labor market and reduced consumer confidence, result in uncertainty, and may cause our customers and/or clients to be cautious in their ad spending.

The expansion of our international operations subjects us to increased challenges and risks.

We have website offerings beyond the U.S., in the United Kingdom (the "UK"), Canada, and Australia, and we may expand further into additional countries. Continued international expansion will require us to invest significant funds and other resources and may subject us to additional risks, including those related to cross-border data transfers; retooling our consumer facing product offerings to better align with local customs, practices, and consumer preferences; compliance with anti-bribery laws, such as the Foreign Corrupt Practices Act; recruiting, training, managing, and retaining contractors and service providers in foreign countries; increased competition from local providers; economic and political instability; and less protective or restrictive intellectual property laws. Currently, we operate our owned-and-operated websites in the UK, Canada, and Australia from servers in the Cloud and in the U.S., which may lead to latency in the performance of our websites located outside the U.S., diminishing their performance.

Our ability to manage our business and conduct our operations internationally requires considerable management attention and resources and is subject to the particular challenges of supporting a rapidly growing business in an environment of multiple languages, cultures, legal and regulatory systems, taxation regimes, and commercial infrastructures. If our revenue from our international operations does not exceed the expense of establishing and maintaining these operations, our business and operating results could suffer, and we may decide to make changes to our business or exit certain jurisdictions to mitigate losses. If we are unable to successfully manage the risks and costs associated with international operations, our business and/or results of operations could be adversely affected.

Acquisitions, investments, and divestitures could complicate operations, or could result in other harmful consequences that may adversely impact our business and results of operations.

Acquisitions have historically been, and continue to be, an important element of our overall corporate strategy and use of capital. In addition, we regularly review and assess strategic alternatives in the ordinary course of business, including potential acquisitions, investments, or divestitures. These potential strategic alternatives may result in many strategic transactions that could be material to our financial condition and results of operations.

The process of evaluating strategic alternatives involves a number of risks and uncertainties and may distract management from our other businesses or result in significant expenses. Moreover, we may invest significant resources towards evaluating and negotiating strategic alternatives that do not ultimately result in a strategic transaction. The success of our acquisitions and other investments will depend in part on our ability to successfully integrate and leverage them to enhance our existing products and services or develop compelling new ones. It may take longer than expected to realize the full benefits from these acquisitions or investments, such as increased revenue, enhanced efficiencies, or increased market share, or the benefits may ultimately be smaller than we expected. Our failure to address these risks or other problems encountered in connection with our acquisitions and investments could cause us to fail to realize the anticipated benefits of such acquisitions or investments, incur unanticipated liabilities and harm our business generally.

Our failure to recruit or the loss of management and highly trained and qualified personnel could adversely affect our business.

Our future success depends, in part, on our ability to attract and retain key personnel, including Donald Patrick, our Chief Executive Officer, Ryan Schulke, our Chief Strategy Officer, and Matthew Conlin, our Chief Customer Officer. It also depends upon our ability to hire and retain highly skilled managerial, technical, and operational personnel in all areas of our organization, each of whom is important to the management of certain aspects of our business and operations and the development of our strategic direction and may be difficult to replace. The loss of the services of these key individuals and the process to replace these individuals could involve significant time and expense and could significantly delay or prevent the achievement of our business objectives.

We have transitioned to a hybrid in-office/remote model, which may adversely affect our ability to attract and retain employees .

We implemented a company-wide work-from-home policy beginning on March 13, 2020. During the pandemic, many employees relocated away from our New York City headquarters. As was the case with many organizations, we experienced higher levels of turnover during the pandemic, and hiring became increasingly difficult as new hires commanded higher salaries.

While we have adapted to a work-from-home environment, we believe it is preferable to have our workforce on premises. Having a large part of our workforce working remotely creates challenges to our technological capacity and cybersecurity capabilities, as well as causes operational inefficiencies and may lead to the diminution in the loyalty and goodwill of our employees. In September 2022, we modified the policy to now require that employees be in the office at least two days a week, and we have recently begun hosting events to bring our employees together. Despite not utilizing our offices at pre-pandemic levels, we have not yet been able to reduce our occupancy costs, and we may not be able to do so prior to the expiration of our current lease in October 2025.

If we are unable to maintain our corporate culture as we grow, our business, financial condition, and results of operations could be harmed. The failure to maintain the key aspects of our culture as our organization grows could result in decreased employee satisfaction and increased difficulty in attracting and retaining top talent, which in turn could compromise the quality of our client service and adversely affect our operations.

We are dependent upon third-party service providers in our operations and may be adversely affected if any of their platforms malfunction.

In addition to risks associated with purchasing online media from third-party publishers discussed above, we utilize numerous third-party service providers in our operations such as cloud-based hosting services, enterprise resource planning systems and other software as a service platforms and services. As with all software and web applications and systems, there may be occasional technical malfunctions that arise with some of these third-party providers. Remedying any such situation could require substantial time, resources, and technical knowledge that we may not have or be able to acquire in a timely fashion. A failure by a third-party service provider could prevent us from operating our websites, connecting our advertiser clients with users, providing online marketing and advertising services, or tracking the performance and results of our online marketing activities and our operations in general. If any of these platforms or applications malfunctions for an extended time period, we may lose clients and/or incur significant costs to either internalize some of these services or find suitable alternatives, which could have a material adverse effect on our business or results of operations.

Risks Relating to Legal and Regulatory Matters

Our business is subject to a significant number of telemarketing laws and regulations. Compliance with these laws and regulations may cause us to incur significant expenses or reduce the availability or effectiveness of our solutions, and failure to comply with them could subject us to civil or criminal penalties or other liabilities.

We, our third-party publishers', and our clients' businesses operate in highly regulated industries, subject to many laws and regulatory requirements, including federal, state, and local laws and regulations regarding telemarketing. Many of these laws and regulations are frequently changing and can be subject to vagaries of interpretation, and the extent and evolution of future government regulation is uncertain. Keeping our business in compliance or bringing our business into compliance with new laws and regulations, therefore, may be costly, affect our revenue and harm our financial results.

We are subject to various state and federal laws regulating telemarketing communications (including SMS or text messaging), including the federal TCPA, Telemarketing Sales Rule ("TSR"), and state telemarketing laws. We use our data to manage internal text messaging campaigns to re-engage with our users and supply it to third-party call center clients for their telemarketing and text messaging campaigns. TCPA regulations have resulted in an increase in individual and class action litigation against marketing companies for alleged TCPA violations. TCPA violations can result in significant financial penalties, including penalties or criminal fines imposed by the FCC or state authorities or through private litigation. Recently, for example, we contributed \$3.1 million to settle a TCPA class action, which may increase the risk of additional claims under the TCPA.

Changes in the interpretation of the TCPA or TSR could also have a material adverse effect on our business. For example, the FCC recently adopted rules which, among things, modified how companies may obtain consumer consent under the TCPA. If implemented, these rules would ban marketers from obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent. This portion of the new rules takes effect in January 2025. There are many aspects of the new rules that are unclear and will be subject to interpretation by the courts and regulatory authorities, and it is likely that there will be legal challenges to the new rules. Because of the uncertainty surrounding the application of the revised TCPA rules to our business, we are unable to predict the impact on our business. If the new rules take effect, we expect that they will impact the sale of telemarketing data and our call solutions business unit, which may adversely affect our revenue and results of operations.

In addition, we promote Medicare Supplement plans by supplying call transfers and contract information of interested users to insurance agencies, brokers and other parties participating in the sale of these policies, as well as selling policies using our own agents. The Centers for Medicare & Medicaid Services ("CMS") has regularly issued rules tightening the acceptable marketing practices of these plans and we expect CMS to continue to issue new rules. Depending on the rules adopted our ability to market and sell these plans may be curtailed which may adversely affect the results of our operations in this space.

We may also face liability for any failure of our third-party publishers, strategic partners, or vendors to comply with legal and regulatory requirements. Users or clients may complain about the content of publisher ads or the methods by which ads are delivered by third-party publishers, who may use unapproved marketing channels, such as text messaging, to drive users to our sites, which may expose us to liability under the TCPA and other laws regulating telemarketing and text messaging.

If we are unable to cause our third-party publishers and strategic partners to monitor and enforce our clients' contractual restrictions on such affiliates, our clients may terminate their relationships with us or decrease their marketing budgets with us. In addition, we may also face liability for any failure of our third-party publishers, strategic partners, vendors, or their respective affiliates to comply with regulatory requirements. The law is unsettled on the extent of liability that an advertiser in our position has for the activities of third-party publishers, strategic partners, or vendors. In addition, certain of our contracts impose liability on us, including indemnification obligations, for the acts of our third-party publishers, strategic partners, or vendors. Despite our efforts to monitor and deter unauthorized or unlawful actions by these third-party publishers, and to contractually limit our liability in such instances, we may be held responsible for this behavior. As a result, we could be subject to costly litigation and, if we are unsuccessful in defending ourselves, could incur damages for the unauthorized or unlawful acts of third-party publishers, strategic partners, or vendors.

Our use of email marketing is subject to laws and rules in each of the jurisdictions in which we operate.

We operate internal email campaigns to promote our owned and operated websites and utilize third party publishers who use email to generate traffic for our websites and to promote our advertisers' products. As a result of these activities, we and our email publishers are subject to various state and federal laws regulating commercial email communications, including the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003 and the California Business and Professions Code Sec. 17529.5. If we or any of our third-party publishers fail to comply with any provisions of these laws or regulations, we could be subject to regulatory investigation, enforcement actions, litigation, or claims. In addition, the FTC Consent Order requires us to obtain "affirmative express consent" for e-mail marketing, a more stringent level of consent than is required of other companies in our industry. This may inhibit our ability to cost-effectively generate email data for our clients.

Further, foreign laws and regulations, such as the Canadian Anti-Spam Law, also apply to our business activities in the foreign jurisdictions in which we operate. If we or any of our third-party publishers fail to comply with any provisions of these laws or regulations, we could be subject to regulatory investigation, enforcement actions and litigation, as well as indemnification obligations with respect to our clients. Any negative outcomes from such regulatory actions or litigation, including monetary penalties or damages, could have a material adverse effect on our financial condition, results of operation and reputation.

Laws and regulations regarding privacy, data protection, and the handling of personal information are complex and evolving. While we strive to comply with all legal and contractual obligations regarding these matters, any failure or perceived failure to do so could have a material adverse effect on our business, financial condition, and results of operations.

Because we collect, store, process, use and sell data, some of which contains personal information, we are subject to complex and evolving federal, state, and foreign laws and regulations, as well as contractual requirements, regarding privacy, data protection and the collection, maintenance, protection, use, transmission, disclosure, and disposal of personal information. These laws and regulations continuously evolve and involve matters central to our business, including user privacy, data protection, content, intellectual property, electronic contracts and other communications, e-commerce, sweepstakes, rewards and other promotional marketing campaigns, competition, protection of minors, consumer protection, taxation, libel, defamation, internet or data usage, and online payment services. While we strive to comply with all applicable laws, policies, legal obligations, and industry codes of conduct relating to privacy and data protection, these obligations may be interpreted and applied in new ways or inconsistently across jurisdictions, and new regulations may be enacted.

The European Union's General Data Protection Regulation ("GDPR") imposed new requirements on entities and granted individuals new rights in connection with the collection, use and storage of the personal information of European Union residents. Our operations in the UK are subject to the UK-GDPR, which took effect prior to Brexit and is largely identical to the GDPR. The fines for failing to comply with the GDPR or UK-GDPR are significant and the potential ways that the regime could be applied to a business such as ours are uncertain. Similarly, the data privacy laws in Canada and Australia are becoming more stringent and we must comply with these laws or risk regulatory inquiries, fines, and penalties.

Currently, approximately a dozen U.S. states have comprehensive data privacy laws in place, including the California Consumer Privacy Act of 2018 ("CCPA"), which is similar to the GDPR and was the first comprehensive U.S. data privacy law enacted. Similar bills are pending in ten additional states. Some of the proposed laws include a private right of action to enforce noncompliance, which, if enacted, would expose us to potential litigation and claims. Because of the number of different laws, it will be extremely difficult and expensive to comply with this "patchwork" of data privacy laws. There can be no assurance that we will be able to do so or that the costs of compliance will not be prohibitively expensive, either of which could have a material adverse effect on our business and results of operations.

Due to the high volume of user registrations on our owned-and-operated websites, we receive many requests from users seeking to exercise their data privacy rights. We elected to implement a third-party solution to support our systems and processes to handle these requests and have already devoted significant resources to handling data privacy requests. We expect to incur additional costs to maintain compliance with the evolving data privacy and data protection laws and regulations.

The outcome of litigation, inquiries, investigations, examinations, or other legal proceedings in which we are involved, in which we may become involved, or in which our clients or competitors are involved could distract management, increase our expenses, or subject us to significant monetary damages or restrictions on our ability to do business.

From time to time, we are subject to audits, inquiries, investigations, claims of non-compliance and lawsuits by private litigants or federal and state governmental agencies, regulatory agencies, attorneys general and other governmental or regulatory bodies, any of whom may allege violations of legal and regulatory requirements. The scope and outcome of these proceedings is often difficult to assess or quantify. Plaintiffs in lawsuits may seek recovery of large amounts, and the cost to defend such litigation may be significant.

For example, Fluent, LLC recently settled investigations by the FTC and PAAG. As a result of these settlements, we made several changes to our employment opportunities marketplace and programmatic advertising businesses and implemented industry-leading compliance measures across the entire business which had and may continue to have a negative impact on our revenues and media margin. While in the medium term, we expect that our industry-leading compliance protocols will be a competitive advantage that will enable us to recapture market share from our competitors, we cannot assure that the adverse impact on our revenues and media margin will not continue longer than expected. Despite resolving the FTC and PAAG matters, we could be subject to additional regulatory actions from other state attorneys general. We also recently agreed to participate in the settlement of a TCPA class action and are involved in other active TCPA class action litigations. Such actions could have a substantial adverse impact on our reputation and ability to continue to buy media cost effectively and the willingness of our advertiser clients to continue to do business with us, which could in turn materially and adversely affect our results of operations and financial position.

There may also be adverse publicity and uncertainty associated with investigations, litigation, and orders (whether pertaining to us, our clients, or our competitors) that could diminish consumers' view of our services and/or result in material discovery expenses. A court-ordered injunction or an administrative cease-and-desist order or settlement may require us to modify our business practices or prohibit conduct in which our competitors may engage. Additionally, our clients might face similar proceedings, actions or inquiries which could affect their businesses and, in turn, our ability to do business with those clients. Any negative outcomes from regulatory actions or litigation or claims, including monetary penalties or damages or injunctive provisions regulating or restricting how we conduct our business could have a material adverse effect on our business, financial condition, results of operations and reputation.

Regardless of whether any current or future claims in which we are involved have merit, or whether we are ultimately held liable or subject to payment of penalties or consumer redress, such investigations and claims have been and may continue to be expensive to defend, may divert management's time away from our operations and may result in changes to our business practices that adversely affect our results of operations.

Our business and the businesses of our advertiser clients may be subject to sales and use tax and other taxes.

The application of sales and use taxes, business taxes, and gross receipts taxes on our digital marketing/advertising services is complex and evolving. Because of changes in the laws governing us, we are potentially subject to taxes in many more states than was previously the case. The line between exempt services and non-enumerated services subject to sales is unclear and varies from state to state. While our advertising services are generally not subject to sales tax, some states, like New York, impose sales tax on information services. Further complicating the determination of the sales taxability of services is the need to determine the source of revenues from the services (i.e., where the service is rendered, where the service is consumed or where the information is accessed).

Changes in tax laws, interpretation, and implementation of regulations, rules, or guidance on taxes may result in our revenues being subject to sales or other taxes or have a significant adverse impact on our effective tax rate. Were any of these to occur, our overall tax burden could increase, which could have a material adverse impact on our business.

Risks Relating to Data Security and Intellectual Property

We collect and process personal information and other data, and our actual or perceived failure to safeguard such data and user privacy could damage our reputation and results of operations.

We maintain data that contain user information such as name, age, personal address, phone number, email address, survey responses and transactional data. Our ability to protect such information and to provide services using such information without unauthorized disclosure is critical. A breach of the security measures on our systems or on those of our third-party vendors could result in the misappropriation of either our proprietary information or our users' personal information, or the interruption or breakdown of our operations. Our business is largely dependent on consumer-facing websites, which could become inaccessible due to service interruptions or attacks. If our websites are unavailable when users attempt to access them, or if they do not load as quickly as expected, users may not return as often in the future, or at all.

Cybersecurity risks have significantly increased in recent years, in part because of the proliferation of new technologies, the increased use of the internet and telecommunications technologies to exchange information and conduct transactions, and the increased sophistication and activities of computer hackers, organized crime, terrorists, and other external parties, including foreign state actors. Outside parties may try to fraudulently induce employees or our users to disclose sensitive information to enable them to access our systems, user information and information relating to our business operations. Although we continue to enhance our physical and cyber security controls and associated procedures, we cannot guarantee that our websites, database, and information technology systems, and those of our third-party service providers, will be free of security breaches, computer malware or viruses, phishing impersonation attacks, misplaced or lost data, programming and/or human errors, ransomware and similar incidents or disruptions from unauthorized use of our database and systems. We have been subject to and are likely to continue to be the target of future cyberattacks.

We, or any of our third-party partners or service providers, could experience compromises to security that result in the decreased performance or availability of our websites or mobile applications; the loss or unauthorized disclosure, access, acquisition, alteration; or the use of confidential information. As a result, consumers, publishers, or advertisers may lose trust and confidence in us, and consumers may decrease the use of our websites, advertisers may stop using our services and/or publishers may stop providing media to us.

Because the techniques used to obtain unauthorized access, disable, or degrade service, or sabotage systems change frequently, often are not recognized until launched against a target, and may originate from less regulated and remote areas around the world, we may be unable to proactively address these techniques or to implement adequate preventative measures.

Any or all of these issues could adversely affect our ability to attract new users and increase engagement by existing users, cause advertisers to not use our services or cause publishers to stop providing media, disrupt our business operations or subject us to governmental or third-party lawsuits, investigations, regulatory fines or other actions or liability, thereby harming our business. Although we are not aware of any material information security incidents to date, we have detected common types of attempts to attack our information systems and data using means that have included denial of service attacks and phishing.

See also risk factor entitled "Laws and regulations regarding privacy, data protection and the handling of personal information..." above for additional information.

If we do not adequately protect our intellectual property rights, our competitive position and business may suffer.

Our ability to compete effectively depends upon our proprietary systems and technology. We rely on trade secret, trademark and copyright law, confidentiality agreements, and technical measures to protect our proprietary rights. We enter into confidentiality agreements with our employees, consultants, advisers, client vendors and publishers. However, these agreements may not effectively prevent unauthorized disclosure of confidential information or unauthorized parties from copying aspects of our services or obtaining and using our proprietary information. Further, these agreements may not provide an adequate remedy in the event of unauthorized disclosures or uses, and we cannot guarantee that our rights under such agreements will be enforceable.

Policing unauthorized use of our proprietary rights can be difficult and costly. Litigation, while it may be necessary to enforce or protect our intellectual property rights, could result in substantial costs and diversion of resources and management attention, and could adversely affect our business, even if we are successful on the merits. In addition, others may independently discover trade secrets and proprietary information, and in such cases, we could not assert any trade secret rights against such parties.

Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our website features, software and functionality or obtain and use our proprietary information. For example, third party website operators have created look-alike sites of our reward sites, some of which contain links to our terms, privacy policies and/or customer service. These sites divert traffic away from our sites, expose us to regulatory scrutiny as the look-alike sites often have compliance issues, and create consumer confusion. Despite our efforts to monitor the internet for look-alike sites, there can be no assurance that we will be able to quickly detect and remove all look-alike sites, which could impair our reputation, expose us to regulatory scrutiny, and adversely affect our business.

As a creator and a distributor of digital media content, we face liability and expenses for legal claims based on the nature and content of the materials that we create or distribute, including materials provided by third parties. If we are required to pay damages or expenses in connection with these legal claims, our business and results of operations may be harmed.

We display original and third-party content on our websites and in our marketing messages. As a result, we have faced and may continue to face potential liability based on a variety of legal theories, including copyright or trademark infringement. We generally rely on the "fair use" exception for our use of third-party brand names and marks, but these third parties may disagree, and the laws governing the fair use of these third-party materials are imprecise and adjudicated on a case-by-case basis. We also create content we believe to be original for our websites. While we do not believe that this content infringes on any third-party copyrights or other intellectual property rights, owners of competitive websites that present similar content have taken and may take the position that our content infringes on their intellectual property rights.

We are also exposed to risk that content provided by third parties and posted to our websites is inaccurate or misleading. These claims could divert management time and attention away from our business and result in significant costs to investigate and defend, regardless of the merit of these claims. The general liability and cyber/technology errors and omissions insurance we maintain may not cover potential claims of this type or may not be adequate to indemnify us for all liability that may be imposed. Any imposition of liability that is not covered by insurance, or that exceeds our insurance coverage, could materially adversely affect our business, financial condition, and results of operations.

Risks Related to Financial Matters

Covenants in our Credit Agreement impose restrictions that may limit our operating and financial flexibility.

On April 2, 2024, Fluent, LLC entered into a credit agreement (the "SLR Credit Agreement") by and among Fluent, LLC, as Borrower, Fluent, Inc. and certain subsidiaries of the Borrower as guarantors, Crystal Financial LLC D/B/A SLR Credit Solutions, as administrative agent, lead arranger and bookrunner ("SLR"), and the lenders from time to time party thereto. The SLR Credit Agreement provides for a \$20.0 million term loan (the "Term Loan") and a revolving credit facility of up to \$30.0 million (the "Revolving Facility" and, together with the Term Loan, the "SLR Credit Facility"). As of April 2, 2024, the SLR Credit Facility has an outstanding principal balance of \$32.7 million and will mature on April 2, 2029 (the "Maturity Date"). We used \$30.0 million of the proceeds to repay our prior credit facility with Citizens Bank, N.A., as administrative agent, lead arranger and bookrunner, and the other lenders thereto.

We may voluntarily prepay the Term Loan, in whole or in part, at any time, subject to a premium payable on the aggregate principal amount of any such voluntary prepayments within the first three years following the closing date. There is no principal amortization prior to maturity under the SLR Credit Agreement, except for certain mandatory prepayments to be made with the net cash proceeds of certain asset sales, casualty events, and other extraordinary receipts and upon the occurrence of certain other events, in each case, subject to certain reinvestment rights, thresholds and other exceptions. Unfunded commitments under the Revolving Facility will be subject to an unused facility fee, which will be payable monthly in arrears, as of the month following the closing, at a rate of 0.50% per annum. All amounts owed under the Credit Facilities will be due and payable on the Maturity Date, or earlier following a change in control or other event of default, unless otherwise extended in accordance with the terms of the SLR Credit Agreement. Borrowings under the SLR Credit Agreement bear interest at a rate per annum equal to a 3-month term SOFR plus 0.26161%, subject to a 1.50% floor, plus 5.25% (the "Applicable Margin"). The Applicable Margin will be reduced to 5.0% when our fixed charge coverage ratio is greater than 1.10 to 1. The anticipated opening interest rate of the SLR Credit Facility is 10.81% (SOFR + CSA + 5.25%).

The SLR Credit Facility is guaranteed by us and certain of our direct and indirect subsidiaries and is secured by substantially all of our assets and those of certain of our direct and indirect subsidiaries, including Fluent, LLC.

The SLR Credit Agreement contains restrictive covenants which impose limitations on the way we conduct our business, including limitations on the amount of additional debt we are able to incur and our ability to make certain investments or to pay dividends or other restricted payments. The restrictive covenants may limit our strategic and financing options and our ability to return capital to our shareholders through dividends or stock buybacks. In addition, the SLR Credit Agreement requires us to maintain and comply with certain financial covenants.

While we expect to be in compliance with the financial and other covenants, we cannot guarantee that we will be. Our failure to comply with these covenants could result in an event of default which, if not cured or waived, could result in the acceleration of the outstanding indebtedness under the SLR Credit Facility and the termination of commitments under the Revolving Facility, which would materially adversely affect our financial health if we are unable to access sufficient funds to repay all the outstanding amounts. Moreover, if we are unable to meet our debt obligations as they come due, we could be forced to restructure or refinance such obligations, seek additional equity financing, or sell assets, which we may not be able to do on satisfactory terms, or at all.

If we become unable to satisfy a financial covenant or otherwise breach a covenant under our debt facility, our auditors and/or our management may determine that the potential for acceleration of our payment obligations, together with other then-existing factors, creates substantial doubt about our ability to continue as a going concern, as was the case with our prior credit facility as of the filing date of Form 10-Q for the third quarter of 2023. If our financial statements were to include such a going concern uncertainty in the future, the perception that we may not be able to continue as a going concern may cause publishers and other vendors, advertisers and other clients (or potential clients), and others, to review their business relationships and terms with us and potentially terminate the relationship or require changes in terms of the relationship that negatively impact our business, financial condition or results of operations. Furthermore, if we seek additional financing to fund our operations at a time when our financial statements include such a going concern uncertainty, financing sources may be unwilling to provide such funding to us on commercially reasonable terms, or at all, which may exacerbate our ability to alleviate the going concern uncertainty. Such uncertainty regarding our ability to continue as a going concern could also have a material and adverse impact on the trading price of our common stock, which could negatively impact our ability to obtain stock-based financing or enter into strategic transactions intended to alleviate the going concern uncertainty.

The Term Loan under our Credit Facility bears interest based on one of two variable rates (the Federal Funds Rate or a Term Secured Overnight Financing Rate ("SOFR")) plus an applicable margin. Either of these interest rates may increase which could increase the cost of servicing our Term Loan and have an adverse effect on our results of operations, cash flows and stock price. In addition, our experience with SOFR based loans is limited.

The term loan under our Credit Facility is at our option either Alternative Base Rate Loans that bear interest at a base rate which is based on the Federal Funds Rate plus a prescribed margin, or Term SOFR Loans that bear interest at rates selected by us (based on loans of one-, three- or six- month duration) based on SOFR published by the CME Group plus prescribed margins. We bear the risk that the rates we are charged by our lenders will increase faster than the earnings and cash flow of our business, which could reduce profitability, adversely affect our ability to service our debt, or cause us to breach covenants contained in our credit agreement or leases.

The use of SOFR based rates is intended to replace rates based on the London Interbank Offered Rate ("LIBOR") and reflects the discontinuation of the use of LIBOR in the financial markets. The use of SOFR-based rates may result in interest rates and/or payments that are higher or lower than the rates and payments that we experienced previously for the term loan under our Credit Facility, where interest rates were based on LIBOR. Also, the use of SOFR-based rates is relatively new, and there could be unanticipated difficulties or disruptions with the calculation and publication of SOFR based rates. In particular, if the agent under the Credit Facility determines that the Term SOFR rates cannot be determined or the agent or the lenders determine that Term SOFR-based rates do not adequately reflect the cost of funding the SOFR Loans, outstanding SOFR Loans will be deemed to have been converted into Alternate Base Rate Loans by the Company. This could result in increased borrowing costs for the Company, which could materially adversely affect our business, financial condition, and result of operations.

We may require additional capital in the future to pursue our business objectives and respond to business opportunities, challenges, or unforeseen circumstances. If capital is not available to us, the future growth of our business and operations would be severely limited.

We intend to continue to make investments to support our growth and may require additional capital to pursue our business objectives and respond to business opportunities, challenges, or unforeseen circumstances. The Credit Agreement includes an undrawn revolving credit facility of up to \$30 million that we can use subject to certain conditions. If we require additional capital, we may need to engage in equity or debt financings to secure additional funds. However, additional funds may not be available when we need them or on acceptable terms. Disruptions in the global equity and credit markets may also limit our ability to access capital.

To the extent that we raise additional funds by issuing equity securities, the ownership of our existing stockholders will be diluted. The incurrence of additional debt financing would result in debt service obligations, and any future instruments governing such debt could provide for operating and financing covenants that could restrict our operations. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue certain operations. Any of these events could significantly harm our business and results of operations.

We have experienced significant charges to our goodwill and could experience significant charges to our intangible assets, which may affect our results of operations in the future.

As a result of prior acquisitions, we had a substantial amount of goodwill and purchased intangible assets on our consolidated balance sheet. The carrying value of goodwill represents the fair value of an acquired business in excess of identifiable assets and liabilities as of the acquisition date. The carrying value of intangible assets with identifiable useful lives are amortized based on their economic lives. Goodwill that is expected to contribute indefinitely to our cash flows is not amortized but must be evaluated for impairment at least annually and when events or changes in circumstances indicate the carrying value may not be recoverable. If necessary, a quantitative test is performed to compare the carrying value of the asset to its estimated fair value, as determined based on a discounted cash flow approach, or when available and appropriate, to comparable market values. If the carrying value of the asset exceeds its current fair value, the asset is considered impaired and its carrying value is reduced to fair value through a non-cash charge to earnings. As of December 31, 2023, substantially all of the goodwill from prior acquisitions has been impaired. Unfavorable changes in the business climate or competitive environment, our revenue forecasts, our market capitalization, capital structure, capital expenditure levels, operating cash flows, as well as adverse legal or regulatory actions or developments could cause further material impairments to the carrying value of our intangible assets or intangible assets we may obtain in future periods.

We will continue to monitor indicators of possible impairment that would cause a triggering event requiring us to complete an interim impairment analysis and possibly recognize additional impairment charges in the future. Impairment charges to our intangible assets could have a material adverse effect on our financial condition, and results of operations.

Risks Related to Our Common Stock and the Securities Markets

There can be no assurance that our common stock will continue to be listed on The Nasdaq Stock Market, which could limit investors' ability to make transactions in our common stock and the price of our common stock and our ability to access the capital markets.

On May 1, 2023, The Nasdaq Stock Market LLC ("Nasdaq") notified us that we were not in compliance with the minimum bid price requirement set forth in Nasdaq Listing Rule 5450(a)(1) (the "Minimum Bid Price Requirement"). The closing bid price for our common stock, par value \$0.0005 per share, had been less than \$1.00 per share for the previous 30 consecutive business days. We were provided an initial period of 180 calendar days, or until October 30, 2023 (the "Initial Compliance Period"), to regain compliance with the Minimum Bid Price Requirement. On October 18, 2023, we transferred the listing of our common stock from The Nasdaq Global Market to The Nasdaq Capital Market, and on October 31, 2023, the Nasdaq confirmed that we were eligible for an additional 180 calendar day period, or until April 29, 2024 (the "Additional Compliance Period"), to regain compliance with the Minimum Bid Price Requirement, including by effecting a reverse stock split, if necessary.

On March 18, 2024, our stockholders approved a proposed Certificate of Amendment to our Certificate of Incorporation and gave the Board the authority, at its discretion, to file the Certificate of Amendment to effect a reverse stock split of our common stock at any time within one year following stockholder approval.

While we intend to demonstrate compliance with the Minimum Bid Price Requirement through a reverse stock split if necessary by April 29, 2024, there can be no assurance that we will be able to regain compliance with the Minimum Bid Price Requirement or continue to satisfy other continued listing standards and maintain the listing of our common stock on Nasdaq. The suspension or delisting of our common stock, or the commencement of delisting proceedings, could, among other things, materially impair our stockholders' ability to buy and sell shares of our common stock and could have an adverse effect on the market price of, and the efficiency of the trading market for, our common stock. Although we may effect a reverse stock split of our issued and outstanding common stock in the future, there can be no assurance that such reverse stock split will enable us to regain compliance with the Nasdaq Minimum Bid Price Requirement. Moreover, the liquidity of the shares of our common stock may be affected adversely by a reverse stock split given the reduced number of shares that will be outstanding following a reverse stock split, especially if the market price of our common stock does not increase because of the reverse stock split.

If we do not regain compliance and our common stock is delisted from Nasdaq, it may be subject to the "penny stock" rules. The SEC has adopted regulations that define a "penny stock" to be any equity security that has a market price per share of less than \$5.00, subject to certain exceptions, such as any securities listed on a national securities exchange, which is the exception on which we currently rely. For any transaction involving a "penny stock," unless exempt, the rules impose additional sales practice requirements on broker-dealers, subject to certain exceptions. If our common stock were delisted and determined to be a "penny stock," a broker-dealer may find it more difficult to trade our common stock and an investor may find it more difficult to acquire or dispose of our common stock on the secondary market.

Our stock price has been and may be volatile in the future, and as a result, investors in our common stock could incur substantial losses.

There can be no guarantee that our stock price will remain at current prices or that future sales of our common stock will not be at prices lower than those sold to investors. We may incur rapid and substantial increases or decreases in our stock price in the foreseeable future attributable to various factors including those discussed in the Risk Factors included in this report. Some factors may be unrelated to our operating performance or prospects or may be beyond our control. The price for our common stock may be influenced by many factors, including investor reaction to our business strategy; the success of our services, products, or technologies; compliance with the Nasdaq listing standards; variations in our financial results; any major change in our board or management; or our involvement in regulatory investigations or litigation. In addition, if one or more analysts covering our business downgrade their evaluations of our common stock or the stock of other companies in our industry, the price of our common stock could decline. If one or more analysts cease to cover our common stock, we could lose visibility in the market for our common stock, which in turn could cause our stock price to decline.

Since our stock price may continue to be volatile in the future, investors in our common stock could incur substantial losses. In the past, following periods of volatility in the market, securities class-action litigation has often been instituted against companies. Securities litigation and stockholder activism, including potential proxy contests, could result in substantial costs and divert management's and our board of directors' attention and resources from our business. Such securities litigation and stockholder activism could give rise to perceived uncertainties as to our future, adversely affect our relationships with service providers and make it more difficult to attract and retain qualified personnel. We may be required to incur significant legal fees and other expenses related to any securities litigation and activist stockholder matters. Further, our stock price could be subject to significant fluctuation or otherwise be adversely affected by the events, risks and uncertainties of any securities litigation and stockholder activism.

The concentration of our stock ownership presents risks, including lack of liquidity in the trading market for our common stock and limitations on any individual stockholder's ability to influence corporate matters.

As of December 31, 2023, our executive officers, directors, and holders of 10% or more of our outstanding common stock, in the aggregate, beneficially owned and have the ability to exercise some voting control over approximately 43.6% of our outstanding shares of common stock. As a result, these stockholders could exert significant influence over all matters requiring stockholder approval, including the election of directors and determination of significant corporate actions. The interests of these stockholders may not always coincide with the interests of other stockholders, and these stockholders may act in a manner that advances their interests and not necessarily those of other stockholders, which might affect the trading price of our common stock.

The concentration of stock ownership may also serve to limit the trading volume of our common stock and lead to greater volatility in our stock price. Our largest shareholder, Frost Gamma Investments Trust ("FGIT"), owns, directly and indirectly, approximately 35.6% of our outstanding common stock.

FGIT has no obligation to provide us with advance notice of any sale or purchase of our common stock. If the concentration of our common stock ownership were to significantly shift, via sales of shares currently held by FGIT or otherwise, we cannot predict the impact that any resulting change to the trading volume might have on our stock price.

Future issuances of shares of our common stock in connection with acquisitions or pursuant to our stock incentive plans could have a dilutive effect on your investment in us.

During 2022 and 2023, we issued 1,328,375 and 1,532,433 shares, respectively, of our common stock in connection with acquisitions, vesting of awards made under our 2018 Stock Incentive Plans and our 2022 Omnibus Equity Incentive Plan (the "2022 Plan"), and for other business purposes. Also, as of December 31, 2023, there were an additional 6,203,001 shares of restricted stock and underlying options issued under the 2022 Plan, as well as other compensatory arrangements that might vest and be delivered through 2031. The benefits derived by us from any future acquisition might not exceed the dilutive effect of the acquisition. Pursuant to the incentive plans, our board of directors has granted and may continue to grant stock options, restricted stock units, or other equity awards to our directors and employees. When these awards vest or are exercised, the issuance of shares of common stock underlying these awards may have a dilutive effect on our common stock, which could cause our stock price to decline.

We do not intend to pay cash dividends for the foreseeable future.

We have never declared or paid cash dividends on our common stock and we do not expect to declare or pay any cash dividends in the foreseeable future. Additionally, our Credit Agreement prohibits us from paying cash dividends on our common stock and contains limitations on our ability to redeem or repurchase shares of our common stock. As a result, shareholders may only receive a return on your investment in our common stock if the trading price of your shares increases.

We are a smaller reporting company and a non-accelerated filer, and we benefit from certain reduced governance and disclosure requirements, including that our independent registered public accounting firm is not required to attest to the effectiveness of our internal control over financial reporting. We cannot be certain if the reduced disclosure requirements applicable to smaller reporting companies and non-accelerated filers will make our common stock less attractive to investors.

Currently, we are a "smaller reporting company," meaning that our outstanding common stock held by nonaffiliates had a value of less than \$250 million at the end of our most recently completed second fiscal quarter. We are also a non-accelerated filer because we had a public float of less than \$75 million as of the last business day of our most recently completed second quarter. As a non-accelerated filer, we are not required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, meaning our auditors are not required to attest to the effectiveness of our internal control over financial reporting. As a result, investors and others may be less comfortable with the effectiveness of our internal controls and the risk that material weaknesses or other deficiencies in internal controls go undetected may increase. In addition, as a smaller reporting company, we take advantage of our ability to provide certain other less comprehensive disclosures in our SEC filings, including, among other things, providing only two years of audited financial statements in annual reports and simplified executive compensation disclosures. Consequently, it may be more challenging for investors to analyze our results of operations and financial prospects, as the information we provide to investors is less robust than the disclosure investors receive from public companies that are not a smaller reporting company.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 1C. Cybersecurity.

We have made cybersecurity and the protection of our customer's data a top priority. The critical areas that we consider for our evolving cybersecurity program include access control; data encryption; SSDLC/change management; BCP/DRP; endpoint security; patch management; vulnerability assessments; compliance management; data privacy; incident response; monitoring, alerting, and lodging; employee training; and cyber insurance.

Risk Management & Strategy

Our cyber risk management program is designed to identify, assess, manage, mitigate, and respond to cybersecurity threats. To help protect our company from a major cybersecurity incident that could have a material impact on operations or our financial results, we have implemented policies, procedures, programs and controls, including investments in technology that focus on cybersecurity incident prevention, identification and mitigation. The underlying controls of the cyber risk management program are based on recognized best practices and standards for cybersecurity and information technology, including the National Institute of Standards and Technology ("NIST"). We execute an NIST 800-53 review annually and use the results of existing cyber risks to prioritize projects designed to address these gaps and create a go-forward strategy. Our internal and external auditors review our IT and cybersecurity controls annually for design and operating effectiveness.

Governance

Our Cybersecurity Program is governed by the Company's IT and Legal and Compliance teams. Our Chief Technology Officer ("CTO") has over 20 years of experience in marketing technology and analytics. Our Vice President of IT Governance, Risk and Compliance ("VP of IT") has over 20 years of experience in IT internal and external audits, IT consulting, and governance, risk, and compliance. Our General Counsels regularly coordinates with the IT team on data security and compliance issues. The CTO and General Counsels report directly to the Chief Executive Officer ("CEO"), so any material issues are raised to CEO, and a status of key cybersecurity projects and any material breaches is provided quarterly to the Board's Audit Committee, which includes both an internal and external audit.

Incident Disclosure and Materiality

Our incident management procedures include identification, evaluation, definition, and escalation based on the determination of materiality. This determination involves the Company's IT and Legal and Compliance teams, executive officers, and cyber insurance provider. Breach notifications and escalation to the Audit Committee would also be based on the materiality determination. Each quarter, the VP of IT provides an update on key cybersecurity projects and any material breaches at the quarterly Audit Committee meeting, at which both the internal and external auditors are present.

While we did not experience a material cybersecurity incident during the year ended December 31, 2023, the scope and impact of any future incident cannot be predicted. Notwithstanding the approach we take to cybersecurity, we may not be successful in preventing or mitigating a cybersecurity incident that could have a material adverse effect on our business, results of operations, or financial condition. See Item 1A. "Risk Factors" for more information on our cybersecurity-related risks.

Item 2. Properties.

Our headquarters are located at 300 Vesey Street, 9th Floor, New York, NY 10282, where we lease 42,685 rentable square feet of office space under an 84-month lease, effective November 2018. The AdParlor business operates out of a shared co-working space located at 200 Bay Street, North Tower Suite 1200, Toronto, Ontario M5J 2J2, Canada under a 12-month lease, effective August 1, 2023.

As of December 31, 2023, we have not terminated any significant lease arrangements. We believe our present facilities are suitable and adequate for our current operating needs.

Item 3. Legal Proceedings.

Other than as disclosed below under "Certain Legal Matters," the Company is not currently a party to any legal proceeding, investigation or claim which, in the opinion of the management, is likely to have a material adverse effect on our business, financial condition, results of operations or cash flows. Legal fees associated with such legal proceedings are expensed as incurred. We review legal proceedings and claims on an ongoing basis and follow appropriate accounting guidance, including FASB Accounting Standards Codification 450 ("ASC 450"), *Contingencies*, when making accrual and disclosure decisions. We establish accruals for those contingencies where the incurrence of a loss is probable and can be reasonably estimated, and we disclose the amount accrued and the amount of a reasonably possible loss in excess of the amount accrued, if such disclosure is necessary for our financial statements to not be misleading. To estimate whether a loss contingency should be accrued by a charge to income, we evaluate, among other factors, the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of such loss. We do not accrue liabilities when the likelihood that the liability has been incurred is probable, but the amount cannot be reasonably estimated.

In addition, we may be involved in litigation from time to time in the ordinary course of business. We do not believe that the ultimate resolution of any such matters currently pending will have a material adverse effect on our business, financial condition, results of operations or cash flows. However, the results of such matters cannot be predicted with certainty, and we cannot assure you that the ultimate resolution of any legal or administrative proceeding or dispute will not have a material adverse effect on our business, financial condition, results of operations and cash flows.

Certain Legal Matters

On March 31, 2022, the Company reached a settlement for \$1.7 million with the New York State Department of Taxation and Finance (the "Tax Department") following a sales and use tax audit covering the period from December 1, 2010 to November 30, 2019. The Tax Department had asserted that revenue derived from certain of the Company's customer acquisition and list management services were subject to sales tax, as a result of being deemed taxable information services. The settlement amount was paid on April 1, 2022. Since March 1, 2022, the Company has been collecting and remitting New York sales tax on certain types of revenue from New York-based clients.

On January 28, 2020, Fluent received a Civil Investigative Demand from the FTC regarding compliance with the FTC Act and the TSR. On October 18, 2022, the FTC staff sent the Company a draft complaint and proposed consent order seeking injunctive relief and a civil monetary penalty. On January 12, 2023, the Company made an initial proposal of \$5.0 million for the civil monetary penalty contingent on successful negotiation of the remaining outstanding terms. The Company accrued the same amount for the year ending December 31, 2022. On May 26, 2023, Fluent agreed to the terms of a Stipulated Order for Permanent Injunction, Monetary Judgment, Civil Penalty Judgment, and Other Relief (the "FTC Consent Order"). The FTC Consent Order imposed a civil penalty of \$2.5 million, required additional changes to the Company's employment opportunities marketplace and programmatic advertising business, and resulted in the implementation of compliance measures across the business. On July 17, 2023, the FTC filed its Complaint for Civil Penalties, Permanent Injunction, Monetary Relief, and Other Relief and, together with Fluent, filed a Joint Motion for Entry of Proposed Stipulated Order in the United States District Court for the Southern District of Florida. The FTC Consent Order was entered by the Court on August 11, 2023, and the monetary judgement was paid on August 15, 2023. The Company maintains insurance policies that cover certain legal costs, which include those incurred related to the FTC investigation. As of December 31, 2023, the Company had recognized \$6.2 million as contra-expense to general and administrative expenses with a small remaining current asset related to these insurance policies.

On October 6, 2020, the Company received notice from the PAAG that it was reviewing the Company's business practices relating to telemarketing. After the Company and the PAAG were unable to reach agreement on a proposed Assurance of Voluntary Compliance, the Commonwealth of Pennsylvania filed a complaint for permanent injunction, civil penalties, and other relief in the United States District Court for the Western District of Pennsylvania on November 2, 2022. On May 18, 2023, the parties entered into a settlement and jointly filed a Consent Petition of Final Decree, wherein the Company agreed to injunctive relief and to pay the PAAG \$0.25 million for investigatory costs, all of which was paid as of June 30, 2023.

The Company has been involved in a TCPA class action, *Daniel Berman v. Freedom Financial Network*, which was originally filed in the Northern District of California in 2018. On May 31, 2023, the parties entered into an Amended Class Action Settlement Agreement (the "Berman Settlement Agreement"), which includes injunctive provisions and payment to plaintiffs of \$9.75 million for legal fees and a consumer redress fund. On July 28, 2023, the Court preliminarily approved the Berman Settlement Agreement, and the Company contributed \$3.1 million, payable following the final approval of the settlement. The final approval of the Berman Settlement Agreement was filed on February 23, 2024, with payment required by March 15, 2024. The Company's contribution amounts were accrued as of December 31, 2022, which includes \$1.1 million in cash and \$2.0 million pursuant to an interest-bearing note with a two-year term provided by co-defendant, Freedom Financial Network.

Item 4. Mine Safety Disclosures.

Not Applicable.

PART II

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

Our common stock is listed on The Nasdaq Capital Market ("Nasdaq") under the symbol "FLNT." Prior to March 26, 2018, our common stock was listed on Nasdaq under the symbol "COGT." As of March 27, 2024, there were 236 record holders of our common stock.

During our fiscal years ended December 31, 2023 and 2022, we paid no dividends and made no other distributions in respect of our common stock. We have no plans to pay any cash dividends or make any other cash distributions in the foreseeable future. Our Credit Agreement prohibits us from paying dividends on our equity securities, other than dividends on common stock which accrue (but are not paid in cash) or are paid in kind, or dividends on preferred stock which accrue (but are not paid in cash) or are paid in kind.

Issuer Purchase of Equity Securities

The table below sets forth the information with respect to purchases made by or on behalf of the Company of its common stock during the fourth quarter of 2022.

Period	Total Number of Shares Purchased(1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs
October 1-31, 2023	—	—	—	—
November 1-30, 2023	—	—	—	—
December 1-31, 2023	—	—	—	—
Total	—	—	—	—

(1) During October 2023, November 2023, and December 2023, no shares were purchased to satisfy federal and state withholding obligations of our employees upon the settlement of restricted stock units, all in accordance with the applicable equity incentive plan.

Item 6. [Reserved].

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes included in this Annual Report on Form 10-K ("2023 Form 10-K"). This 2023 Form 10-K contains certain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from any future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to those differences include, but are not limited to, those discussed in the section titled "Cautionary Note Regarding Forward-Looking Statements" and in Part I, "Item 1A. Risk Factors" of this 2023 Form 10-K.

Overview

Fluent, Inc. ("we," "us," "our," "Fluent," or the "Company"), is an industry leader in digital marketing services. We primarily perform customer acquisition services by operating highly scalable digital marketing campaigns, through which we connect our advertiser clients with consumers they are seeking to reach. We access these consumers through both our owned and operated digital media properties and our auxiliary syndicated performance marketplace products. In 2023, we delivered data and performance-based customer acquisition services for over 500 consumer brands, direct marketers, and agencies across a wide range of industries, including Media & Entertainment, Financial Products & Services, Health & Life Sciences, Retail & Consumer, and Staffing & Recruitment.

We attract consumers at scale to our owned and operated digital media properties primarily through promotional offerings where they are rewarded for completing activities within the platforms. When registering on our sites, consumers provide their names, contact information, and opt-in permission to present them with relevant offers on behalf of our clients. Approximately 90% of these users engage with our media on their mobile devices or tablets.

Once users have registered on our sites, we integrate our proprietary direct marketing technologies and analytics to engage them with surveys, polls, and other experiences, through which we learn about their lifestyles, preferences, and purchasing histories, among other matters. Based on these insights, we serve targeted, relevant offers to them on behalf of our clients. As new users register and engage with our sites and existing registrants re-engage, the enrichment of our database expands our addressable client base and improves the effectiveness of our performance-based campaigns.

We also operate syndicated performance marketplaces on partner sites where we utilize our proprietary ad-serving technology to identify and acquire additional consumers for our advertiser clients. Our technology is integrated at key moments in the consumer experience to capitalize on high engagement and improve conversion. For example, Adflow, our post-sale e-commerce business, connects our advertisers to consumers on e-commerce websites after check-out. These syndicated solutions generate meaningful income for our partners, while driving additional growth for our advertiser clients. We typically remunerate our syndication partners on a revenue share or impression basis.

Additionally, the company operates a call center performance marketplace that provides live-call-based performance campaigns to help clients increase engagement. The call solutions marketplace serves clients across an array of industries but has a heavy focus on the health insurance sector.

Since our inception, we have amassed a large, proprietary database of first-party, self-declared user information and preferences. We solicit our users' consent to be contacted by us and/or our advertisers via various contact methods including email, telephone, SMS/text, and push messaging. We then leverage their self-declared data in our performance offerings primarily in two ways: (1) to serve advertisements that we believe will be relevant to users based on the information they provide when they engage on our sites or other partner sites through our syndicated performance marketplaces and (2) to provide our clients with users' contact information so that such clients may communicate with them directly. We may also leverage our existing technology and database to drive new revenue streams, including utilization-based models (e.g., programmatic advertising).

We generate revenue by delivering measurable marketing results to our clients. We differentiate ourselves from other marketing alternatives by our abilities to provide clients with a cost-effective and measurable return on advertising spend ("ROAS"), a measure of profitability of sales compared to the money spent on ads, and to manage highly targeted and highly fragmented online media sources. We are predominantly paid on a negotiated or market-driven "per click," "per lead," or other "per action" basis that aligns with the customer acquisition cost targets of our clients. We bear the costs of acquiring traffic from publishers performance marketplaces that ultimately generate qualified clicks, leads, calls, app downloads, or customers for our clients.

Through AdParlor, LLC ("AdParlor"), we conduct our non-core business which offers clients various social media strategies through the planning and buying of media on different platforms.

For the years ended December 31, 2023 and 2022, we recorded revenue of \$298.4 million and \$361.1 million, net loss of (\$63.2) million and (\$123.3) million, and adjusted EBITDA of \$6.8 million and \$22.7 million, respectively. Adjusted EBITDA is a non-GAAP financial measure equal to net income (loss), the most directly comparable financial measure based on US GAAP, adding back income taxes, interest expense, depreciation and amortization, share-based compensation expense, and other adjustments. See our audited consolidated financial statements and accompanying notes thereto appearing elsewhere in this 2023 Form 10-K, and for further discussion and analysis of our results of operations. For further discussion of adjusted EBITDA, including a reconciliation from net income (loss), see "Definitions, Use and Reconciliation of Non-GAAP Financial Measures" below.

Trends Affecting our Business

Development, Acquisition and Retention of High-Quality Targeted Media Traffic

Our business depends on identifying and accessing media sources that are of high quality and on our ability to attract targeted users to our owned and operated media properties. As our business has grown, we have attracted larger and more sophisticated clients to our marketplaces. To further increase our value proposition to clients and to fortify our leadership position in the evolving regulatory landscape of our industry, we implemented a Traffic Quality Initiative in 2020 and expanded into new syndicated performance marketplaces in 2023. Sourcing high quality traffic will remain a focus and part of a broader initiative to improve customer acquisition for our clients.

Starting in 2022, we increased our spend with major digital media platforms, revised our bidding strategies for affiliate traffic, and developed partnerships to expand traffic from social media platforms, including the growing influencer sector. We also pursued strategic initiatives that enable us to grow revenue with existing user traffic volume, while attracting users to our media properties via email and SMS messages. These efforts continued in 2023, as we focused on improved monetization of consumer traffic through improved customer relationship management and internal capabilities that allow us to re-engage consumers who have registered on our owned media properties. Through these initiatives, our business has become less dependent on the volume of users to generate revenue growth.

We believe that significant value has been, and will continue to be, created by improving the quality of traffic sourced to our media properties, through increased user participation rates on our sites, leading to higher conversion rates, resulting in increased monetization, and ultimately increasing revenue and media margin. Media margin, a non-GAAP measure, is the portion of gross profit (exclusive of depreciation and amortization) reflecting variable costs paid for media and related expenses and excluding non-media cost of revenue.

Since 2022, we have experienced challenges growing our traffic volume to our owned and operated properties due to several factors including the volatility of affiliate supply sources, changes in search engine algorithms, email and text message blocking algorithms, and increased competition for available media. In response to these challenges, we invested in strategic and internal efforts to secure additional traffic from the growing influencer sector and expanding our ad network beyond our owned and operated marketplace to new syndicated performance marketplaces. The mix and profitability of our media channels, strategies, and partners is likely to continue to be dynamic and reflect evolving market trends and the regulatory environment.

Advertiser Trends & Seasonality

We deliver data and performance-based marketing executions to our clients across a wide range of industries, including Media & Entertainment, Financial Products & Services, Health & Life Sciences, Retail & Consumer, and Staffing & Recruitment. Both data and performance-based spend continued to be challenged in 2023 by general economic uncertainty. We experienced slowdowns in 2023 in certain sectors of the Media & Entertainment, Staffing & Recruitment, and Financial Products & Services industries. Specifically, in the third quarter of 2023 our largest client in the gaming sector pulled back pricing and spend as they refocused on ROAS rather than growth. Although the Company addressed this pullback by scaling other clients in the marketplace from the gaming sector and other sectors of the Media & Entertainment industry, the gap was not fully absorbed by other bidders.

To offset these challenges, we continue to work with a select group of advertisers to define high performing consumer segments and strategically price paid conversions to help clients drive higher ROAS. This initiative has driven increased budgets from clients across the Media & Entertainment industry, which, collectively, represents a large component of our revenue mix.

Additionally, our performance is subject to fluctuations as a result of seasonality and cyclicalities in our traffic sources and our clients' businesses. Specifically, Adflow and our businesses that benefit from Medicare open enrollment experience increased volume in the fourth quarters. Other factors affecting our business may include macroeconomic conditions that impact the digital advertising industry, the various client verticals we serve, and general market conditions.

We believe the first half of 2024 will continue to be characterized by slowed economic conditions and uncertainty. To confront these headwinds, we will continue to diversify our client base, and we intend to further develop our "ROAS program" across additional segments of advertisers in an effort to gain additional budget allocations and further improve our user monetization. We project improvement in the second half of 2024, but we cannot assure you that such improvement will occur.

Business Practices & Compliance

During 2023, we continued to be impacted by slowed economic conditions and uncertainty. Additionally, as a result of the FTC Consent Order described in Part I, Item 3— Legal Proceedings, above, we made additional changes to our employment opportunities marketplace and programmatic advertising businesses and implemented industry-leading compliance measures to the owned and operated marketplace, which have had negative impacts on our revenues and media margin throughout the year. In the medium term, we expect that the increased regulatory scrutiny will eliminate the advantage that less compliance-focused competitors currently benefit from, enabling us to recapture market share. Additionally, legal fees related to the FTC Consent Order decreased over the year and were ultimately offset by insurance reimbursements for legal fees incurred in current and prior periods.

Current Economic Conditions

We are subject to risks and uncertainties caused by events with significant macroeconomic impacts. Inflation, rising interest rates, and reduced consumer confidence have caused our clients and their customers to be cautious in their spending. The full impact of these macroeconomic events and the extent to which these macro factors may impact our business, financial condition, and results of operations in the future remains uncertain. In light of the challenging macro-economic environment, we prioritized strategic investments in 2023 that had near-term benefits to revenue while also streamlining our organization through targeted workforce reductions.

Please see "Results of Operations" below, and "Item 1A. Risk Factors — "Economic or political instability could adversely affect our business, financial condition, and results of operations," and "We are exposed to credit risks from our clients, and we may not be able to collect on amounts owed to us." for further discussion of current economic conditions.

Definitions, Use and Reconciliation of Non-US GAAP Financial Measures

We report the following non-US GAAP measures:

Media margin is defined as that portion of gross profit (exclusive of depreciation and amortization) reflecting variable costs paid for media and related expenses and excluding non-media cost of revenue. Gross profit (exclusive of depreciation and amortization) represents revenue minus cost of revenue (exclusive of depreciation and amortization). Media margin is also presented as a percentage of revenue.

Adjusted EBITDA is defined as net income (loss), excluding (1) income taxes, (2) interest expense, net, (3) depreciation and amortization, (4) share-based compensation expense, (5) loss on early extinguishment of debt, (6) accrued compensation expense for Put/Call Consideration, (7) goodwill impairment, (8) write-off of intangible assets, (9) loss on disposal of property and equipment, (10) acquisition-related costs, (11) restructuring and other severance costs, and (12) certain litigation and other related costs.

Adjusted net income (loss) is defined as net income (loss), excluding (1) share-based compensation expense, (2) loss on early extinguishment of debt, (3) accrued compensation expense for Put/Call Consideration, (4) goodwill impairment, (5) write-off of intangible assets, (6) loss (gain) on disposal of property and equipment, (7) acquisition-related costs, (8) restructuring and other severance costs, and (9) certain litigation and other related costs. Adjusted net income (loss) is also presented on a per share (basic and diluted) basis.

Below is a reconciliation of media margin from gross profit (exclusive of depreciation and amortization), which we believe is the most directly comparable US GAAP measure:

	Year Ended December 31,	
	2023	2022
Revenue	\$ 298,399	\$ 361,134
Less: Cost of revenue (exclusive of depreciation and amortization)	219,884	267,487
Gross Profit (exclusive of depreciation and amortization)	\$ 78,515	\$ 93,647
Gross Profit (exclusive of depreciation and amortization) % of revenue	26%	26%
Non-media cost of revenue (1)	12,785	16,392
Media margin	\$ 91,300	\$ 110,039
Media margin % of revenue	30.6%	30.5%

(1) Represents the portion of cost of revenue (exclusive of depreciation and amortization) not attributable to variable costs paid for media and related expenses.

Below is a reconciliation of adjusted EBITDA from net income (loss), which we believe is the most directly comparable US GAAP measure:

	Year Ended December 31,	
	2023	2022
Net loss	\$ (63,218)	\$ (123,332)
Income tax expense (benefit)	(116)	1,776
Interest expense, net	3,204	1,965
Depreciation and amortization	10,876	13,214
Share-based compensation expense	3,756	4,092
Goodwill impairment	55,405	111,069
Write-off of intangible assets	—	186
Loss on disposal of property and equipment	—	19
Acquisition-related costs (1)	2,745	2,247
Restructuring and certain severance costs	456	414
Certain litigation and other related costs	(6,311)	11,079
Adjusted EBITDA	\$ 6,797	\$ 22,729

(1) Balance includes compensation expense related to non-competition agreements and earn-out expense incurred as a result of business combinations (see Note 13, *Business acquisitions*, and Note 14, *Variable Interest Entity*, in the Notes to the Consolidated Financial Statements). The earn-out expense was \$434 and \$121 for the years ended December 31, 2023 and 2022, respectively.

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Below is a reconciliation of adjusted net income and adjusted net income per share from net income (loss), which we believe is the most directly comparable US GAAP measure:

(In thousands, except share and per share data)	Year Ended December 31,	
	2023	2022
Net loss	\$ (63,218)	\$ (123,332)
Share-based compensation expense	3,756	4,092
Goodwill impairment	55,405	111,069
Write-off of intangible assets	—	186
Loss on disposal of property and equipment	—	19
Acquisition-related costs (1)	2,745	2,247
Restructuring and certain severance costs	456	414
Certain litigation and other related costs	(6,311)	11,079
Adjusted net income (loss)	\$ (7,167)	\$ 5,774
Adjusted net income (loss) per share:		
Basic	\$ (0.09)	\$ 0.07
Diluted	\$ (0.09)	\$ 0.07
Adjusted weighted average number of shares outstanding:		
Basic	82,622,131	81,412,595
Diluted	82,622,131	81,565,372

(1) Balance includes compensation expense related to non-competition agreements and earn-out expense incurred as a result of business combinations (see Note 13, *Business acquisitions*, and Note 14, *Variable Interest Entity*, in the Notes to the Consolidated Financial Statements). The earn-out expense was \$434 and \$121 for the years ended December 31, 2023 and 2022, respectively.

We present media margin, media margin as a percentage of revenue, adjusted EBITDA, adjusted net income, and adjusted net income per share as supplemental measures of our financial and operating performance because we believe they provide useful information to investors. More specifically:

Media margin, as defined above, is a measure of the efficiency of the Company's operating model. We use media margin and the related measure of media margin as a percentage of revenue as primary metrics to measure the financial return on our media and related costs, specifically to measure the degree by which the revenue generated from our digital marketing services exceeds the cost to attract the consumers to whom offers are made through our services. Media margin is used extensively by our management to manage our operating performance, including evaluating operational performance against budgeted media margin and understanding the efficiency of our media and related expenditures. We also use media margin for performance evaluations and compensation decisions regarding certain personnel.

Adjusted EBITDA, as defined above, is another primary metric by which we evaluate the operating performance of our business, on which certain operating expenditures and internal budgets are based and by which, in addition to media margin and other factors, our senior management is compensated. The first three adjustments represent the conventional definition of EBITDA, and the remaining adjustments are items recognized and recorded under US GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. These adjustments include litigation and other related costs associated with legal matters outside the ordinary course of business, including costs and accruals related to matters described above under Part I, Item 3 — Legal Proceedings. We consider items one-time in nature if they are non-recurring, infrequent or unusual and have not occurred in the past two years or are not expected to recur in the next two years, in accordance with SEC rules. There were no adjustments for one-time items in the periods presented.

Adjusted net income (loss), as defined above, and the related measure of adjusted net income (loss) per share exclude certain items that are recognized and recorded under US GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. We believe adjusted net income (loss) affords investors a different view of the overall financial performance of the Company than adjusted EBITDA and the US GAAP measure of net income (loss).

Media margin, adjusted EBITDA, adjusted net income (loss), and adjusted net income (loss) per share are non-GAAP financial measures with certain limitations regarding their usefulness. They do not reflect our financial results in accordance with GAAP, as they do not include the impact of certain expenses that are reflected in our condensed consolidated statements of operations. Accordingly, these metrics are not indicative of our overall results or indicators of past or future financial performance. Further, they are not financial measures of profitability and are neither intended to be used as a proxy for the profitability of our business nor to imply profitability. The way we measure media margin, adjusted EBITDA, and adjusted net income (loss) may not be comparable to similarly titled measures presented by other companies and may not be identical to corresponding measures used in our various agreements.

Results of Operations

Summary

Year ended December 31, 2023 compared to year ended December 31, 2022:

- Revenue decreased 17% to \$298.4 million, from \$361.1 million.
- Net loss was \$63.2 million, or \$0.77 per share, compared to net loss of \$123.3 million, or \$1.51 per share.
- Gross profit (exclusive of depreciation and amortization) decreased 16% to \$78.5 million, representing 26% of revenue, from \$93.6 million, representing 26% of revenue.
- Media margin decreased 17% to \$91.3 million, representing 30.6% of revenue, from \$110.0 million, representing 30.5% of revenue.
- Adjusted EBITDA decreased 70% to \$6.8 million, based on a net loss of \$63.2 million, from \$22.7 million, based on net loss of \$123.3 million.
- Adjusted net loss was \$7.2 million, or \$ (0.09) per share, compared to adjusted net income of \$5.8 million, or \$ 0.07 per share.

The following tables show our results of operations for the periods presented and express the relationship of certain line items as a percentage of revenue for those respective periods:

(in thousands)	Year Ended December 31,			
	2023		2022	
Revenue	\$ 298,399	100%	\$ 361,134	100%
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization)	219,884	73.7	267,487	74.1
Sales and marketing	18,576	6.2	17,121	4.7
Product development	18,454	6.2	18,159	5.0
General and administrative	35,334	11.8	53,470	14.8
Depreciation and amortization	10,876	3.6	13,214	3.7
Goodwill impairment and write-off of intangible assets	55,405	18.6	111,255	30.8
Loss on disposal of property and equipment	—	—	19	—
Total costs and expenses	358,529	120.2	480,725	133.1
Loss from operations	(60,130)	(20.2)	(119,591)	(33.1)
Interest expense, net	(3,204)	(1.1)	(1,965)	(0.5)
Loss before income taxes	(63,334)	(21.2)	(121,556)	(33.7)
Income tax (expense) benefit	116	—	(1,776)	(0.5)
Net loss	\$ (63,218)	(21.2)	\$ (123,332)	(34.2)

Year ended December 31, 2023 compared to year ended December 31, 2022
Revenue.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Revenue	\$ 298,399	\$ 361,134	(17%)

The decrease was primarily attributable to contraction of our owned and operated marketplaces due to a challenging macro-economic environment, which influenced reductions in spend by key clients in the media & entertainment and subscription sectors. Additionally, these decreases were partially an effect of changes in business practices to reflect regulatory requirements in connection with the FTC Consent Order described in Part I, Item 3 – Legal Proceedings, above. The decreases related to these factors were partially offset by:

- Enhanced customer relationship management ("CRM") capabilities, specifically the use of our internally-developed SMS messaging served to increase monetization of consumer traffic, which partially offset reductions in client pricing and net traffic volume decreases.
- Revenue from the launch of new syndicated performance marketplaces that provide the opportunity to acquire customers for new and existing clients from an expanded media network.

The key factors that drove lower revenue in 2023, and the accompanying offsets, are expected to persist into 2024, with economic headwinds lightening and effect reversing over the year.

Cost of revenue (exclusive of depreciation and amortization).

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Cost of revenue (exclusive of depreciation and amortization)	\$ 219,884	\$ 267,487	(18%)

The decrease was attributable to the same factors causing the decline in revenue for the period. Our cost of revenue primarily consists of media and related costs associated with acquiring traffic from third-party publishers, digital media platforms, and influencers for our owned and operated websites and purchasing media from syndicated publisher partners. The costs also include enablement costs associated with our call centers and tracking costs related to our consumer data. In addition, there are indirect costs which include fulfillment costs related to rewards earned by consumers who complete the requisite number of advertiser offers, along with call center software and hosting costs.

For the year ended December 31, 2023, cost of revenue as a percentage of revenue decreased slightly to 73.7%, compared to 74.1% for the year ended December 31, 2022.

In the normal course of executing paid media campaigns to source consumer traffic, we regularly evaluate new channels, strategies, and partners. Traffic acquisition costs incurred with the major digital media platforms have historically been higher than affiliate traffic sources. For the year ended December 31, 2023, digital media spend continued to be driven by strategic test and learn initiatives that began in the second quarter of 2022. The mix and profitability of our media channels, strategies, and partners reflect evolving market dynamics and the impact of our Traffic Quality Initiative and the increased compliance obligations from the FTC Consent Order. As we evaluate and scale new media channels, strategies, and partners, we may determine that certain sources initially able to provide us profitable quality traffic may not be able to maintain our quality standards over time, and we may need to discontinue, or direct a modification of the practices of, such sources, which could reduce profitability. The improved traffic quality being sourced is the foundation to support sustainable long-term growth and positioning us as an industry leader. Past levels of cost of revenue (exclusive of depreciation and amortization) may therefore not be indicative of future costs, which may increase or decrease as these uncertainties in our business play out.

Sales and marketing.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Sales and marketing	\$ 18,576	\$ 17,121	8%

For the years ended December 31, 2023 and 2022, respectively, the amounts consisted primarily of employee salaries and benefits of \$15.8 million and \$14.4 million, advertising costs of \$0.9 million and \$1.1 million, non-cash share-based compensation expense of \$0.5 million and \$0.6 million, and travel and entertainment expenses of \$0.4 million and \$0.4 million. The change in employee salaries and benefits was primarily due to salary increases.

Product development.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Product development	\$ 18,454	\$ 18,159	2%

For the years ended December 31, 2023 and 2022, respectively, the amounts consisted primarily of employee salaries and benefits of \$13.6 million and \$13.0 million, software license and maintenance costs of \$1.9 million and \$1.6 million, professional fees of \$1.7 million and \$2.4 million, and non-cash share-based compensation expense of \$0.6 million and \$0.6 million, respectively. The slight increase in product development expense was primarily due to increased salary costs and IT related fees mainly offset by lower consulting fees.

General and administrative.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
General and administrative	\$ 35,334	\$ 53,470	(34%)

For the years ended December 31, 2023 and 2022, respectively, the amounts consisted mainly of employee salaries and benefits of \$18.5 million and \$21.0 million, professional fees of \$6.6 million and \$6.0 million, office overhead of \$4.3 million and \$4.5 million, acquisition-related costs of \$2.7 million and \$2.2 million, non-cash share-based compensation expense of \$2.6 million and \$2.9 million, software license and maintenance costs of \$2.6 million and \$2.4 million, and certain litigation and related costs of (\$6.3) million and \$11.1 million. The decrease in litigation and related costs was mainly the result of the lower-than-expected regulatory settlement reached in the second quarter of 2023 and insurance reimbursements for previously incurred legal fees related to the FTC Consent Order, even as prior to the settlement legal fees had increased. The reduction in salary costs was due to corporate restructuring in the first quarter of 2023 and fourth quarter of 2022, which was slightly offset by increased consulting fees and strategic employee training expenses.

During the fourth quarter of 2022 and first quarter of 2023, the Company implemented reductions in the workforce that resulted in the termination of 21 and 20 employees, respectively. These reductions in workforce were implemented following management's determination to reduce headcount and decrease the Company's costs to more effectively align resources to the core business operations. In connection with fourth quarter 2022 reductions in workforce, the Company incurred \$0.4 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, to be fully settled in cash by March 31, 2023. In connection with the first quarter 2023 reductions in the workforce, the Company incurred \$0.5 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, to be fully settled in cash by March 31, 2024. Subsequently, the Company implemented an additional reduction in workforce in the first quarter of 2024, resulting in the termination of 20 employees. The exit-related restructuring costs are expected to be approximately \$0.7 million, consisting primarily of one-time termination benefits and associated costs, to be fully settled in cash by September 30, 2024. Apart from these exit-related restructuring costs, these reductions in workforce are expected to result in corresponding reductions in future salary and benefits within sales and marketing, product development, and general and administrative expenses.

Depreciation and amortization.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Depreciation and amortization	\$ 10,876	\$ 13,214	(18%)

The decrease was mainly due to certain intangibles that fully amortized during the current year, partly offset by the amortization of the intangibles related to the consolidation of TAPP Influencers Corp ("TAPP").

Goodwill impairment.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Goodwill impairment	\$ 55,405	\$ 111,069	(50%)

The Company recognized \$55.4 million impairment loss for the year ended December 31, 2023, as compared to \$111.1 million for the year ended December 31, 2022, related to both the Fluent and All Other reporting units.

Write-off of long-lived assets.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Write-off of intangible assets	—	\$ 186	(100%)

The Company did not recognize write-offs of intangible assets for the year ended December 31, 2023, compared to \$0.2 million for the write-offs of intangible assets related to software developed for internal use for the year ended December 31, 2022.

Interest expense, net.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Interest expense, net	\$ (3,204)	\$ (1,965)	63%

The increase was driven by the higher average interest rate on the Term Loan described below under "Liquidity and Capital Resources".

Loss (gain) on disposal of property and equipment.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Loss on disposal of property and equipment	—	\$ 19	(100%)

The Company recognized no gain or loss on disposal of property and equipment for the year ended December 31, 2023, compared to de minimis loss on disposal for the year ended December 31, 2022.

Net loss before income taxes.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Loss before income taxes	\$ (63,334)	\$ (121,556)	(48%)

The decrease in net loss was primarily due to a decline in cost of revenue of \$47.6 million, a decrease of goodwill impairment and write-off of intangibles of \$55.9 million, and a decrease in operating expenses of \$16.7 million driven in part by the contra-expense related to the insurance reimbursement for prior legal fees, partially offset by decline in revenue of \$62.7 million.

Income tax (expense) benefit.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Income tax (expense) benefit	\$ 116	\$ (1,776)	(107%)

For the years ended December 31, 2023 and 2022, there was an effective tax rate of 0.2% and (1.5)%, respectively. This was primarily driven by the impact of a non-deductible goodwill impairment against pre-tax year-to-date losses offset by the benefit of federal research and development credits.

As of December 31, 2023 and 2022, the Company recorded full valuation allowances against its net deferred tax assets. The Company intends to maintain full valuation allowances against the net deferred tax assets until there is sufficient evidence to support the release of all or some portion of such allowances. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded, however, the exact timing and amount of any valuation allowance release are subject to change, depending upon the level of profitability that the Company is able to achieve and the net deferred tax assets available.

Net loss.

(In thousands)	Year Ended December 31,		
	2023	2022	% Change
Net loss	\$ (63,218)	\$ (123,332)	(49%)

For the years ended December 31, 2023 and 2022, net loss was \$63.2 million and \$123.3 million, respectively, as a result of the foregoing.

Liquidity and Capital Resources

Cash flows provided by operating activities. For the years ended December 31, 2023 and 2022, net cash provided by operating activities was \$8.1 million and \$2.0 million, respectively. Net loss in 2023 of \$63.2 million represents a decrease of \$60.1 million, as compared with net loss of \$123.3 million in 2022. Adjustments to reconcile net loss to net cash provided by operating activities of \$70.4 million in 2023 decreased by \$58.7 million, as compared with \$129.1 million in 2022, primarily due to a lower goodwill impairment and depreciation and amortization in the current period as compared to the prior period. Changes in assets and liabilities sourcing cash of \$0.9 million in 2023, as compared with consumed cash of \$3.8 million in 2022, primarily due to ordinary-course changes in working capital, largely involving the timing of receipt of amounts owing from clients and disbursements of amounts payable to vendors.

Cash flows used in investing activities. For the years ended December 31, 2023 and 2022, net cash used in investing activities was \$7.1 million and \$5.4 million, respectively. The increase was mainly due to the increase in investment in capitalized software along with the impact of the TAPP consolidation that occurred in 2023, compared to the True North Acquisition that occurred in 2022.

Cash flows used in financing activities. For the years ended December 31, 2023 and 2022, net cash used in financing activities was \$10.8 million and \$5.4 million, respectively. The change of \$5.3 million in cash used by financing activities in 2023 was mainly due to the \$5.0 million prepayment made on the debt along with the fees paid related to the debt modification, slightly offset by the decline in taxes paid related to share settlements of vesting of restricted stock units.

As of December 31, 2023, we had noncancelable operating lease commitments of \$4.2 million and long-term debt which had a \$31.3 million principal balance. For the year ended December 31, 2023, we funded our operations using available cash.

As of December 31, 2023, we had cash and cash equivalents of approximately \$15.8 million, a decrease of \$9.7 million from \$25.5 million as of December 31, 2022. We believe that we will have sufficient cash resources to finance our operations and expected capital expenditures for the next twelve months and beyond.

Our material cash requirements from known contractual and other obligations consist of our term loan and obligations under operating leases for office space. For more information regarding our term loan, refer to Note 8 and Note 16 of the Notes to our Consolidated Financial Statements included in this Annual Report on Form 10-K. For more information regarding our lease obligations, refer to Note 4 of the Notes to our Consolidated Financial Statements included in this Annual Report on Form 10-K.

Our future capital requirements will depend on many factors, including employee-related expenditures from expansion of our headcount, costs to support the growth in our client accounts and continued client expansion, the timing and extent of spending to support product development efforts, the expansion of sales and marketing activities, the introduction of new and enhanced solutions, features, and functionality, and litigation. We may in the future enter into arrangements to acquire or invest in complementary businesses, services, technologies, and intellectual property rights. We may be required to draw upon our revolving facility in order to meet these future capital requirements. In the event that we do not meet the conditions to draw, or additional financing is not accessible from outside sources, we may not be able to raise it on terms acceptable to us, or at all. If we are unable to raise additional capital when desired, our business, results of operations, and financial condition would be adversely affected.

We may explore the possible acquisition of businesses, products, and/or technologies that are complementary to our existing business. We continue to identify and prioritize additional technologies, which we may wish to develop internally or through licensing or acquisition from third parties. While we may engage from time to time in discussions with respect to potential acquisitions, there can be no assurance that any such acquisitions will be made or that we will be able to successfully integrate any acquired business with our then current business or realize anticipated cost synergies. In order to finance such acquisitions and working capital, it may be necessary for us to raise additional funds through public or private financings. Any equity or debt financings, if available at all, may be on terms which are not favorable to us and, in the case of equity financings, may result in dilution to shareholders.

On March 31, 2021, Fluent, LLC entered into a credit agreement (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Citizens Credit Agreement") with certain subsidiaries of Fluent, LLC as guarantors, the lenders thereto, and Citizens Bank, N.A. ("Citizens Bank") as administrative agent, lead arranger and bookrunner. The original Citizens Credit Agreement provided for a term loan in the aggregate principal amount of \$50.0 million funded on the Closing Date, along with an undrawn revolving credit facility of up to \$15.0 million (together with the term loan, the "Citizens Credit Facility").

On January 26, 2024, the Borrower and Citizens Bank entered into a Third Temporary Waiver and Amendment to Credit Agreement (the "Third Waiver"), pursuant to which Citizens Bank agreed to waive through the earlier of April 30, 2024, an occurrence of any other event of default, or failure to comply with requirements of the Third Waiver and its rights and remedies arising from the Company's breach of the total leverage covenant and fixed charge ratio during the quarters ending December 31, 2023 and March 31, 2024. Among other things, the Third Waiver required the Borrower to, by March 31, 2024, deliver one or more Transaction Commitments, defined as: (i) a third-party commitment to provide additional capital in exchange for equity or subordinated debt, (ii) a purchase agreement for the sale of a divested business, or (iii) a third-party commitment to refinance the Credit Agreement. One condition of the Transaction Commitments was that they had to, in the aggregate, provide for net proceeds to Fluent of not less than \$10.0 million.

On April 2, 2024, Fluent, LLC entered into a credit agreement (the "SLR Credit Agreement") by and among Fluent, LLC, as Borrower, Fluent, Inc. and certain subsidiaries of the Borrower as guarantors, Crystal Financial LLC D/B/A SLR Credit Solutions, as administrative agent, lead arranger and bookrunner ("SLR"), and the lenders from time to time party thereto. The SLR Credit Agreement provides for a \$20.0 million term loan (the "Term Loan") and a revolving credit facility of up to \$30.0 million (the "Revolving Facility") and, together with the Term Loan, the "SLR Credit Facility"). As of April 2, 2024, the SLR Credit Facility has an outstanding principal balance of \$32.7 million and will mature on April 2, 2029 (the "Maturity Date"). We used a portion of the net proceeds of the SLR Credit Facility to repay our outstanding obligations under the Citizens Credit Agreement, as defined above, dated March 31, 2021.

We may voluntarily prepay the Term Loan, in whole or in part, at any time, subject to a premium payable on the aggregate principal amount of any such voluntary prepayments within the first three years following the closing date. There is no principal amortization prior to maturity under the SLR Credit Agreement, except for certain mandatory prepayments to be made with the net cash proceeds of certain asset sales, casualty events, and other extraordinary receipts and upon the occurrence of certain other events, in each case, subject to certain reinvestment rights, thresholds and other exceptions. Unfunded commitments under the Revolving Facility will be subject to an unused facility fee, which will be payable monthly in arrears, as of the month following the closing, at a rate of 0.50% per annum. All amounts owed under the Credit Facilities will be due and payable on the Maturity Date, or earlier following a change in control or other event of default, unless otherwise extended in accordance with the terms of the SLR Credit Agreement. Borrowings under the SLR Credit Agreement bear interest at a rate per annum equal to a 3-month term SOFR plus 0.26161%, subject to a 1.50% floor, plus 5.25% (the "Applicable Margin"). The Applicable Margin will be reduced to 5.0% when our fixed charge coverage ratio is greater than 1.10 to 1. The anticipated opening interest rate of the SLR Credit Facility is 10.81% (SOFR + CSA + 5.25%).

The SLR Credit Facility is guaranteed by us and certain of our direct and indirect subsidiaries and is secured by substantially all of our assets and those of certain of our direct and indirect subsidiaries, including Fluent, LLC.

The SLR Credit Agreement contains restrictive covenants which impose limitations on the way we conduct our business, including limitations on the amount of additional debt we are able to incur and our ability to make certain investments or to pay dividends or other restricted payments.

Critical Accounting Estimates

Management's discussion and analysis of financial condition and results of operations are based upon Fluent's consolidated financial statements, which have been prepared in accordance with US GAAP. The preparation of these consolidated financial statements requires Fluent to make certain estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, Fluent evaluates its estimates, including those related to revenue recognition, recoverability of the carrying amounts of goodwill and intangible assets, share-based compensation, income taxes, and contingencies. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. All amounts below are presented in thousands.

We believe the following critical accounting estimates govern our more significant judgments and estimates used in the preparation of our consolidated financial statements. Further details of the Company's accounting policies are available in Item 8, Financial Statements and Supplementary Data, Note 2, *Summary of significant accounting policies*, in the Notes to Consolidated Financial Statements.

Revenue recognition

Data and performance-based marketing revenue

Revenue is recognized when control of goods or services is transferred to customers, in amounts that reflect the consideration we expect to be entitled to in exchange for those goods or services, based on our performance obligation. Our customers simultaneously receive and consume the benefits provided, as we satisfy our performance obligations. Furthermore, we elected the "right to invoice" practical expedient available within ASC 606-10-55-18 as the measure of progress, because we have a right to payment from a customer in an amount that corresponds directly with the value of the performance completed to date.

When there is a delay between the period in which revenue is recognized and when a customer invoice is issued, revenue is recognized and the related amounts are recorded as unbilled revenue within accounts receivable on the consolidated balance sheets. In line with industry practice, the unbilled revenue balance is recorded based on our internally tracked conversions, net of estimated variances between this amount and the amount tracked and subsequently confirmed by customers. Substantially all amounts included within the unbilled revenue balance are invoiced to customers within the month directly following the period of service. Our historical estimates related to unbilled revenue have not differed materially from actual invoiced revenue; however, there is a possibility that invoiced revenue may differ materially from estimates and may impact our consolidated financial statements in future periods.

Business combinations

We record acquisitions pursuant to ASC 805, *Business Combinations*, by allocating the fair value of purchase consideration to the tangible assets acquired, liabilities assumed and estimated fair values of intangible assets acquired. The excess of the fair value of purchase consideration over the fair values of these identifiable assets and liabilities is recorded as goodwill. Such valuations require management to make significant estimates and assumptions with respect to intangible assets. Significant estimates in valuing certain intangible assets include, but are not limited to, future expected cash flows from acquired intangible assets, useful lives, and discount rates. Our estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. If actual results are materially lower than originally estimated, it could result in a material impact on our consolidated financial statements in future periods.

Goodwill

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is tested at least annually for impairment, or when events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable, by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that its fair value exceeds the carrying value. Goodwill is tested for impairment at the reporting unit level and is conducted by estimating and comparing the fair value of each of our reporting units to their carrying value. If the carrying value of a reporting unit exceeds its fair value, we recognize an impairment loss equal to the amount of the excess, limited to the amount of goodwill allocated to that reporting unit.

For the quantitative factors, management utilizes a third-party valuation firm for certain assumptions and analysis including discount rate and market multiples. We review the assumptions and analysis with the valuation firm to ensure reasonableness, although it is inherently uncertain and unpredictable.

For the three months ended March 31, 2023, we considered a combination of the income and market approaches to determine the fair value of the Fluent reporting unit. We determined that a market-based approach, due to the decline in value of our publicly traded stock, provided the best indication of fair value of the Fluent reporting unit. The market approach considers our implied market multiple applied to management's forecast and further adjusted for a control premium. If we were to experience an additional decline in market capitalization or assumptions in management's forecast, there would be an increased risk of impairment of goodwill. Based on the results of this market-based approach as of March 31, 2023, we concluded that the Fluent reporting unit's carrying value exceeded its estimated fair value by 20% and concluded that its goodwill of \$51,614 was impaired and recorded a non-cash impairment charge of \$25,700.

Additionally, we engaged a third party to assist in conducting an interim test of the fair value of our goodwill for potential impairment for the three months ended June 30, 2023. We determined that a combination of income approach and the market approach provided the best indication of fair value of the Fluent reporting unit. The income approach and market approach utilize accounting estimates and assumptions, changes in which could materially impact our financial condition or operating performance if actual results differ from such estimates and assumptions. The critical assumptions in the income approach include forecasted revenues and profitability, long-term growth rates, and discount rates. The market approach considers our implied market multiple applied to management's forecasted profitability and is further adjusted for control premium. Management exercises judgment in developing these assumptions. If we were to experience sales declines, a significant change in operating margins which may impact our cash flows, an increase in our discount rates, a decline in our market capitalization, and/or a decrease in our projected long-term growth rates, there would be an increased risk of impairment of goodwill. Based on the results of this approach as of June 30, 2023, we concluded that the Fluent reporting unit's fair value exceeded its estimated carrying value by 5% and concluded that its goodwill of \$27,469 was not impaired.

Further, we engaged a third party to assist in conducting an interim test of the fair value of our goodwill for potential impairment for the three months ended September 30, 2023. We determined that a combination of income approach and the market approach provided the best indication of fair value of the Fluent and All Other reporting units. The income approach and market approach utilize accounting estimates and assumptions, changes in which could materially impact our financial condition or operating performance if actual results differ from such estimates and assumptions. The critical assumptions in the income approach include forecasted revenues and profitability, long-term growth rates, and discount rates. The market approach for the Fluent reporting unit considers our implied market multiple applied to management's forecasted profitability and is further adjusted for control premium. The market approach for the All Other reporting unit considers the enterprise values of comparable companies applied to management's forecasted profitability and is further adjusted for control premium. Management exercises judgment in developing these assumptions. If we were to experience sales declines, a significant change in operating margins which may impact our cash flows, an increase in our discount rates, a decline in our market capitalization, and/or a decrease in our projected long-term growth rates, there would be an increased risk of impairment of goodwill. The results of this approach indicated that the Fluent reporting unit's carrying value and All Others carrying value exceeded its fair value by 32% and 29%, respectively. We therefore concluded that the Fluent reporting unit's goodwill was impaired and recorded a non-cash impairment for the remainder of the goodwill balance of \$27,469. In addition, the All Other reporting unit's goodwill of \$3,497 was also concluded to be impaired, and we recorded a non-cash impairment charge of \$2,236. Based on the results from the interim test as of September 30, 2023, we concluded no further triggering events existed as of October 1, 2023 that would indicate it is more likely than not that the fair value was less than the carrying value for our annual impairment test.

Intangible assets other than goodwill

Intangible assets are initially capitalized based on actual costs incurred, acquisition cost, or fair value if acquired as part of a business combination. These intangible assets are amortized on a straight-line basis over their respective estimated useful lives, which are the periods over which these assets are expected to contribute directly or indirectly to future cash flows. We also capitalize eligible costs, in accordance with ASC 350-40, *Software - Internal-Use Software*, which include applicable salaries and benefits, share-based compensation expense, travel expenses and other direct costs of developing internal-use software that are incurred in the application development stage, when developing or obtaining software for internal use. Once the internal use software is ready for its intended use, it is amortized on a straight-line basis over its useful life.

Finite-lived intangible assets are evaluated for impairment periodically, or whenever events or changes in circumstances indicate that their related carrying amounts may not be recoverable, in accordance with ASC 360-10-15, *Impairment or Disposal of Long-Lived Assets*. In evaluating intangible assets for recoverability, we use the best estimate of future cash flows expected to result from the use of the asset and eventual disposition, using assumptions of revenue growth rates, operating expenses, and terminal growth rates. These matters are highly uncertain, and different assumptions can result in a materially different estimate of future cash flow. To the extent that estimated future undiscounted cash inflows attributable to the asset, less estimated future undiscounted cash outflows, is less than the carrying amount, an impairment loss is recognized in an amount equal to the difference between the carrying value of such asset and its fair value.

Asset recoverability is an area involving management judgment, requiring assessment as to whether the carrying values of assets are supported by their undiscounted future cash flows. We use a third-party valuation firm to assist us in evaluating asset recoverability.

During the three months ended June 30, 2023 and September 30, 2023, we conducted an interim test of recoverability of its long-lived assets, which compared projected undiscounted cash flows to the carrying value of the asset group. If we were to experience sales declines, a significant change in operating margins which may impact our cash flows, and/or a decrease in our projected long-term growth rates, there would be an increased risk of impairment of long-lived assets. Based on the results of this recoverability test, we determined that, as of June 30, 2023 and September 30, 2023, its long-lived assets were not impaired.

Share-based Compensation

We account for share-based compensation in accordance with ASC 718, *Compensation - Stock Compensation*. Under ASC 718, for awards with time-based conditions, we measure the cost of services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize such costs on a straight-line basis over the period the recipient is required to provide service in exchange for the award, which is the vesting period. For equity awards with market conditions, we recognize costs on a straight-line basis, regardless of whether the market conditions are achieved and the awards ultimately vest. For equity awards with performance conditions, we record the share-based compensation when achievement of the performance criteria is deemed probable using the grant date fair value. For equity-based awards settled in cash, we record the share-based compensation when achievement of the performance criteria is deemed probable adjusted for fair value at each reporting period.

We recognize forfeitures as they occur.

Income taxes

We account for income taxes in accordance with ASC 740, *Income Taxes*, which requires the use of the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recorded for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The valuation allowances are provided to reduce the amount of deferred tax assets if it is considered more likely than not that some portion or all of the deferred tax assets will not be realized, which is based on our review of historical results and forecasts.

Further, we recognize in our financial statements the impact of a tax position, if that position is more likely than not of being sustained upon examination, based on the technical merits of the position. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs and we consult with external tax counsel as appropriate. We accrue interest and penalties related to uncertain tax positions, if and when required, as interest expense and a component of other expenses, respectively, in the consolidated statements of operations. Changes in recognition or measurement are based on factors, including but not limited to, change in known facts and circumstances, changes in tax law, and new guidance and interpretation, all of which a change in factors could result in a change in our income tax, which could materially impact our consolidated financial statements in future periods.

Contingencies

We account for contingencies in accordance with ASC 450, *Contingencies*, by accruing a loss contingency if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In determining whether a loss should be accrued, we evaluate, among other factors, the degree of probability and the ability to reasonably estimate the amount of any such loss. If the probability changes or the estimates used are incorrect, we may need to record adjustments to our contingencies, which could material impact on our consolidated financial statements in future periods. In the ordinary course of business, we are subject to loss contingencies that cover a range of matters.

Recently Issued Accounting Standards

See Note 2, *Summary of significant accounting policies*, under the caption "(r) Recently issued and adopted accounting standards" in the Notes to Consolidated Financial Statements for further information on certain accounting standards that have been adopted during 2023 or that have not yet been required to be implemented and may be applicable to our future operations.

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

The Company is not required to provide the information required by this Item as it is a "smaller reporting company," as defined in Rule 12b-2 of the Exchange Act.

Item 8. Financial Statements and Supplementary Data.

Our Consolidated Financial Statements and the Notes thereto, together with the report thereon of our independent registered public accounting firm, are filed as part of this report, beginning on page F-1.

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

Not applicable.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Interim Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this 2023 Form 10-K. Based upon that evaluation, the Company's Chief Executive Officer and Interim Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of the end of the period covered by this annual report.

Management's Annual Report on Internal Control over Financial Reporting

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Management, under the supervision of and with the participation of the Company's Chief Executive Officer and Interim Chief Financial Officer, conducted an assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2023 based on the criteria set forth by the Committee of Sponsoring Organizations ("COSO") of the Treadway Commission in *Internal Control-Integrated Framework (2013)*. Based on that assessment, our Chief Executive Officer and Interim Chief Financial Officer concluded that our internal control over financial reporting was effective to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of our financial statements for external purposes in accordance with the U.S generally accepted accounting principles as of the end of the period covered by this annual report.

This Form 10-K does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to the SEC's "non-accelerated filer" rules that permit the Company to provide only management's assessment report for the year ended December 31, 2023.

Remediation of Material Weaknesses in Internal Control

As disclosed under Part I, Item 4, Controls and Procedures, in the Company's Quarterly Report on Form 10-Q for the six months ended June 30, 2023, the Company reported a material weakness in internal control related to our ability to timely account for non-routine, non-recurring, unusual or complex financial transactions.

This material weakness was addressed by our improved quarterly communication with key internal process owners to ensure non-routine, non-recurring, unusual or complex transactions are identified timely during and subsequent to the reporting period. We also began to require additional certifications from such process owners prior to issuance of the financial statements. For those non-routine, non-recurring, unusual or complex transactions identified, we have and will engage third-party professionals for assistance, as needed. Lastly, we strengthened our quarterly review checklists to better ensure all items are identified and properly disclosed within the financial statement. During the fourth quarter of 2023, the Company completed its testing of the operating effectiveness of these implemented control enhancements.

Changes in Internal Control Over Financial Reporting

Except as noted above, there were no changes in the Company's internal control over financial reporting that occurred during the quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

Inherent Limitations of Internal Controls

Our management, including our Chief Executive Officer and Interim Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Item 9B. Other Information.

Not applicable.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2023.

Item 11. Executive Compensation.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2023.

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

The information required by this item is incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2023.

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

The information required by this item is incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2023.

Item 14. Principal Accounting Fees and Services.

The information required by this item is incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2023.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) List of documents filed as part of this report:

1. Financial Statements: The information required by this item is contained in Item 8 of this Form 10-K.
2. Financial Statement Schedules: The information required by this item is included in the consolidated financial statements contained in Item 8 of this Form 10-K.
3. Exhibits: The following exhibits are filed as part of, or incorporated by reference into, this Form 10-K.

Exhibit No.	Description	Filed Herewith
3.1	Certificate of Domestication (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed March 26, 2015).	
3.2	Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed March 26, 2015).	
3.3	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on September 26, 2016).	
3.4	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on April 16, 2018).	
3.5	Amended and Restated Bylaws of Fluent, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on February 19, 2019).	
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K filed April 16, 2018).	
4.2	Form of Additional Warrants (incorporated by reference to Exhibit 4.5 to the Company's Current Report on Form 8-K filed October 17, 2017).	
4.3	Description of Securities (incorporated by reference to Exhibit 4.3 to the Company's Annual Report on Form 10-K filed March 15, 2023).	
10.1	Form of Indemnity Agreement (incorporated by reference to Exhibit 10.1 to the Company's Annual Report on Form 10-K filed March 15, 2023).	
10.2	Form of Restricted Stock Unit Agreement with three year-vesting, under IDI Inc.'s 2015 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed August 14, 2015).+	
10.3	Form of Non-qualified Stock Option Agreement under IDI Inc.'s 2015 Stock Incentive Plan (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q filed August 14, 2015).+	
10.4	2015 Stock Incentive Plan (incorporated by reference to the Company's Definitive Proxy Statement on Schedule 14A filed on April 30, 2015).	
10.5	Credit Agreement, dated March 31, 2021, by and among Fluent, LLC, as the borrower, certain subsidiaries of the borrower party thereto, the lenders party thereto, and Citizens Bank, N.A., as administrative agent. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed March 31, 2021).	
10.6	First Amendment to Credit Agreement, effective as of September 1, 2021, by and among Fluent, LLC, as Borrower, certain subsidiaries of the Borrower party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed November 4, 2021).	
10.7	Second Amendment to Credit Agreement, Waiver, Acknowledgement and Joinder, effective as of December 20, 2022, by and among Fluent, LLC, as Borrower, certain subsidiaries of the Company party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.7 to the Company's Annual Report on Form 10-K filed March 15, 2023).	
10.8	Third Amendment to Credit Agreement, effective as of May 12, 2023, by and among Fluent, LLC, as Borrower, certain subsidiaries of the Borrower party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed August 21, 2023).	
10.9	Fourth Amendment to Credit Agreement, effective as of August 21, 2023, by and among Fluent, LLC, as Borrower, certain subsidiaries of the Borrower party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed August 21, 2023).	
10.10	Temporary Waiver Under Credit Agreement, effective as of November 15, 2023, by and among Fluent, LLC, as Borrower, certain subsidiaries of the Borrower party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed November 15, 2023).	
10.11	Second Temporary Waiver Under Credit Agreement, effective as of January 17, 2024, by and among Fluent, LLC, as Borrower, certain subsidiaries of the Borrower party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent.	X
10.12	Third Temporary Waiver and Amendment to Credit Agreement, effective as of January 26, 2024, by and among Fluent, LLC, as Borrower, certain subsidiaries of the Borrower party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent.	X
10.13	Amendment to IDI, Inc. 2015 Stock Incentive Plan effective June 1, 2016 (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement Form S-8 filed on June 3, 2016).+	

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10.14	Employment Agreement, by and between Fluent, LLC and Donald Patrick, effective as of January 8, 2018 (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed on March 27, 2018).+	
10.15	Amendment to IDI, Inc. 2015 Stock Incentive Plan, effective January 8, 2018 (incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-8 filed on April 6, 2018).+	
10.16	Fluent, Inc. 2018 Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 8, 2018).+	
10.17	Employment Agreement, by and between Fluent, Inc. and Ryan Schulke, dated September 11, 2018 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed on September 12, 2018). +	
10.18	Employment Agreement, by and between Fluent, Inc. and Matthew Conlin, dated September 11, 2018 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K, filed on September 12, 2018).+	
10.19	Fluent, Inc. 2022 Omnibus Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 10, 2022).+	
10.20	Form of Restricted Stock Unit Award Grant Notice (2022 Long Term Incentive Plan) (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q, filed August 21, 2023).+	
10.21	Form of Restricted Stock Unit Award Grant Notice (2022 Omnibus Equity Incentive Plan) (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q, filed August 21, 2023).+	
10.22	Form of 2022 Performance Share Unit Agreement (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q, filed August 21, 2023).+	
10.23	Form of Stock Option Grant Notice and Option Agreement (2022 Omnibus Equity Incentive Plan) (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q, filed August 21, 2023).+	
10.24	Consulting Agreement, by and between Fluent, Inc. and Ryan Perfit, dated January 20, 2023 and effective February 1, 2023 (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q, filed May 15, 2023).	
10.25	Amendment to Letter Agreement for Consulting Services, effective as of February 1, 2024, by and between Fluent, LLC and CRIO, LLC.	X
10.26	Credit Agreement, by and among, Fluent, LLC, Fluent, Inc., certain subsidiaries of Fluent, LLC as guarantors, Crystal Financial LLC D/B/A SLR Credit Solutions, and each other lender from time to time party thereto.	X
14.1	Code of Ethics (incorporated by reference to Exhibit 14.1 to the Company's Annual Report on Form 10-K filed on March 13, 2020).	
21.1	Subsidiaries of Fluent, Inc.	X
23.1	Consent of Grant Thornton LLP.	X
31.1	Certification of Chief Executive Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X
31.2	Certification of Chief Financial Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X
32.1	Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*	X
32.2	Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*	X
97.1	Fluent, Inc. Clawback Policy	X
101.INS	Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	
+	Management contract or compensatory plan or arrangement	
*	This certification is deemed not filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.	

Item 16. Form 10-K Summary.

Not applicable.

SIGNATURES

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

April 2, 2024

FLUENT, INC.

By: /s/ Don Patrick
Don Patrick
Chief Executive Officer

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

Signature	Title	Date
<u>/s/ Don Patrick</u> Don Patrick	Chief Executive Officer (Principal Executive Officer)	April 2, 2024
<u>/s/ Ryan Perfit</u> Ryan Perfit	Interim Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 2, 2024
<u>/s/ Ryan Schulke</u> Ryan Schulke	Chairman and Chief Strategy Officer	April 2, 2024
<u>/s/ Matthew Conlin</u> Matthew Conlin	Chief Customer Officer and Director	April 2, 2024
<u>/s/ Don Mathis</u> Don Mathis	Lead Director	April 2, 2024
<u>/s/ Barbara Kohn</u> Barbara Kohn	Director	April 2, 2024
<u>/s/ David Graff</u> David Graff	Director	April 2, 2024
<u>/s/ Richard Pfenniger</u> Richard Pfenniger	Director	April 2, 2024

Item 8. Financial Statements and Supplementary Data.

Index to Financial Statements

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Fluent, Inc.

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Fluent, Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations, changes in shareholders' equity, and cash flows for each of the two years in the period ended December 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

Basis for opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

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

Critical audit matters

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

Evaluation of revenue recognition

As described in Notes 2 and 12 to the financial statements, and disclosed in the consolidated statements of operations, the Company recorded \$298.4 million of total revenues for the year ended December 31, 2023, of which \$289.1 million related to the Fluent operating segment.

The Company's performance obligation is typically to (1) deliver data records, based on predefined qualifying characteristics specified by the customer or (2) generate conversions, based on predefined user actions and subject to certain qualifying characteristics specified by the customer. We identified revenue recognition as a critical audit matter.

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The principal considerations for our determination that revenue recognition is a critical audit matter are (1) the significant level of audit effort required to evaluate the sufficiency and appropriateness of audit evidence when examining the Company's customer confirmations in combination with cash receipts and other supporting evidence; and (2) evaluating the nature and extent of audit evidence obtained for new revenue contracts or amendments to existing contracts, which require subjective auditor judgment because of the nature of the Company's revenue contracts and the extent of reliance of third-party evidence.

Our audit procedures related to the evaluation of revenue recognition included the following, among others:

- We obtained understanding of the design of key controls over the Company's revenue recognition process.
- For a sample of revenue transactions, we performed detailed transaction testing by (1) agreeing the amount recognized to source documentation; (2) comparing the amount of revenue recognized to third party customer confirmations obtained by the Company; and (3) comparing the amount of revenue recognized to subsequent cash remittance advice or obtaining direct third party confirmations.

Recoverability of the carrying value of goodwill of the Fluent reporting unit

As described in Notes 2 and 7 to the financial statements, goodwill is tested at least annually for impairment, or when events or changes in circumstances indicate that the carrying amount of goodwill may not be recoverable. After incurring cumulative impairment charges of \$53.2 million during the current fiscal year, goodwill for the Fluent reporting unit as of December 31, 2023 is \$0. The Company estimates the fair value of its reporting units using a weighting of fair values derived from the income and market approaches. We identified management's evaluation of the recoverability of the carrying value of the Fluent reporting unit goodwill as a critical audit matter.

The principal considerations for our determination that management's evaluation of the recoverability of the carrying value of goodwill of the Fluent reporting unit is a critical audit matter is that the estimate of the fair value requires significant estimates and judgments made by management related to assumptions such as forecasted revenue growth, profitability, discount rate, and the identification of comparable publicly traded companies and market multiples.

Our audit procedures related to the evaluation of the recoverability of the carrying value of goodwill for the Fluent reporting unit included the following, among others:

- We obtained understanding of the design of key internal controls over identification of triggering events and performance of goodwill impairment test over the Fluent reporting unit.
- We assessed the Company's ability to forecast revenue and operating income by comparing: (1) historical revenue and operating income projections to actual results; and (2) comparing current forecasted projections to historical trends, industry data, and underlying business strategies.
- With the assistance of valuation professionals with specialized skills and knowledge, we: (1) reviewed the valuation methodology; (2) tested the weighted average cost of capital; and (3) reviewed the reconciliation of the fair value of the Fluent reporting unit to the market capitalization of the Company, including assessing reasonableness of the implied control premium and selected market multiples.

/s/ GRANT THORNTON LLP

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

New York, New York
April 2, 2024

FLUENT, INC.
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except share data)

	December 31, 2023	December 31, 2022
ASSETS:		
Cash and cash equivalents	\$ 15,804	\$ 25,547
Accounts receivable, net of allowance for doubtful accounts of \$ 231 and \$544, respectively	56,531	63,164
Prepaid expenses and other current assets	6,071	3,506
Total current assets	78,406	92,217
Property and equipment, net	591	964
Operating lease right-of-use assets	3,395	5,202
Intangible assets, net	26,809	28,745
Goodwill	1,261	55,111
Other non-current assets	1,405	1,730
Total assets	\$ 111,867	\$ 183,969
LIABILITIES AND SHAREHOLDERS' EQUITY:		
Accounts payable	\$ 10,954	\$ 6,190
Accrued expenses and other current liabilities	30,534	35,626
Deferred revenue	430	1,014
Current portion of long-term debt	5,000	5,000
Current portion of operating lease liability	2,296	2,389
Total current liabilities	49,214	50,219
Long-term debt, net	25,488	35,594
Operating lease liability, net	1,699	3,743
Other non-current liabilities	1,062	458
Total liabilities	77,463	90,014
Contingencies (Note 16)		
Shareholders' equity:		
Preferred stock — \$0.0001 par value, 10,000,000 Shares authorized; Shares outstanding — 0 shares for both periods	—	—
Common stock — \$0.0005 par value, 200,000,000 Shares authorized; Shares issued — 85,917,891 and 84,385,458, respectively; and Shares outstanding — 81,306,322 and 80,085,306, respectively	43	42
Treasury stock, at cost — 4,611,569 and 4,300,152 shares, respectively	(11,407)	(11,171)
Additional paid-in capital	427,286	423,384
Accumulated deficit	(381,518)	(318,300)
Total shareholders' equity	34,404	93,955
Total liabilities and shareholders' equity	\$ 111,867	\$ 183,969

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except share data)

	Year Ended December 31,	
	2023	2022
Revenue	\$ 298,399	\$ 361,134
Costs and expenses:		
Cost of revenue (exclusive of depreciation and amortization)	219,884	267,487
Sales and marketing	18,576	17,121
Product development	18,454	18,159
General and administrative	35,334	53,470
Depreciation and amortization	10,876	13,214
Goodwill impairment and write-off of intangible assets	55,405	111,255
Loss on disposal of property and equipment	—	19
Total costs and expenses	358,529	480,725
Loss from operations	(60,130)	(119,591)
Interest expense, net	(3,204)	(1,965)
Loss before income taxes	(63,334)	(121,556)
Income tax (expense) benefit	116	(1,776)
Net loss	\$ (63,218)	\$ (123,332)
Basic and diluted loss per share:		
Basic	\$ (0.77)	\$ (1.51)
Diluted	\$ (0.77)	\$ (1.51)
Weighted average number of shares outstanding:		
Basic	82,622,131	81,412,595
Diluted	82,622,131	81,412,595

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(Amounts in thousands, except share data)

	Common stock		Treasury stock		Additional	Accumulated	Total
	Shares	Amount	Shares	Amount	paid-in capital	deficit	Shareholders' equity
Balance at December 31, 2021	83,057,083	\$ 42	4,091,823	\$ 10,723	\$ 419,059	\$ (194,968)	\$ 213,410
Vesting of restricted stock units and issuance of stock under incentive plans	1,328,375	—	—	—	211	—	211
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	208,329	(448)	—	—	(448)
Share-based compensation expense	—	—	—	—	4,114	—	4,114
Net loss	—	—	—	—	—	(123,332)	(123,332)
Balance at December 31, 2022	<u>84,385,458</u>	<u>\$ 42</u>	<u>4,300,152</u>	<u>\$ 11,171</u>	<u>\$ 423,384</u>	<u>\$ (318,300)</u>	<u>\$ 93,955</u>
Vesting of restricted stock units and issuance of stock under incentive plans	1,532,433	1	—	—	(1)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	311,417	(236)	—	—	(236)
Share-based compensation expense	—	—	—	—	3,903	—	3,903
Net loss	—	—	—	—	—	(63,218)	(63,218)
Balance at December 31, 2023	<u>85,917,891</u>	<u>\$ 43</u>	<u>4,611,569</u>	<u>\$ 11,407</u>	<u>\$ 427,286</u>	<u>\$ (381,518)</u>	<u>\$ 34,404</u>

See notes to consolidated financial statements

FLUENT, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands)

	Year Ended December 31,	
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (63,218)	\$ (123,332)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	10,876	13,214
Non-cash loan amortization expense	426	265
Share-based compensation expense	3,756	4,092
Goodwill impairment	55,405	111,069
Write-off of intangible assets	—	186
Loss on disposal of property and equipment	—	19
Provision for bad debts	124	450
Deferred income taxes	(145)	(225)
Changes in assets and liabilities, net of business acquisition:		
Accounts receivable	6,509	6,617
Prepaid expenses and other current assets	(2,565)	(917)
Other non-current assets	325	162
Operating lease assets and liabilities, net	(330)	(184)
Accounts payable	4,764	(9,940)
Accrued expenses and other current liabilities	(6,088)	477
Deferred revenue	(584)	139
Other	(1,117)	(128)
Net cash provided by operating activities	<u>8,138</u>	<u>1,964</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Business acquisition/consolidation, net of cash acquired	(1,250)	(1,036)
Capitalized costs included in intangible assets	(5,838)	(4,383)
Acquisition of property and equipment	(25)	(17)
Net cash used in investing activities	<u>(7,113)</u>	<u>(5,436)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of long-term debt	(10,000)	(5,000)
Debt financing costs	(532)	—
Taxes paid related to net share settlement of vesting of restricted stock units	(236)	(448)
Net cash used in financing activities	<u>(10,768)</u>	<u>(5,448)</u>
Net decrease in cash and cash equivalents	(9,743)	(8,920)
Cash and cash equivalents at beginning of period	25,547	34,467
Cash and cash equivalents at end of period	<u>\$ 15,804</u>	<u>\$ 25,547</u>
SUPPLEMENTAL DISCLOSURE INFORMATION		
Cash paid for interest	\$ 2,984	\$ 1,758
Cash paid (refund) for income taxes, net	\$ (272)	\$ 1,014
Share-based compensation capitalized in intangible assets	\$ 94	\$ 97
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES		
Contingent payments in connection with TAPP consolidation	\$ 2,915	\$ —
Deferred payment in connection with True North acquisition	\$ —	\$ 860
Contingent consideration in connection with True North acquisition	\$ —	\$ 250
Equity issued in connection with True North acquisition	\$ —	\$ 211

See notes to consolidated financial statements

FLUENT, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share data)

1. Principal activities and organization

Principal activities

Fluent, Inc. ("Fluent," or the "Company"), a Delaware corporation, is an industry leader in data-driven digital marketing services. The Company primarily performs customer acquisition services by operating highly scalable digital marketing campaigns, through which the Company connects its advertiser clients with consumers they are seeking to reach. The Company delivers data and performance-based marketing executions to its clients, which in 2023 included over 500 consumer brands, direct marketers, and agencies across a wide range of industries, including Media & Entertainment, Financial Products & Services, Health & Life Sciences, Retail & Consumer, and Staffing & Recruitment.

2. Summary of significant accounting policies

(a) Basis of preparation

These consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("US GAAP") and applicable rules and regulations of the Securities and Exchange Commission (the "SEC").

From time to time, the Company may enter into relationships or investments with other entities, and, in certain instances, the entity in which the Company has a relationship or investment may qualify as a variable interest entity ("VIE"). The Company consolidates a VIE in its financial statements if the Company is deemed to be the primary beneficiary of the VIE. The primary beneficiary is the party that has the power to direct activities that most significantly impact the operations of the VIE and has the obligation to absorb losses or the right to benefits from the VIE that could potentially be significant to the VIE.

Principles of consolidation

All significant transactions among the Company and its subsidiaries have been eliminated upon consolidation.

(b) Use of estimates

The preparation of consolidated financial statements in accordance with US GAAP requires the Company's management to make estimates and assumptions relating to the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant items subject to such estimates and assumptions include the allowance for doubtful accounts, useful lives of intangible assets, recoverability of the carrying amounts of goodwill and intangible assets, the portion of revenue subject to estimates for variances between internally-tracked conversions and those confirmed by the customer, purchase accounting, put/call considerations, consolidation of variable interest entity and income tax provision. These estimates are often based on complex judgments and assumptions that management believes to be reasonable but are inherently uncertain and unpredictable. Actual results could differ from these estimates.

(c) Cash and cash equivalents

Cash and cash equivalents consist of cash on hand and bank deposits with original maturities of three months or less, which are unrestricted as to withdrawal and use.

The Company's cash and cash equivalents are held in major financial institutions located in the United States, which have high credit ratings. As of December 31, 2023 and 2022, cash and cash equivalents were available for use in servicing the Company's debt obligations and general operating purposes.

Financial instruments and related items, which potentially subject the Company to concentrations of credit risk, consist principally of cash investments. The Company places its temporary cash instruments with highly rated financial institutions within the United States, and, at times, may maintain balances in such institutions in excess of the \$250 thousand U.S. Federal Deposit Insurance Corporation insurance limit. The Company monitors the credit ratings of its financial institutions to mitigate this risk.

(d) Accounts receivable and allowance for doubtful accounts

Accounts receivables are due from customers, which are generally unsecured, and consist of amounts earned but not yet collected. None of the Company's accounts receivable bear interest.

The allowance for doubtful accounts is management's best estimate of the amount of probable credit losses in the Company's existing accounts receivable. Management determines this allowance based on reviews of customer-specific facts and circumstances along with an application of a percentage against the balance based upon aging and historic charge offs. Management also evaluates the macroeconomic environment to determine if any additional adjustments are needed. Account balances are charged off against the allowance for doubtful accounts after all customary means of collection have been exhausted and the potential for recovery is considered remote. The Company does not have off-balance sheet credit exposure related to its customers.

Movements within the allowance for doubtful accounts consist of the following:

(In thousands)	Year Ended December 31,	
	2023	2022
Beginning balance	\$ 544	\$ 313
Charges to expenses	124	450
Write-offs	(437)	(219)
Ending balance	<u>\$ 231</u>	<u>\$ 544</u>

(e) Property and equipment

Property and equipment are stated at cost, net of accumulated depreciation or amortization. Expenditures for maintenance, repairs and minor renewals are charged to expense in the period incurred. Betterments and additions are capitalized. Property and equipment are depreciated on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are depreciated over the shorter of their estimated useful lives or lease terms that are reasonably assured. The estimated useful lives of property and equipment are as follows:

	Years
Computer and network equipment	5
Furniture, fixtures, and office equipment	7
Leasehold improvements	6 - 7

Assets to be disposed of, and for which there is a committed plan of disposal, whether through sale or abandonment, are reported at the lower of carrying value or fair value less costs to sell. When items of property and equipment are retired or otherwise disposed of, loss or income on disposal is recorded for the difference between the net book value and proceeds received therefrom.

(f) Business combination

The Company records acquisitions pursuant to ASC 805, *Business Combinations*, by allocating the fair value of purchase consideration to the tangible assets acquired, liabilities assumed and estimated fair values of intangible assets acquired. The excess of the fair value of purchase consideration over the fair values of these identifiable assets and liabilities is recorded as goodwill. Such valuations require management to make significant estimates and assumptions with respect to intangible assets. Significant estimates in valuing certain intangible assets include, but are not limited to, future expected cash flows from acquired intangible assets, useful lives, and discount rates. Management's estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable and, as a result, actual results may differ from estimates. During the measurement period, the Company may record adjustments to acquired assets and assumed liabilities, with corresponding offsets to goodwill. Upon the conclusion of a measurement period, any subsequent adjustments are recorded to earnings.

(g) Intangible assets other than goodwill

The Company's intangible assets are initially capitalized based on actual costs incurred, acquisition cost, or fair value if acquired as part of a business combination. These intangible assets are amortized on a straight-line basis over their respective estimated useful lives, which are the periods over which these assets are expected to contribute directly or indirectly to the future cash flows of the Company. The Company's intangible assets represent purchased intellectual property, software developed for internal use, acquired proprietary technology, customer relationships, trade names, domain names, databases, and non-competition agreements, including those resulting from acquisitions. Intangible assets have estimated useful lives of 2 - 20 years.

In accordance with ASC 350-40, *Software - Internal-Use Software*, the Company capitalizes eligible costs, including applicable salaries and benefits, share-based compensation, travel, and other direct costs of developing internal-use software that are incurred in the application development stage. Once the internal-use software is ready for its intended use, it is amortized on a straight-line basis over its useful life.

Finite-lived intangible assets are evaluated for impairment periodically, or whenever events or changes in circumstances indicate that their related carrying amounts may not be recoverable in accordance with ASC 360-10-15, *Impairment or Disposal of Long-Lived Assets*. In evaluating intangible assets for recoverability, the Company uses its best estimate of future cash flows expected to result from the use of the asset and eventual disposition in accordance with ASC 360-10-15. To the extent that estimated future undiscounted net cash flows are less than the carrying amount, an impairment loss is recognized in an amount equal to the difference between the carrying value of such asset and its fair value.

Asset recoverability is an area involving management judgment, requiring assessment as to whether the carrying values of assets are supported by their undiscounted future cash flows. In estimating future cash flows, certain assumptions are required to be made in respect of highly uncertain matters such as revenue growth rates, operating expenses, and terminal growth rates.

For the year ended December 31, 2023, the Company determined the value of intangible assets was recoverable except for certain internally developed software costs, as discussed in Note 6, *Intangible assets, net*. As of December 31, 2023 and 2022, the Company reviewed the indicators for impairment and concluded that no impairment of its finite-lived intangible assets existed.

(h) Goodwill

Goodwill represents the difference between the purchase price and the estimated fair value of net assets acquired, when accounted for by the acquisition method of accounting. As of December 31, 2023 and 2022, the goodwill balance relates to the acquisition of Fluent LLC Acquisition, the Q Interactive Acquisition, the AdParlor Acquisition, the Winopoly Acquisition, and the True North Loyalty Acquisition (as defined in Note 6, *Intangible assets, net*).

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is tested at least annually for impairment, or when events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable, by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that its fair value exceeds the carrying value. For purposes of reviewing impairment and the recoverability of goodwill, we make certain assumptions regarding estimated future cash flows and other factors in determining the fair values, including market multiples and discount rates, among others. Goodwill is tested for impairment at the reporting unit level and is conducted by estimating and comparing the fair value of each of the Company's reporting units to its carrying value. If the carrying value of a reporting unit exceeds its fair value, the Company recognizes an impairment loss equal to the amount of the excess, limited to the amount of goodwill allocated to that reporting unit.

(i) Fair value of financial instruments

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. ASC 820, *Fair Value Measurements and Disclosure* describes a fair value hierarchy based on the following three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value:

- Level 1 – defined as observable inputs, such as quoted prices in active markets;
- Level 2 – defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and
- Level 3 – defined as unobservable inputs, for which little or no market data exists, therefore requiring an entity to develop its own assumptions.

The fair value of the Company's cash, cash equivalents, accounts receivable, accounts payable, and accrued liabilities approximate their carrying values because of the short-term nature of these instruments.

As of December 31, 2023, the Company regards the fair value of its long-term debt to approximate its carrying value. This fair value assessment represents a Level 2 measurement. See Note 8, *Long-term debt, net*.

The fair value of certain long-lived non-financial assets and liabilities may be required to be measured on a nonrecurring basis in certain circumstances, including when there is evidence of impairment. As of December 31, 2023, certain non-financial assets have been measured at fair value subsequent to their initial recognition. The Company determined the estimated fair value to be Level 3, as certain inputs used to determine fair value are unobservable, see Note 7, *Goodwill*, for further discussion of the impairment charge.

(j) Revenue recognition

Data and performance-based marketing revenue

Revenue is generated when control of goods or services is transferred to customers, in amounts that reflect the consideration the Company expects to be entitled to in exchange for those goods or services. The Company's performance obligation is typically to (a) deliver data records, based on predefined qualifying characteristics specified by the customer, (b) generate conversions, based on predefined user actions (for example, a click, a registration, or the installation of an app) and subject to certain qualifying characteristics specified by the customer, (c) verify user interest or transfer calls to advertiser clients as a part of the contact center operation, or (d) deliver media spend as a part of the business of AdParlor, LLC ("AdParlor"), a wholly-owned subsidiary of the Company.

The Company applies the practical expedient related to the review of a portfolio of contracts in reviewing the terms of customer contracts as one collective group, rather than by individual contract. Based on historical knowledge of the contracts contained in this portfolio and the similar nature and characteristics of the customers, the Company concluded that the financial statement effects are not materially different than accounting for revenue on a contract-by-contract basis.

Revenue is recognized upon satisfaction of associated performance obligations. The Company's customers simultaneously receive and consume the benefits provided, which satisfies the Company's performance obligations. Furthermore, the Company elected the "right to invoice" practical expedient available within ASC 606-10-55-18 as the measure for revenue to be recognized, as it corresponds directly with the amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. The Company's revenue arrangements do not contain significant financing components. The Company has further concluded that revenue does not require disaggregation.

For each identified performance obligation in a contract with a customer, the Company assesses whether it or the third-party supplier is the principal or agent. In arrangements where Fluent has substantive control of the specified goods and services, is primarily responsible for the integration of products and services into the final deliverable to the customer, has inventory risk and discretion in establishing pricing, Fluent is considered to have acted as the principal. For performance obligations in which Fluent also acts as principal, the Company records the gross amount billed to the customer within revenue and the related incremental direct costs incurred as cost of revenue. If the third-party supplier, rather than Fluent, is primarily responsible for the performance and deliverable to the customer, and Fluent solely arranges for the third-party supplier to provide services to the customer, Fluent is considered to have acted as the agent. For performance obligations for which Fluent so acts as the agent, the net fees on such transactions are recorded as revenue, with no associated costs of revenue for the Company.

If a customer pays consideration before the Company's performance obligations are satisfied, such amounts are classified as deferred revenue on the consolidated balance sheets. As of December 31, 2023 and 2022, the balance of deferred revenue was \$ 430 and \$ 1,014, respectively. The majority of the deferred revenue balance as of December 31, 2023 will be recognized into revenue during the first quarter of 2024.

When there is a delay between the period in which revenue is recognized and when a customer invoice is issued, revenue is recognized, and the related amounts are recorded as unbilled revenue within accounts receivable on the consolidated balance sheets. As of December 31, 2023 and 2022, unbilled revenue included in accounts receivable was \$ 21,488 and \$ 26,878 , respectively. In line with industry practice, the unbilled revenue balance is recorded based on the Company's internally tracked conversions, net of estimated variances between this amount and the amount tracked and subsequently confirmed by customers. Substantially all amounts included within the unbilled revenue balance are invoiced to customers within the month directly following the period of service. Historical estimates related to unbilled revenue have not differed materially from actual invoiced revenue.

Sales commissions are recorded at the time revenue is recognized and recorded in sales and marketing in the consolidated statements of operations. The Company has elected to utilize a practical expedient to expense incremental costs incurred related to obtaining a contract.

In addition, the Company elected the practical expedient to not disclose the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less and (ii) contracts for which revenue is recognized at the amount to which the Company has the right to invoice for services performed.

(k) Cost of revenue (exclusive of depreciation and amortization)

Cost of revenue primarily includes media and related costs, which consist of the cost to acquire traffic through the purchase of impressions, clicks or actions from publishers or third-party intermediaries, such as advertising exchanges, and technology costs that enable media acquisition. The costs also include enablement costs associated with call centers and tracking costs for consumer data. These costs are used primarily to drive user traffic to the Company's and its clients' media properties. Cost of revenue additionally consists of indirect costs such as call center software, hosting, and fulfillment costs. Cost of revenue is presented exclusive of depreciation and amortization expenses.

(l) Advertising costs

Advertising costs are charged to operations as incurred. For the years ended December 31, 2023 and 2022, advertising costs, included in sales and marketing expenses, were \$ 860 and \$ 1,067 , respectively.

(m) Share-based compensation

The Company accounts for share-based compensation in accordance with ASC 718, *Compensation - Stock Compensation* ("ASC 718"). Under ASC 718, for awards with time-based conditions, the Company measures the cost of services received in exchange for an award of equity instruments based on the grant-date fair value of the award and generally recognizes such costs on a straight-line basis over the period the recipient is required to provide service in exchange for the award, which generally is the vesting period. For equity awards with market conditions, the Company recognizes costs on a straight-line basis, regardless of whether the market conditions are achieved and the awards ultimately vest. For equity awards with performance conditions, the Company begins recording share-based compensation when achievement of the performance criteria is probable using grant date fair value. For equity based awards settled in cash, we record the share-based compensation when achievement of the performance criteria is deemed probable adjusted for fair value at each reporting period. The Company recognizes forfeitures as they occur.

(n) Income taxes

The Company accounts for income taxes in accordance with ASC 740, *Income Taxes*, which requires the use of the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The effect on deferred tax assets and liabilities of a change in tax rates or laws is recognized in income in the period that the change in tax rates or laws is enacted. A valuation allowance is provided to reduce the amount of deferred tax assets if it is considered more likely than not that some portion or all of the deferred tax assets will not be realized based on management's review of historical results and forecasts.

ASC 740 clarifies the accounting for uncertain tax positions. This interpretation requires that an entity recognizes in its financial statements the impact of a tax position, if that position is more likely than not of being sustained upon examination, based on the technical merits of the position. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company's accounting policy is to accrue interest and penalties related to uncertain tax positions, if and when required, as interest expense and a component of other expenses, respectively, in the consolidated statements of operations.

(o) Income (loss) per share

Basic income (loss) per share is computed by dividing net loss by the weighted average number of common shares outstanding during the periods, in addition to restricted stock units ("RSUs") and restricted common stock that are vested not delivered. Diluted income (loss) per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock and is calculated using the treasury stock method for stock options and unvested shares. Common equivalent shares are excluded from the calculation in loss periods, as their effects would be anti-dilutive.

(p) Segment data

The Company identifies operating segments as components of an entity for which discrete financial information is available and is regularly reviewed by the chief operating decision maker in making decisions regarding resource allocation and performance assessment. The Company defines the term "chief operating decision maker" to be its chief executive officer. The Company has determined it has two operating segments and two corresponding reporting units, "Fluent" and "All Other," and one reportable segment. "All Other" represents the operating results of AdParlor, a digital advertising solution for social media buying and is included in segment reporting for purposes of reconciliation of the respective balances to the consolidated financial statements. "Fluent," for the purposes of segment reporting, represents the consolidated operating results of the Company excluding "All Other."

(q) Contingencies

In the ordinary course of business, the Company is subject to loss contingencies that cover a range of matters. An estimated loss from a loss contingency, such as a legal proceeding or claim, is accrued if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability and the ability to reasonably estimate the amount of any such loss.

(r) Recently issued and adopted accounting standards

Accounting pronouncements not listed below were assessed and determined to be not applicable or are expected to have minimal impact on the Company's Consolidated Financial Statements.

In January 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses*, and additional changes, modifications, clarifications, or interpretations thereafter, which require a reporting entity to estimate credit losses on certain types of financial instruments, and present assets held at amortized cost and available-for-sale debt securities at the amount expected to be collected. The new guidance was effective for annual and interim periods beginning after December 15, 2022, and early adoption was permitted. The Company completed its assessment of the new guidance and determined it had no material impact on its consolidated financial statements.

In October 2023, the FASB issued ASU No. 2023-06, *Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiatives*, which incorporates updates to the Codification to align with SEC Disclosure requirements in response to the August 2018 SEC Release No. 33-10532. The amendment updates and simplifies certain SEC disclosure requirements that were duplicative, overlapping, or outdated due to changes in other SEC requirements and in U.S. GAAP, International Financial Reporting Standards ("IFRS"), or the overall financial reporting environment. The new guidance is effective for each amendment only if the SEC removes the related disclosure of presentation requirements from its existing regulations by June 30, 2027. The guidance is to be applied prospectively, with early adoption prohibited. The Company is currently evaluating the impact of adopting the ASU on our consolidated financial statements and disclosures.

In November 2023, the FASB issued ASU No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which requires a public entity to disclose significant segment expenses that are regularly provided to the chief operating decision maker ("CODM"), a description of other segment items by reportable segment, and an explanation of any additional measures the CODM uses in deciding how to allocate resources. The new guidance is effective for fiscal years beginning after December 15, 2023 and interim periods within fiscal years beginning after December 15, 2024, and early adoption is permitted. The guidance is to be applied on a retrospective basis, with such disclosures to be made in regard to all prior periods presented in the financial statements. The Company completed its assessment and concluded this update had no material impact on its consolidated financial statements.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 470): Improvements to Income Tax Disclosures*, which are designed to increase the transparency and decision-usefulness of income tax disclosures for financial statement users. The ASU follows investors indication and request for enhanced tax disclosures in order to better assess an entity's operations, related tax risks, jurisdictional tax exposures, and increase transparency regarding tax information through improvements to tax disclosures, specifically rate reconciliation, income taxes paid, and unrecognized tax benefits and certain temporary differences. The new guidance is effective for fiscal years beginning after December 15, 2024 and interim periods within fiscal years beginning after December 15, 2025, and early adoption is permitted. The guidance is to be applied on a prospective basis, but retrospective application is permitted. The Company is currently evaluating the impact of adopting this ASU on our consolidated financial statements and disclosures.

3. Income (loss) per share

For the years ended December 31, 2023 and 2022 basic and diluted income (loss) per share was as follows:

(In thousands, except share data)	Year Ended December 31,	
	2023	2022
Numerator:		
Net loss	\$ (63,218)	\$ (123,332)
Denominator:		
Weighted average shares outstanding	80,907,297	79,709,212
Weighted average restricted shares vested not delivered	1,714,834	1,703,383
Total basic weighted average shares outstanding	82,622,131	81,412,595
Dilutive effect of assumed conversion of restricted stock units	—	—
Dilutive effect of assumed conversion of stock options	—	—
Total diluted weighted average shares outstanding	82,622,131	81,412,595
Basic and diluted loss per share:		
Basic	\$ (0.77)	\$ (1.51)
Diluted	\$ (0.77)	\$ (1.51)

Based on exercise prices compared to the average stock prices for the years ended December 31, 2023 and 2022, certain stock equivalents, including restricted stock units and stock options, have been excluded from the diluted weighted average share calculations due to their anti-dilutive nature.

	Year Ended December 31,	
	2023	2022
Restricted stock units	4,389,001	4,223,156
Stock options	1,814,000	2,139,000
Total anti-dilutive securities	6,203,001	6,362,156

4. Lease commitments

At the inception of a contract, the Company determines whether the contract is or contains a lease based on the facts and circumstances present. Operating leases with terms greater than one year are recognized on the consolidated balance sheets as Operating lease right-of-use assets, Current portion of operating lease liability, and Operating lease liability, net. Financing leases with terms greater than one year are recognized on the consolidated balance sheets as Property and equipment, net, Accrued expenses and other current liabilities, and Other non-current liabilities. The Company has elected not to recognize leases with terms of one year or less on the consolidated balance sheets.

Lease obligations and their corresponding assets are recorded based on the present value of lease payments over the expected lease term. As the interest rate implicit in lease contracts is typically not readily determinable, the Company utilizes an appropriate incremental borrowing rate, which is the rate incurred to borrow an amount equal to the applicable lease payments on a collateralized basis, over a similar term, and in a similar economic environment. Certain adjustments to the right-of-use asset may be required for items such as initial direct costs paid or incentives received. The components of a lease are split into three categories: lease components, non-lease components and non-components; however, the Company has elected to combine lease and non-lease components into a single component. Rent expense associated with operating leases is recognized over the expected term on a straight-line basis. In connection with financing leases, depreciation of the underlying asset is recognized over the expected term on a straight-line basis and interest expense is recognized as incurred.

The Company is party to several noncancelable operating and financing lease agreements that have original lease periods expiring between 2024 and 2025. Although certain leases include options to renew, the Company does not assume renewals in the determination of the lease term unless the renewals are deemed to be reasonably assured at lease commencement. The Company's lease agreements do not contain any material residual value guarantees, nor material restrictive covenants. Effective October 10, 2018, the Company entered into a seven-year operating lease agreement for approximately 42,685 square feet of office space in New York City. In connection with this lease agreement, the Company maintains a letter of credit of \$ 1,480 as of December 31, 2023. Additionally, the Company obtained the right to use certain furniture, fixtures, and office equipment already installed in the new office space, which the Company has treated as a capital lease.

For the year ended December 31, 2023 and 2022, the components of lease costs are as follows:

(In thousands)	Year Ended December 31,	
	2023	2022
Operating leases:		
Rent expense	\$ 2,193	\$ 2,196
Financing lease:		
Leased furniture, fixtures, and office equipment depreciation expense	49	49
Interest expense	19	26
Short-term leases:		
Rent expense	244	102
Total lease costs	<u>\$ 2,505</u>	<u>\$ 2,373</u>

As of December 31, 2023 and 2022, the weighted average lease-term and discount rate of the Company's leases are as follows:

	December 31, 2023	
	Operating Leases	Financing Lease
Weighted average remaining lease-term (in years)	1.9	1.9
Weighted average discount rate	5.0%	5.0%

As of December 31, 2023, scheduled future maturities of the Company's lease liabilities are as follows:

(In thousands)	December 31, 2023	
	Operating Leases	Financing Lease
Year		
2024	\$ 2,296	\$ 169
2025	1,890	143
Total undiscounted cash flows	4,186	312
Less: imputed interest	(191)	(14)
Present value of lease liabilities	<u>\$ 3,995</u>	<u>\$ 298</u>

For the year ended December 31, 2023 and 2022, supplemental cash flow information related to leases is as follows:

(In thousands)	Year Ended December 31,	
	2023	2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows used for operating leases	\$ 2,424	\$ 2,338
Operating cash flows used for financing lease	\$ 19	\$ 26
Lease liabilities related to the acquisition of right-of-use assets:		
Operating leases	\$ —	\$ 238

5. Property and equipment, net

Property and equipment, net consists of the following:

(In thousands)	December 31, 2023	December 31, 2022
Computer and network equipment	\$ 600	\$ 592
Furniture, fixtures, and office equipment	905	888
Leased furniture, fixtures, and office equipment	875	875
Leasehold improvements	1,260	1,260
Total cost of property and equipment	3,640	3,615
Less: accumulated depreciation and amortization	(3,049)	(2,651)
Property and equipment, net	<u>\$ 591</u>	<u>\$ 964</u>

For the years ended December 31, 2023 and 2022, depreciation of property and equipment was \$ 398 and \$ 491 , respectively.

6. Intangible assets, net

Intangible assets, net, other than goodwill, consist of the following:

(In thousands)	Amortization period (years)	December 31, 2023	December 31, 2022
Gross amount:			
Software developed for internal use	3	\$ 20,175	\$ 13,740
Acquired proprietary technology	3 - 5	16,972	15,965
Customer relationships	5 - 10	39,168	38,068
Trade names	4 - 20	16,657	16,657
Domain names	20	195	195
Databases	5 - 10	31,292	31,292
Non-competition agreements	2 - 5	1,768	1,768
		<u>126,227</u>	<u>117,685</u>
Accumulated amortization:			
Software developed for internal use		(12,142)	(8,097)
Acquired proprietary technology		(15,132)	(14,305)
Customer relationships		(37,249)	(35,156)
Trade names		(6,893)	(6,038)
Domain names		(77)	(68)
Databases		(26,157)	(23,508)
Non-competition agreements		(1,768)	(1,768)
		<u>(99,418)</u>	<u>(88,940)</u>
Net intangible assets:			
Software developed for internal use		8,033	5,643
Acquired proprietary technology		1,840	1,660
Customer relationships		1,919	2,912
Trade names		9,764	10,619
Domain names		118	127
Databases		5,135	7,784
		<u>\$ 26,809</u>	<u>\$ 28,745</u>

The gross amounts associated with software developed for internal use primarily represent capitalized costs of internally developed software. The amounts relating to acquired proprietary technology, customer relationships, trade names, domain names, databases and non-competition agreements primarily represent the fair values of intangible assets acquired as a result of the acquisition of Fluent, LLC, effective December 8, 2015 (the "Fluent LLC Acquisition"); the acquisition of Q Interactive, LLC, effective June 8, 2016 (the "Q Interactive Acquisition"); the acquisition of substantially all the assets of AdParlor Holdings, Inc. and certain of its affiliates, effective July 1, 2019 (the "AdParlor Acquisition"); the acquisition of 50 % interest in Winopoly, LLC (the "Initial Winopoly Acquisition"), effective April 1, 2020; the acquisition of 100 % interest in True North Loyalty, LLC, (the "True North Acquisition"), effective January 1, 2022 (Note 13, *Business acquisitions*); and the consolidation of TAPP Influencers Corp. ("TAPP") effective January 9, 2023 (see Note 14, *Variable Interest Entity*).

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During the three months ended June 30, 2023, the Company determined that the effects of the recently imposed regulatory requirements on the Company constituted a triggering event. The Company also then determined that the decline in the market value of its publicly traded stock, which resulted in a corresponding decline in its market capitalization, along with the operating results for the three months ended September 30, 2023, also constituted a triggering event. The Company conducted an interim test of the recoverability of its long-lived assets, which compared projected undiscounted cash flows to the carrying value of the asset group. The results of this approach indicated that its long-lived assets were not impaired as of June 30, 2023 or September 30, 2023. The Company believes that the assumptions utilized in the impairment tests, including the estimation of future cash flows, were reasonable. Future tests may indicate impairment if actual future cash flows or other factors considered differ from the assumptions used in the prior interim impairment tests. The Company then determined that no additional triggering events had occurred during the remainder of 2023 requiring further impairment assessments for its long-lived assets.

For the years ended December 31, 2023 and 2022, amortization expenses related to intangible assets, and included in depreciation and amortization expenses in the Company's consolidated statements of operations, were \$ 10,478 and \$ 12,723 , respectively.

For the years ended December 31, 2023 and 2022, the Company capitalized \$ 5,932 and \$ 4,480 , respectively, most of which was related to internally developed software, and wrote off \$ 0 and \$ 186 , respectively, due to abandonment of certain internally developed software whose net carrying values were not recoverable.

As of December 31, 2023, estimated amortization expenses related to the Company's intangible assets for 2024 through 2029 and thereafter are as follows:

(In thousands)

Year	December 31, 2023
2024	\$ 9,378
2025	8,364
2026	1,669
2027	828
2028	828
2029 and thereafter	5,742
Total	<u>\$ 26,809</u>

7. Goodwill

Goodwill represents the difference between the purchase price and the estimated fair value of net assets acquired, when accounted for by the acquisition method of accounting. As of December 31, 2023, the goodwill balance relates to the acquisition of Fluent LLC Acquisition, the Q Interactive Acquisition, the AdParlor Acquisition, the Initial Winopoly Acquisition, and the True North Acquisition (Note 13, *Business acquisitions*). As of December 31, 2023 and 2022, the change in the carrying value of goodwill for our operating segments (Note 12, *Segment information*), are listed below:

(In thousands)	Fluent	All Other	Total
Balance at Ended December 31, 2021	\$ 160,922	\$ 4,166	\$ 165,088
True North acquisition	1,092	—	1,092
Goodwill impairment	(110,400)	(669)	(111,069)
Balance at December 31, 2022	51,614	3,497	55,111
TAPP consolidation	1,555	—	1,555
Goodwill impairment	(53,169)	(2,236)	(55,405)
Balance at December 31, 2023	<u>\$ —</u>	<u>\$ 1,261</u>	<u>\$ 1,261</u>

As of December 31, 2023, net goodwill was comprised of gross goodwill of \$ 168,552 and accumulated impairment of \$ 167,291 .

During the three months ended March 31, 2023, the Company determined that the decline in the market value of its publicly-traded stock, which resulted in a corresponding decline in its market capitalization, constituted a triggering event. As such, the Company conducted an interim test of the fair value of the Fluent reporting unit's goodwill for potential impairment as of March 31, 2023. The Company considered a combination of income and market approaches to determine the fair value of the Fluent reporting unit. The Company determined that a market-based approach, which considered the Company's implied market multiple applied to management's forecast and further adjusted for a control premium, provided the best indication of fair value of the Fluent reporting unit. The results of this market-based approach indicated that the Fluent reporting unit's carrying value exceeded its fair value by 20 %. The Company therefore concluded that the Fluent reporting unit's goodwill of \$ 51,614 was impaired and recorded a non-cash impairment charge of \$ 25,700 .

During the three months ended June 30, 2023, the Company determined that the effect of the recently imposed regulatory requirements and the effect of the continued economic slowdown on the Company's expected operating results had each constituted a triggering event. As such, the Company conducted an interim test of the fair value of the Fluent reporting unit's goodwill for potential impairment related to both triggering events as of June 30, 2023. The Company applied a combination of income and market approaches to determine the fair value of the Fluent reporting unit. The results of this approach indicated that the fair value exceeded its carrying value by 5 %. The Company therefore concluded that the Fluent reporting unit's goodwill of \$ 27,469 was not impaired.

During the three months ended September 30, 2023, the Company determined that the decline in the market value of its publicly-traded stock, which resulted in a corresponding decline in its market capitalization, along with the impact of the continued economic slowdown on the Company's expected operating results had both constituted a triggering event. As such, the Company conducted an interim test of the fair value of the Fluent reporting unit's goodwill for potential impairment related to both triggering events and All Others for potential impairment related to the economic slowdown. The Company applied a combination of income and market approaches to determine the fair value of the Fluent reporting unit and All Others. The results of this approach indicated that the Fluent reporting unit's carrying value and All Others carrying value exceeded its fair value by 32 % and 29 %, respectively. The Company therefore concluded that the Fluent reporting unit's goodwill was impaired and recorded a non-cash impairment for the remainder of the goodwill balance of \$ 27,469 . In addition, the All Other goodwill of \$ 3,497 was also concluded to be impaired, and the Company recorded a non-cash impairment charge of \$ 2,236 . Based on the results from the interim test as of September 30, 2023, the Company concluded no further triggering events existed as of October 1, 2023 that would indicate it is more likely than not that the fair value was less than the carrying value for the Company's annual impairment test.

8. Long-term debt, net

Long-term debt, net, related to the Credit Facility (as defined below) consisted of the following:

(In thousands)	December 31, 2023	December 31, 2022
Credit Facility Term Loan due 2025 (less unamortized discount and financing costs of \$ 762 and \$656, respectively)	\$ 30,488	\$ 40,594
Less: Current portion of long-term debt	(5,000)	(5,000)
Long-term debt, net (non-current)	<u>\$ 25,488</u>	<u>\$ 35,594</u>

Credit Facility

On March 31, 2021, Fluent, LLC (the "Borrower") entered into a credit agreement (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement") with certain subsidiaries of the Borrower as guarantors, the lenders thereto, and Citizens Bank, N.A. ("Citizens Bank") as administrative agent, lead arranger and bookrunner. The original Credit Agreement provided for a term loan in the aggregate principal amount of \$ 50,000 funded on the Closing Date (the "Term Loan"), along with an undrawn revolving credit facility of up to \$ 15,000 (the "Revolving Loans," and together with the Term Loan, the "Credit Facility").

On May 15, 2023, the Borrower and Citizens Bank entered into a third amendment to the Credit Agreement, which amended certain provisions by adding an additional tier of applicable margin to the selected rates and providing for additional notice of certain material events and, for the remaining fiscal quarters of 2023, established the following, in each case pursuant to the terms and conditions under the Credit Agreement: (i) adjustments to the pricing floor and certain EBITDA add-backs; (ii) monthly financial reporting requirements; (iii) additional financial covenant testing conditions on Fluent's ability to draw on the Revolving Loans; (iv) additional tiers to certain financial covenants and added a minimum cash liquidity financial covenant; (v) additional restrictions on the ability to (a) make loans and advances to officers, directors and employees; (b) invest in certain subsidiaries and joint ventures; and (c) make additional loans, investments or permitted acquisitions; and (vi) additional unrestricted cash requirements before the Company is permitted to pay dividends, make distributions or redeem, or repurchase equity interests.

On August 21, 2023, the Borrower and Citizens Bank entered into a fourth amendment to the Credit Agreement (the "Fourth Amendment"), which (i) adjusted certain financial covenants for the remaining fiscal quarters of 2023, including prohibiting the Company from drawing on the Revolving Loans until the issuance of the December 31, 2023 annual financial statements, (ii) temporarily adjusted interest rates, (iii) permitted Citizens Bank to retain a business consultant at the Borrower's expense to advise on the credit parties' financial and operating performance; (iv) required weekly liquidity reports to Citizens Bank, and (v) required a \$ 5,000 prepayment of the Term Loan and a reduction in the maximum amount of the Revolving Loans by the same amount to \$ 10,000 . The \$ 5,000 prepayment amount was paid as of September 30, 2023. In evaluating the amendments under ASC 470-50, *Debt-Modifications and Extinguishments*, the Company determined that the amendment should be treated as a debt modification with no gain or loss recognized.

On November 15, 2023, the Borrower and Citizens Bank entered into a Temporary Waiver Under Credit Agreement, pursuant to which Citizens Bank agreed to waive through the termination date its rights and remedies arising from the Company's breach of the total leverage ratio covenant during the quarter ending September 30, 2023. The Initial Waiver also added new reporting requirements, temporarily increased the applicable margin, and extended the term of the business consultant through January 15, 2024. The Borrower was required to provide a 2024 budget that has been reviewed by the business consultant. On January 17, 2024 the Initial Waiver termination date was extended until January 26, 2024.

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On January 26, 2024, the Borrower and Citizens Bank entered into a Third Temporary Waiver and Amendment to Credit agreement (the "Third Waiver"), pursuant to which Citizens Bank agreed to waive through the earlier of April 30, 2024, an occurrence of any other event of default, or failure to comply with requirements of the Third Waiver and its rights and remedies arising from the Company's breach of the total leverage covenant and fixed charge ratio during the quarters ending December 31, 2023 and March 31, 2024. Among other things, the Third Waiver required the Borrower to, by March 31, 2024, deliver one or more Transaction Commitments, defined as: (i) a third-party commitment to provide additional capital in exchange for equity or subordinated debt, (ii) a purchase agreement for the sale of a divested business, or (iii) a third-party commitment to refinance the Credit Agreement. One condition of the Transaction Commitments was that they had to, in the aggregate, provide for net proceeds to Fluent of not less than \$ 10,000 .

All obligations under the Credit Agreement have been accelerated to mature on September 30, 2025 from the initial March 30, 2026, and interest is payable monthly. Scheduled principal amortization of the Term Loan is \$ 1,250 per quarter, which commenced with the fiscal quarter ended June 30, 2021. At December 31, 2023, the Company was in compliance with all of the financial covenants under the Credit Agreement, except for the total leverage ratio and fixed charge ratio covenants. As discussed above, these covenant breaches were waived through the termination date by the Waiver.

Borrowings under the Credit Agreement bear interest at a rate per annum equal to the benchmark selected by the Borrower, which may be based on the Alternative Base Rate, LIBOR rate (subject to a floor of 0.25 %) prior to the election as of December 31, 2023 or Term Secured Overnight Financing Rate ("SOFR") (subject to a floor of 0.00 %) subsequent to the election, plus a margin applicable to the selected benchmark. The applicable margin is between 0.75 % and 1.75 % for borrowings based on the Alternative Base Rate and 1.75 % and 2.75 % for borrowings based on LIBOR and Term SOFR, depending upon the Borrower's Total Leverage Ratio. The opening interest rate of the Credit Facility was 2.50 % (LIBOR + 2.25 %), which increased to 8.96 % (Term SOFR + 0.1 % + 3.50 %) as of December 31, 2023.

The Credit Agreement also contains certain customary conditions applicable to extensions of credit, including that representations and warranties made in the Credit Agreement be materially true and correct at the time of such extension (once such extensions are no longer prohibited by the Fourth Amendment or a later amendment).

Maturities

As of December 31, 2023, scheduled future maturities of the Credit Agreement, including the required principal prepayment based on a portion of the Company's quarterly excess cash flow and excluding potential future additional principal prepayments, are as follows:

(In thousands)

Year	
2024	\$ 5,000
2025	5,000
2026	21,250
2027	0
2028	0
Total maturities	\$ 31,250

Fair value

As of December 31, 2023, the fair value of long-term debt is considered to approximate its carrying value. The fair value assessment represents a Level 2 measurement.

9. Income taxes

The Company is subject to federal and state income taxes in the United States. For the years ended December 31, 2023 and 2022, the provision for income taxes on income (loss) from operations consisted of the following:

(In thousands)	Year Ended December 31	
	2023	2022
Current:		
Federal	\$ (24)	\$ 1,392
State	(70)	606
Foreign	123	3
Total current	29	2,001
Deferred:		
Federal	(3,352)	(3,730)
State	(462)	(537)
Foreign	20	1
Less: valuation allowance	3,649	4,041
Total deferred	(145)	(225)
Total income tax expense (benefit)	\$ (116)	\$ 1,776

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For the years ended December 31, 2023 and 2022, the provision for income taxes differs from the amounts computed by applying the applicable federal statutory rates as follows:

(In thousands)	Year Ended December 31,			
	2023		2022	
Federal income taxes at the statutory rate	\$	(13,300)	21.0%	\$ (25,527) 21.0%
Share-based compensation shortfall (windfall)		13	(0.0)	8 (0.0)
Effect of state taxes, net of federal tax benefit		(517)	0.8	(2) 0.0
Non-deductible items		(421)	0.7	1,070 (0.9)
Goodwill impairment		9,491	(15.0)	23,184 (19.1)
Return to provision adjustment		2,731	(4.3)	493 (0.4)
Foreign rate difference		16	(0.0)	1 (0.0)
Deferred only adjustments		197	(0.3)	444 (0.4)
Research and development credit		(1,992)	3.1	(1,960) 1.6
Other		17	(0.0)	24 (0.0)
Change in valuation allowance		3,649	(5.8)	4,041 (3.3)
Income tax expense (benefit)	\$	(116)	0.2%	\$ 1,776 (1.5)%

Under the Tax Cuts and Jobs Act of 2017, research and development costs are no longer fully deductible and are required to be capitalized and amortized for U.S. tax purposes effective January 1, 2022. The mandatory capitalization requirement increases the Company's deferred tax assets before valuation allowance and cash taxes payable.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. As of December 31, 2023 and 2022, the significant components of deferred tax assets and (liabilities) consist of the following:

(In thousands)	December 31, 2023	December 31, 2022
Deferred tax assets:		
Net operating loss carryforwards	\$ 1,400	\$ 973
Share-based compensation	5,129	5,344
Capitalized research and experimental expenditures	3,069	4,088
Intangible assets, net	1,415	—
Tax credits	1,413	—
Accrued expense	1,178	894
Operating lease liability	973	1,533
Interest expense limitation	589	—
Accounts receivable, net	56	136
Other	280	—
	15,502	12,968
Valuation allowance	(14,568)	(11,171)
Total deferred tax assets, net of valuation allowance	934	1,797
Deferred tax liabilities:		
Operating lease right-of-use asset	(827)	(1,300)
Property and equipment, net	(136)	(222)
Intangible assets, net	—	(407)
Other	—	(42)
	(963)	(1,971)
Net deferred tax liability	\$ (29)	\$ (174)

As of December 31, 2023, the Company has state net operating loss carryforwards of \$ 24,216 , which begin to expire in 2030.

As of December 31, 2023 and 2022, the Company recorded a full valuation allowance against its net deferred tax assets of \$ 14,568 and \$ 11,171 , respectively, which is driven by the movement in the net deferred tax assets. For the year ended December 31, 2023, the movement in the net deferred tax assets are primarily a result of the capitalized research and experimental expenditures, an increase in the tax basis of amortizable intangibles, and utilization of federal and state net operating losses. The Company intends to continue maintaining a full valuation allowance on these net deferred tax assets until there is sufficient evidence to support the release of all or some portion of these allowances. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded, however, the exact timing and amount of any valuation allowance release are subject to change, depending upon the level of profitability that the Company is able to achieve and the net deferred tax assets available.

The Company continually evaluates expiring statutes of limitations, audits, proposed settlements, changes in tax law and new authoritative rulings. The Company files tax returns in federal and certain state and local jurisdictions. The periods subject to examination are generally for tax years ended 2019 through 2022, including the following major jurisdictions: U.S. Federal, New York State, and New York City. Due to utilization of net operating losses in subsequent periods with open statutes, tax years 2015 and forward remain open to examination by Federal taxing authorities until the statute is closed on the tax year in which the net operating loss was utilized.

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For the years ended December 31, 2023 and 2022, reconciliation of the gross amounts of unrecognized tax benefits, excluding accrued interest and penalties, consists of the following:

(In thousands)	Year Ended December 31,	
	2023	2022
Unrecognized tax benefits, opening balance	\$ 1,480	\$ 1,480
Change in unrecognized tax benefits	—	—
Unrecognized tax benefits, ending balance	<u>\$ 1,480</u>	<u>\$ 1,480</u>

If the Company's tax positions are ultimately sustained, the Company's liability would be reduced by \$ 1,480 , all of which would impact the Company's tax provision. The Company is reasonably certain that all of its uncertain tax positions will reverse within the next twelve months due to the closing of the statute of limitations.

10. Common stock, treasury stock and warrants

Common stock

As of December 31, 2023 and 2022 the number of issued shares of common stock was 85,917,891 and 84,385,458 , respectively, which included shares of treasury stock of 4,611,569 and 4,300,152 , respectively.

For the year ended December 31, 2023, the change in the number of issued shares of common stock comprised the following issuances:

- An aggregate of 1,532,433 shares of common stock were issued as a result of the vesting of RSUs and included 311,417 shares of common stock withheld to cover withholding taxes upon such vesting, which are reflected as additions to treasury stock in the consolidated statements of changes in shareholders' equity.

For the year ended December 31, 2022, the change in the number of issued shares of common stock comprised the following issuances:

- An aggregate of 1,328,375 shares of common stock were issued as a result of the vesting of RSUs and included 208,329 shares of common stock withheld to cover withholding taxes upon such vesting, which are reflected as additions to treasury stock in the consolidated statements of changes in shareholders' equity.

Treasury stock

As of December 31, 2023 and 2022, the Company held 4,611,569 and 4,300,152 shares in treasury, with a cost of \$ 11,407 and \$ 11,171 , respectively. The Company's share-based incentive plans allow employees the option to either make cash payment or forfeit shares of common stock upon vesting to satisfy federal and state statutory tax withholding obligations associated with equity awards. The forfeited shares of common stock may be taken into treasury stock by the Company or sold on the open market.

For the year ended December 31, 2023 and 2022, 311,417 and 208,329 shares, respectively, were withheld to cover withholding taxes owed by certain employees, all of which were taken into treasury stock.

Warrants

As of December 31, 2023 and 2022, the warrants to purchase an aggregate of 0 and 0 shares of common stock were outstanding, respectively. On May 22, 2022, the warrants to purchase an aggregate of 833,333 shares of common stock at prices ranging from \$ 3.75 to \$ 6.00 per share expired unexercised.

Preferred stock

As of December 31, 2023 and 2022, the Company had 10 million shares of blank-check preferred stock with par value of \$ 0.0001 per share authorized. No shares of preferred stock have been issued or are outstanding.

11. Share-based compensation

On June 8, 2022, the stockholders of the Company approved the Fluent, Inc. 2022 Omnibus Equity Incentive Plan (the "2022 Plan") that authorized for issuance 15,422,523 shares of the Company's common stock, which became effective on August 10, 2022 ("Effective Date"). With the 2022 Plan, no further awards are available to be issued under the 2018 Stock Incentive Plan (the "Prior Plan"), but all awards under the Prior Plans that are outstanding as of the Effective Date will continue to be governed by the terms, conditions and procedures set forth in the Prior Plans and any applicable award agreement. As of December 31, 2023, the Company had 6,882,861 shares of common stock available for grants pursuant to the 2022 Plan, which included 1,282,176 shares of common stock previously available for issuance under the Fluent Inc. 2018 Stock Incentive Plan (the "Prior Plan").

The primary purpose of the Company's stock compensation plan is to attract, retain, reward, and motivate certain individuals by providing them with opportunities to acquire or increase their ownership interests in the Company. In October 2022, the Company issued to certain of its senior officers and employees, restricted stock units ("RSUs") (time-based), long-term incentive grants (performance and time-based vesting RSUs), or performance stock units ("PSUs") (on achievement of targets, a cash payout) under the 2022 Plan.

Stock options

The Compensation Committee of the Company's Board of Directors approved the grant of stock options to certain Company officers, which were issued on February 1, 2019, December 20, 2019, March 1, 2020, and March 1, 2021, respectively, under the 2018 Plan. Subject to continuing service, 50 % of the shares subject to these stock options will vest if the Company's stock price remains above 125 %, 133.33 %, 133.3 % and 133.33 %, respectively, of the exercise prices for twenty consecutive trading days, and the remaining 50 % of the shares subject to these stock options will vest if the Company's stock price remains above 156.25 %, 177.78 %, 177.78 % and 177.78 %, respectively, of the exercise prices for twenty consecutive trading days; provided, that no shares will vest prior to the first anniversary of the grant date. As of December 31, 2023, the first condition for the stock options issued on February 1, 2019, December 20, 2019 and March 1, 2020 had been met and the second condition for the stock options issued on December 20, 2019 and March 1, 2020 had been met. Any shares that remain unvested as of the fifth anniversary of the grant date will vest in full on such date. The fair value of the stock options granted was estimated at the trading day before the date of grant using a Monte Carlo simulation model. The key assumptions utilized to calculate the grant-date fair values for these awards are summarized below:

Issuance Date	February 1, 2019	December 20, 2019	March 1, 2020	March 1, 2021
Fair value lower range	\$ 2.81	\$ 1.58	\$ 1.46	\$ 4.34
Fair value higher range	\$ 2.86	\$ 1.61	\$ 1.49	\$ 4.43
Exercise price	\$ 4.72	\$ 2.56	\$ 2.33	\$ 6.33
Expected term (in years)	1.0 - 1.3	1.0 - 1.6	1.0 - 1.5	1.0 - 1.3
Expected volatility	65%	70%	70%	80%
Dividend yield	—%	—%	—%	—%
Risk-free rate	2.61%	1.85%	1.05%	1.18%

For the years ended December 31, 2023 and 2022, the activity related to stock options consisted of the following:

	Number of options	Weighted average exercise price per share	Weighted average remaining contractual term (years)	Aggregate intrinsic value
Outstanding as of December 31, 2021	2,204,000	\$ 4.41	7.1	\$ —
Granted	—			
Forfeited	—			
Expired	(65,000)	\$ 1.10		
Outstanding as of December 31, 2022	2,139,000	\$ 4.37	6.3	—
Granted	—			
Forfeited	(308,000)			
Expired	(17,000)			
Outstanding as of December 31, 2023	1,814,000	\$ 4.28	5.4	—
Options exercisable as of December 31, 2023	1,071,000	\$ 3.81	5.5	—

The aggregate intrinsic value amounts in the table above represent the difference between the closing price of the Company's common stock at the end of the reporting period and the corresponding exercise prices, multiplied by the number of in-the-money stock options as of the same date.

For the years ended December 31, 2023 and 2022, the unvested balance of stock options was as follows:

	Number of options	Weighted average exercise price per share	Weighted average remaining contractual term (years)
Unvested as of December 31, 2022	897,000	\$ 4.91	6.3
Granted	—		
Forfeited	(154,000)	\$ 7.38	
Vested	—		
Unvested as of December 31, 2023	743,000	\$ 4.95	5.4

For the years ended December 31, 2023 and 2022, compensation expense recognized for stock options of \$ 0 and \$ 125, respectively was recognized in sales and marketing, product development and general and administrative expenses in the consolidated statement of operations. As of December 31, 2023, there was \$ 0 of unrecognized share-based compensation with respect to outstanding stock options.

Restricted stock units and restricted stock

For the years ended December 31, 2023 and 2022, details of unvested restricted stock units ("RSUs") and restricted stock activity were as follows:

	Number of units	Weighted average grant date fair value
Unvested as of December 31, 2021	3,111,321	\$ 8.03
Granted	2,864,701	\$ 1.44
Vested and delivered	(1,120,046)	\$ 3.55
Withheld as treasury stock (1)	(208,329)	\$ 4.56
Vested not delivered (2)	—	\$ 3.30
Forfeited	(424,491)	\$ 3.53
Unvested as of December 31, 2022	4,223,156	\$ 5.37
Granted	3,487,110	\$ 0.89
Vested and delivered	(1,221,016)	\$ 2.96
Withheld as treasury stock (1)	(311,417)	\$ 1.82
Vested not delivered (2)	(39,592)	\$ 2.85
Forfeited	(1,749,241)	\$ 1.20
Unvested as of December 31, 2023	4,389,000	\$ 4.43

- (1) As discussed in Note 10, *Common stock, treasury stock and warrants*, the increase in treasury stock was primarily attributable to shares withheld to cover statutory withholding taxes upon the vesting of RSUs. As of December 31, 2023 and 2022, there were 4,611,569 and 4,300,152 outstanding shares of treasury stock, respectively.
- (2) Vested not delivered represents vested RSUs with delivery deferred to a future time. During the year ended December 31, 2023, there was a 39,592 change in vested not delivered balance as a result of the timing of delivery of certain shares. During the year ended December 31, 2022, there was no net change in vested not delivered balance as a result of the timing of delivery of certain shares. As of December 31, 2023 and 2022, there were 1,739,592 and 1,691,666 outstanding RSUs included in vested not delivered, respectively.

For the years ended December 31, 2023 and 2022, the Company recognized compensation expense for RSUs of \$ 3,903 and \$ 3,989, respectively, in sales and marketing, product development and general and administrative in the consolidated statements of operations, and intangible assets in the consolidated balance sheets. As of December 31, 2023, there was \$ 3,048 of unrecognized share-based compensation with respect to outstanding RSUs and restricted stock. The fair value of the RSUs and restricted stock was estimated using the closing prices of the Company's common stock on the dates of grant.

As of December 31, 2023, unrecognized share-based compensation expense associated with the granted RSUs, restricted stock and stock options is \$ 3,048, which is expected to be recognized over a weighted average period of 1.2 years. For the years ended December 31, 2023 and 2022, share-based compensation for the Company's equity awards were allocated to the following lines in the consolidated financial statements:

(In thousands)	Year Ended December 31,	
	2023	2022
Sales and marketing	\$ 543	\$ 600
Product development	626	556
General and administrative	2,640	2,861
Share-based compensation expense	3,809	4,017
Capitalized in intangible assets	94	97
Total share-based compensation	\$ 3,903	\$ 4,114

As of December 31, 2023, the Company recorded a liability of \$ 53 related to PSUs that are to be settled in cash.

401(k) Profit Sharing Plan and Trust Plan

The Company maintains a 401(k) Profit Sharing Plan and Trust ("Plan") covering all U.S. employees. Under the Plan, the Company makes a safe harbor matching contribution equal to 100 % of an employee's salary deferrals that do not exceed 3 % of the employee's compensation plus 50 % of the employee's salary deferrals between 3 % and 5 % of such employee's compensation. This safe harbor matching contribution is 100 % vested. During 2023, we made matching contributions to the Plan of \$ 1,034. During 2022, we made matching contributions to the Plan of \$ 916.

The Company also has a discretion to award eligible employees under the Plan, profit sharing contributions

12. Segment information

The Company identifies operating segments as components of an entity for which discrete financial information is available and is regularly reviewed by the chief operating decision maker ("CODM") in making decisions regarding resource allocation and performance assessment. The profitability measure employed by CODM is segment EBITDA. As of December 31, 2023, the Company has two operating segments and two corresponding reporting units, "Fluent" and "All Other," and one reportable segment. "All Other" represents operating results of AdParlor, LLC and is included for purposes of reconciliation of the respective balances below to the consolidated financial statements. "Fluent," for the purposes of segment reporting, represents the consolidated operating results of the Company excluding "All Other."

Summarized financial information concerning the Company's segments is shown in the following tables below:

(In thousands)	Year Ended December 31,	
	2023	2022
Fluent segment revenue(1):		
United States	\$ 175,528	\$ 218,981
International	113,555	131,808
Fluent segment revenue	\$ 289,083	\$ 350,789
All Other segment revenue (1):		
United States	\$ 9,316	\$ 10,273
International	—	72
All Other segment revenue	\$ 9,316	\$ 10,345
Segment EBITDA		
Fluent segment EBITDA	\$ (47,760)	\$ (106,109)
All Other segment EBITDA	(1,494)	(268)
Total EBITDA	(49,254)	(106,377)
Depreciation and amortization	10,876	13,214
Total loss from operations	\$ (60,130)	\$ (119,591)

(1) Revenue aggregation is based upon location of the customer.

(In thousands)	December 31,	
	2023	2022
Total assets:		
Fluent	\$ 97,629	\$ 168,486
All Other	14,238	15,483
Total assets	\$ 111,867	\$ 183,969

As of December 31, 2023, long-lived assets are all located in the United States.

For the year ended December 31, 2023, the Company identified an international customer within the Fluent segment with revenue in the amount of \$ 54,080 that represents 18 % of consolidated revenue. In addition, 27 % of the Company's revenue is earned from customers located in Israel.

13. Business acquisition

True North Acquisition

On January 1, 2022, the Company acquired a 100 % membership interest in True North Loyalty, LLC for a deemed purchase price of \$ 2,321, which consisted of (i) \$ 1,000 in cash at closing, (ii) \$ 860 of deferred payments due at both the first and second anniversary of the closing date adjusted for net working capital, and (iii) contingent consideration with a fair value at the closing date of \$ 250, payable in common stock based upon the achievement of specified revenue targets over the five-year period following the completion of the acquisition. The Company also issued 100,000 shares of fully-vested stock under the Prior Plan to the sellers valued at \$ 211. Certain seller parties entered into employment and non-competition agreements with the Company in connection with the True North Acquisition. True North Loyalty, LLC is a subscription-based business that utilizes call center operations and other media channels to market recurring revenue services to consumers. In accordance with ASC 805, the Company determined that the True North Acquisition constituted the purchase of a business.

Since January 1, 2022, the Company has used the excess earnings method, a variation of the income approach, to amortize: (i) the fair value of the acquired customer relationships related to subscribers of \$ 170 over a one-year period and (ii) the fair value of the acquired customer relationships related to call centers of \$ 1,180, over a five-year period. The amount of the purchase price in excess of the fair value of the net assets acquired was recorded as goodwill in the amount of \$ 1,092 and primarily relates to intangible assets that do not qualify for separate recognition, including assembled workforce and synergies. For tax purposes, the goodwill is not deductible.

14. Variable Interest Entity

A VIE is an entity that either (i) has insufficient equity to permit the entity to finance its activities without additional subordinated financial support, or (ii) has equity investors who lack the characteristics of a controlling financial interest. The primary beneficiary is the party that has the power to direct activities that most significantly impact the operations of the VIE and has the obligation to absorb losses or the right to benefits from the VIE that could potentially be significant to the VIE. The Company assesses whether we are the primary beneficiary of a VIE at the inception of the arrangement and as of the reporting date.

On January 9, 2023, the Company entered into employment agreements with certain key employees of TAPP, an influencer-based business, which uses as an application to utilize its relationship with influencers to bring consumers to advertising clients. The Company is also a customer of TAPP and accounts for the majority of TAPP's revenues. By virtue of TAPP's key employees being employed by the Company and the significance of the Company to TAPP's financial performance, the Company determined that TAPP qualified as a VIE in which the Company had a variable interest and that the Company is the primary beneficiary as a result of its significant influence and control over certain activities that most significantly impact its economic performance. As a result, the Company consolidates the TAPP operations. As the Company does not have an equity interest, 100 % of the net assets and results of the operations of TAPP are attributable to non-controlling interests.

As the Company gained control of TAPP, in accordance with ASC 805, Business Combinations, it was then determined that TAPP constituted a business. The deemed fair value of the consideration was \$ 4,165 , which consisted of \$ 1,250 of initial cash and \$ 2,915 which was contingent based upon achievement of specified revenue and media margin targets over three years. The fair value of assets acquired, which excluded the immaterial net-working capital, were determined to be the publisher contracts of \$ 1,100 , which were valued using the 'with or without' method, a variation of the income approach, to be amortized over a period of one year and industry-based trade secrets of \$ 1,510 , which were valued using the excess earnings method, a variation of the income approach, to be amortized over a period of four years. The amount of the purchase price in excess of the fair value of the net assets acquired was recorded as goodwill in the amount of 1,555 and primarily represents workforce and expected cash flow generation for the TAPP business that does not qualify for separate recognition as intangible assets included within the Fluent operating segment. For tax purposes, the value of the acquisition payments is treated as ordinary compensation for services rendered, deductible when paid and included in the employees' wages. At and for the year ended December 31, 2023, the assets and revenues of TAPP totaled a de minimis percentage of the Company's total assets and revenue.

15. Contingencies

Except as disclosed below, the Company is not currently a party to any legal proceeding, investigation or claim which, in the opinion of management, is likely to have a material adverse effect on the business, financial condition, results of operations or cash flows. Legal fees associated with such legal proceedings are expensed as incurred. The Company reviews legal proceedings and claims on an ongoing basis and follows the appropriate accounting guidance, including ASC 450, when making accrual and disclosure decisions. The Company establishes accruals for those contingencies where the incurrence of a loss is probable and can be reasonably estimated, and the Company discloses the amount accrued and the amount of a reasonably possible loss in excess of the amount accrued, if such disclosure is necessary for the consolidated financial statements to not be misleading. To estimate whether a loss contingency should be accrued by a charge to income, the Company evaluates, among other factors, the probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss. The Company does not accrue liabilities when the likelihood that the liability has been incurred is probable, but the amount cannot be reasonably estimated.

In addition, the Company may be involved in litigation from time to time in the ordinary course of business. It is the opinion of the Company's management that the ultimate resolution of any such matters currently pending will not have a material adverse effect on the Company's business, financial condition, results of operations or cash flows. However, the results of such matters cannot be predicted with certainty and there can be no assurance that the ultimate resolution of any legal or administrative proceeding or dispute will not have a material adverse effect on the Company's business, financial condition, results of operations and cash flows.

In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability and the ability to reasonably estimate the amount of any such loss.

On March 31, 2022, the Company reached a settlement for \$ 1,700 with the New York State Department of Taxation and Finance (the "Tax Department") following a sales and use tax audit covering the period from December 1, 2010 to November 30, 2019. The Tax Department had asserted that revenue derived from certain of the Company's customer acquisition and list management services were subject to sales tax, as a result of being deemed taxable information services. The settlement amount was paid on April 1, 2022. Since March 1, 2022, the Company has been collecting and remitting New York sales tax on certain types of revenue from New York-based clients.

On January 28, 2020, Fluent received a Civil Investigative Demand from the Federal Trade Commission (the "FTC") regarding compliance with the FTC Act and Telemarketing Sales Rule. On October 18, 2022, the FTC staff sent the Company a draft complaint and proposed consent order seeking injunctive relief and a civil monetary penalty. On January 12, 2023, the Company made an initial proposal of \$ 5,000 for the civil monetary penalty contingent on successful negotiation of the remaining outstanding terms. The Company accrued the same amount for the year ending December 31, 2022. On May 26, 2023, Fluent agreed to the terms of a Stipulated Order for Permanent Injunction, Monetary Judgment, Civil Penalty Judgment, and Other Relief (the "FTC Consent Order"). The FTC Consent Order imposed a civil penalty of \$ 2,500, required additional changes to the Company's employment opportunities marketplace and programmatic advertising business, and resulted in the implementation of compliance measures across the business. On July 17, 2023, the FTC filed its Complaint for Civil Penalties, Permanent Injunction, Monetary Relief, and Other Relief and, together with Fluent, filed a Joint Motion for Entry of Proposed Stipulated Order in the United States District Court for the Southern District of Florida. The FTC Consent Order was entered by the Court on August 11, 2023, and the escrow funds were released on August 15, 2023. The Company maintains insurance policies that cover certain legal costs, which include those incurred related to the FTC investigation. As of December 31, 2023, the Company had recognized \$ 6,162 as contra-expense to general and administrative expenses with a small remaining current asset related to these insurance policies.

On October 6, 2020, the Company received notice from the Pennsylvania Office of the Attorney General ("PAAG") that it was reviewing the Company's business practices relating to telemarketing. After the Company and the PAAG were unable to reach agreement on a proposed Assurance of Voluntary Compliance, the Commonwealth of Pennsylvania filed a complaint for permanent injunction, civil penalties, and other relief in the United States District Court for the Western District of Pennsylvania on November 2, 2022. On May 18, 2023, the parties entered into a settlement and jointly filed a Consent Petition of Final Decree, wherein the Company agreed to injunctive relief and to pay the PAAG \$ 250 for investigatory costs, all of which was paid as of June 30, 2023.

The Company has been involved in a Telephone Consumer Protection Act class action, *Daniel Berman v. Freedom Financial Network*, which was originally filed in the Northern District of California in 2018. On May 31, 2023, the parties entered into an Amended Class Action Settlement Agreement (the "Berman Settlement Agreement"), which includes injunctive provisions and payment to plaintiffs of \$ 9,750 for legal fees and a consumer redress fund. On July 28, 2023, the Court preliminarily approved the Berman Settlement Agreement, and the Company contributed \$ 3,100, payable following the final approval of the settlement. The final approval of the Berman Settlement Agreement was filed on February 23, 2024, with payment required by March 15, 2024. The Company's contribution amounts were accrued as of December 31, 2022, which includes \$ 1,100 in cash and \$ 2,000 pursuant to an interest-bearing note with a two-year term provided by co-defendant, Freedom Financial Network.

16. Subsequent Events

On April 2, 2024, Fluent, LLC entered into a credit agreement (the "SLR Credit Agreement") by and among Fluent, LLC, as Borrower, Fluent, Inc. and certain subsidiaries of the Borrower as guarantors, Crystal Financial LLC D/B/A SLR Credit Solutions, as administrative agent, lead arranger and bookrunner ("SLR"), and the lenders from time to time party thereto. The SLR Credit Agreement provides for a \$ 20,000 term loan (the "Term Loan") and a revolving credit facility of up to \$ 30,000 (the "Revolving Facility" and, together with the Term Loan, the "SLR Credit Facility"). As of April 2, 2024, the SLR Credit Facility has an outstanding principal balance of \$ 32,700 and will mature on April 2, 2029 (the "Maturity Date").

The Company used a portion of the net proceeds of the SLR Credit Facility to repay its outstanding obligations under the Credit Agreement, dated March 31, 2021 (See Note 8, *Long-term debt, net*). During the first quarter 2024, the Company expects to recognize an estimated debt extinguishment loss of \$ 1,100 related to early repayment of the Credit Agreement.

The Company may voluntarily prepay the Term Loan, in whole or in part, at any time, subject to a premium payable on the aggregate principal amount of any such voluntary prepayments within the first three years following the closing date. There is no principal amortization prior to maturity under the SLR Credit Agreement, except for certain mandatory prepayments to be made with the net cash proceeds of certain asset sales, casualty events, and other extraordinary receipts and upon the occurrence of certain other events, in each case, subject to certain reinvestment rights, thresholds and other exceptions. Unfunded commitments under the Revolving Facility will be subject to an unused facility fee, which will be payable monthly in arrears, as of the month following the closing, at a rate of 0.50 % per annum. All amounts owed under the Credit Facilities will be due and payable on the Maturity Date, or earlier following a change in control or other event of default, unless otherwise extended in accordance with the terms of the SLR Credit Agreement. Borrowings under the SLR Credit Agreement bear interest at a rate per annum equal to a 3-month term SOFR plus 0.26161 %, subject to a 1.50 % floor, plus 5.25 % (the "Applicable Margin"). The Applicable Margin will be reduced to 5.0 % when our fixed charge coverage ratio is greater than 1.10 to 1. The anticipated opening interest rate of the SLR Credit Facility is 10.81 % (SOFR + CSA + 5.25 %).

The SLR Credit Facility is guaranteed by us and certain of our direct and indirect subsidiaries and is secured by substantially all of our assets and those of certain of our direct and indirect subsidiaries, including Fluent, LLC.

The SLR Credit Agreement contains restrictive covenants which impose limitations on the way the Company conducts business, including limitations on the amount of additional debt the Company is able to incur and our ability to make certain investments or to pay dividends or other restricted payments.

SECOND TEMPORARY WAIVER UNDER CREDIT AGREEMENT

THIS SECOND TEMPORARY WAIVER UNDER CREDIT AGREEMENT (this "Temporary Waiver") is entered into as of January 17, 2024 (the "Effective Date") by and among FLUENT, LLC, a Delaware limited liability company (the "Borrower"), the Required Lenders party hereto, and CITIZENS BANK, N.A., a national banking association, as administrative agent for the Lenders under the Credit Agreement (as hereinafter defined) (in such capacity, the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement (as defined below).

WHEREAS, the Borrower, the Guarantors, certain banks and financial institutions from time to time party to the Credit Agreement (the "Lenders") and the Administrative Agent are parties to that certain Credit Agreement, dated as of March 31, 2021 (as amended by that certain First Amendment to Credit Agreement, dated as of September 3, 2021, that certain Second Amendment to Credit Agreement, Waiver, Acknowledgment and Joinder, dated as of December 19, 2022, that certain Third Amendment to Credit Agreement, dated as of May 15, 2023, that certain Fourth Amendment to Credit Agreement, dated as of August 21, 2023, and as the same may be further amended, modified, extended, restated, replaced or supplemented from time to time, including by this Amendment, the "Credit Agreement");

WHEREAS, those certain Events of Default listed on Exhibit A attached hereto have occurred and are continuing (the "Specified Events of Default");

WHEREAS, the Parties entered into that certain Temporary Waiver Under Credit Agreement dated as of November 15, 2023 (the "First Waiver Effective Date"), pursuant to which the Waiver Period (as defined therein) is set to expire on January 15, 2024; and

WHEREAS, the Borrower has requested that the Administrative Agent and Required Lenders continue to temporarily waive the Specified Events of Default for a period after January 15, 2024, and, subject to the satisfaction of the conditions set forth herein, the Administrative Agent and the Required Lenders signatory hereto are willing to do so, on a temporary basis, in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. Acknowledgment and Temporary Waiver.

(a) Each Credit Party acknowledges that: (i) each of the Specified Events of Default has occurred and is continuing and has not been cured; and (ii) if the Specified Events of Default are not waived, an Event of Default shall be deemed to be continuing.

(b) Subject to the terms and conditions set forth in this Temporary Waiver, including without limitation the conditions to effectiveness set forth in Section 3 below, the limitations set forth in Section 4 below, and the covenants set forth in Section 5 below, and at the request of the Credit Parties, the Administrative Agent and the Lenders party hereto hereby temporarily waive the Specified Events of Default from the date hereof until the earlier of (the "Waiver Termination Date"): (1) the occurrence of any other Event of Default; or (2) January 26, 2024. As used herein, the term "Waiver Period" shall mean the period beginning on the Waiver Effective Date (as defined below) and ending on the Waiver Termination Date. Upon the Waiver Termination Date: (a) the waiver set forth in this Section 1(b) shall be deemed of no further force and effect; and (b) the Specified Events of Default shall be deemed to be continuing.

(c) **Acknowledgment of Rights and Remedies.**

(i) Each Credit Party (i) acknowledges that the Specified Events of Default have occurred and are continuing; and (ii) acknowledges and agrees that but for the terms of this Temporary Waiver, the Administrative Agent may, with the consent or at the direction of the Required Lenders, proceed to enforce its rights and remedies, on behalf of the Lenders, under the Credit Documents to collect the Obligations owing under the Credit Agreement and the other Credit Documents.

(ii) Each Credit Party acknowledges that on and after the Waiver Termination Date, the Administrative Agent may, with the consent or at the direction of the Required Lenders, proceed on behalf of the Lenders and in accordance with the terms of the Credit Agreement and any other Credit Documents, whether with respect to the Specified Events of Default or other Events of Default, if any, to enforce any or all of its rights and remedies under or in respect of this Temporary Waiver, the Credit Agreement, any of the other Credit Documents or applicable law, including, without limitation, the right: (i) to commence any legal or other action to collect any or all of the Obligations from any or all of the Credit Parties and any other person liable therefor and/or any Collateral; (ii) to foreclose or otherwise realize on any or all of the Collateral and/or as appropriate, set-off or apply to the payment of any or all of the Obligations, any or all of the Collateral; (iii) to vote Collateral consisting of equity interests by proxy; (iv) to exercise dominion over cash in deposit accounts; (v) to take any other enforcement action or otherwise exercise any or all rights and remedies provided for by any or all of the Credit Agreement, the other Credit Documents or applicable law; and (vi) to reject any subsequent waiver, financial restructuring or other proposal made by or on behalf of the Credit Parties, or any of them, or any creditor or equity holder, in each case in accordance with the Credit Documents.

(d) No Permanent Waiver or Amendment. Except as expressly set forth herein, nothing in this Temporary Waiver, nor any of the Required Lenders' or the Administrative Agent's entry into this Temporary Waiver or any of the documents referenced herein, their negotiations with any party with respect to any Credit Document, their conduct of any analysis or investigation of any Collateral for the Obligations or any Credit Document, their acceptance of any payment from any Credit Party or any other party, or any other action or failure to act on the part of the Administrative Agent or the Lenders, shall: (i) constitute an extension, modification or permanent waiver of, or give rise to any obligation on the part of the Administrative Agent and the Lenders to extend, modify or permanently waive, any term, condition or other aspect of the Credit Agreement or the other Credit Documents; (iii) extend the terms of the Credit Agreement or the due date of any of the Obligations; or (iv) give rise to any defenses or counterclaims to the right of the Administrative Agent and the Lenders, from and after the Waiver Termination Date, to compel payment of the Obligations or to otherwise enforce their rights and remedies described in the Credit Agreement, the other Credit Documents, or otherwise provided by applicable law. Except as expressly limited herein, the Administrative Agent and the Required Lenders hereby expressly reserve all of their rights and remedies described in the Credit Agreement and the other Credit Documents, or otherwise provided by applicable law that may exist by virtue of the Specified Events of Default, and from and after the Waiver Termination Date, the Administrative Agent and the Lenders shall be entitled to enforce such rights and remedies according to the original terms of the Credit Documents. This Temporary Waiver shall not constitute a course of dealing with the parties hereto at variance with the Credit Agreement such as to require further notice by the Administrative Agent or the Lenders to require strict compliance with the terms of the Credit Agreement and the other Credit Documents in the future. The Credit Parties acknowledge and expressly agree that the Administrative Agent and the Required Lenders reserve the right to, and do in fact, require strict compliance with all terms and provisions of the Credit Agreement and the other Credit Documents.

SECTION 2. Domestic Unrestricted Cash. Notwithstanding anything to the contrary in the Credit Agreement, during the period beginning December 25, 2023 through and including the Waiver Termination Date (the "Cash Modification Period"), the Credit Parties shall not be required to comply with Section 5.9(d) of the Credit Agreement; provided, that, at all times during the Cash Modification Period, each Credit Party shall, and shall cause each of its Subsidiaries, to (i) maintain Domestic Unrestricted Cash on the balance sheet of the Credit Parties and their Subsidiaries (but excluding any cash received on such date in connection with any Loan or other incurrence of Indebtedness) in an amount equal to or greater than \$10,000,000 and (ii) on each Monday (or if such Monday is not a Business Day, the next succeeding Business Day), furnish to Administrative Agent (which will promptly be distributed to Lenders) an officer's certificate prepared by the chief financial officer or other Responsible Officer of the Borrower with knowledge as to the financial condition of the Credit Parties and their Subsidiaries (x) stating that, as of the Friday preceding the delivery of such officer's certificate, the Credit Parties and their Subsidiaries are in compliance with Section 2 of this Temporary Waiver, and (y) attaching account balances as of the Friday preceding the delivery of such officer's certificate, and the failure to do so shall constitute an immediate Event of Default under the Credit Agreement, which is not a Specified Event of Default.

SECTION 3. Conditions to Effectiveness. Notwithstanding any other provision of this Temporary Waiver and without affecting in any manner the rights of the Administrative Agent and the Lenders hereunder, it is understood and agreed that this Temporary Waiver shall not become effective, and the Credit Parties shall have no rights under this Temporary Waiver, until satisfaction of the following conditions precedent (the date on which all such conditions precedent are satisfied, the "Waiver Effective Date"):

(a) the Administrative Agent shall have received executed counterparts to this Temporary Waiver from each of the Credit Parties, the Required Lenders and the Required Revolving Lenders;

(b) Payment by the Borrower of (i) all outstanding fees and expenses required to be paid under the Credit Agreement, including, but not limited to, fees and expenses of the Administrative Agent and its advisors (including, but not limited to, counsel and financial advisors) and (ii) the fee due and payable pursuant to that certain Fee Letter dated as of the date hereof;

(c) the representations and warranties in Section 7 of this Temporary Waiver being true and accurate.

SECTION 4. Limitations to this Temporary Waiver. Each Credit Party hereby agrees that, notwithstanding the waiver set forth in Section 1(b), it shall not, nor will it permit any Subsidiary to, without the prior written consent of the Administrative Agent, during the Waiver Period:

- (a) create or incur any new Indebtedness pursuant to Section 6.1(i) of the Credit Agreement;
- (b) create or incur any new Indebtedness pursuant to Section 6.1(j) of the Credit Agreement;
- (c) create, incur, or assume any new Liens pursuant to Section 6.2(cc) of the Credit Agreement;
- (d) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(iv)(A)(3) of the Credit Agreement;
- (e) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(vi) of the Credit Agreement;
- (f) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(viii) of the Credit Agreement;
- (g) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(xiv) of the Credit Agreement;
- (h) make any Investment pursuant to Section 6.5(e) of the Credit Agreement;
- (i) make any Investment pursuant to Section 6.5(g) of the Credit Agreement;
- (j) make any Investment pursuant to Section 6.5(h)(i) of the Credit Agreement;
- (k) make any Investment pursuant to Section 6.5(h)(ii) of the Credit Agreement;
- (l) make any Investment pursuant to Section 6.5(k) of the Credit Agreement;
- (m) make any Investment pursuant to Section 6.5(p) of the Credit Agreement;
- (n) make any Investment pursuant to Section 6.5(q) of the Credit Agreement;
- (o) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(d) of the Credit Agreement;
- (p) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(e) of the Credit Agreement;
- (q) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(h) of the Credit Agreement; and
- (r) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(i) of the Credit Agreement.

Failure to comply with the foregoing shall constitute an immediate Event of Default under the Credit Agreement.

SECTION 5. Covenants. As a material inducement to the execution by the Administrative Agent and the Required Lenders of this Temporary Waiver, in addition to the Credit Parties' other covenants set forth in the Credit Agreement and the other Credit Documents, each Credit Party agrees, as applicable, that it shall comply with each of the following covenants on and after the Effective Date and that the failure to comply with any of such covenants after the applicable due date shall constitute an immediate Event of Default under the Credit Agreement, which is not a Specified Event of Default:

(a) In addition to any and all reporting requirements set forth in the Credit Agreement, the Borrower shall provide to the Administrative Agent (for subsequent distribution to Lenders) the following during the Waiver Period, which in each case shall be in form and substance acceptable to Administrative Agent in its sole discretion:

(i) On each Monday, a thirteen-week cash report for the subsequent week setting forth all forecasted receipts and disbursements on a weekly basis ("Cash Forecast") and a variance report (A) comparing the Credit Parties' actual cash receipts, disbursements, and cash flows for the immediate preceding week to projected cash receipts, disbursements, and cash flows for such week as set forth in the immediately prior Cash Forecast, (B) comparing the material variances to the amounts set forth in the applicable Cash Forecast, and (C) including footnotes or other similar notations describing any material differences in the actual versus forecasted results (and the Credit Parties' shall provide the Administrative Agent access to the Credit Parties' management team to discuss material variances);

(ii) On or prior to the fifteenth (15th) day of each calendar month (commencing on December 15, 2023), (A) a copy of the projected Consolidated statements of income for the Parent and its Subsidiaries for such monthly period and for the portion of the fiscal year ending with such period, in each case setting forth in comparative form Consolidated figures for the corresponding period or periods of the preceding fiscal year and including management discussion and analysis of operating results inclusive of operating metrics in comparative form and (ii) a certificate of a Responsible Officer substantially in the form of Exhibit 5.2(b) of the Credit Agreement stating that (x) such financial statements present fairly in all material respects the financial position of the Credit Parties and their Subsidiaries on a consolidated basis for the periods indicated in conformity with GAAP (subject, in the case of interim statements, to normal recurring year end audit adjustments and the absence of footnotes) applied on a consistent basis and (y) such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and such certificate shall include the calculations in reasonable detail required to indicate compliance with Section 5.9 of the Credit Agreement as of the last day of such monthly period;

SECTION 6. Revolving Loans, Swingline Loans, and Letters of Credit. Notwithstanding any of the waivers set forth in this Temporary Waiver, the Credit Parties acknowledge and agree that they will not request any additional Revolving Loans, Swingline Loans or Letters of Credit from any Lender and that notwithstanding the temporary waiver set forth in Section 1(b) hereof, as a condition to the Lenders providing the waivers set forth in Section 1(b) hereof, no Lender is obligated to provide nor shall any Lender provide any Revolving Loans, Swingline Loans or Letters of Credit pursuant to the Credit Agreement during the Waiver Period.

SECTION 7. Representations. To induce the Required Lenders and the Administrative Agent to enter into this Temporary Waiver, each Credit Party hereby represents and warrants to the Lenders and the Administrative Agent that:

(a) Each of the Credit Parties has full power and authority and the legal right to make, deliver and perform this Temporary Waiver and has taken all necessary limited liability company, partnership or corporate action, as applicable, to authorize the execution, delivery and performance by it of the Temporary Waiver. The Temporary Waiver has been duly executed and delivered on behalf of each Credit Party. The Temporary Waiver constitutes a legal, valid and binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(b) The execution, delivery and performance by each Credit Party of this Temporary Waiver (a) will not violate any Requirement of Law or any Contractual Obligation of any Credit Party, except those as to which waivers or consents have been obtained or those where such violation could not reasonably be expected to have a Material Adverse Effect, (b) will not conflict with, result in a breach of or constitute a default under (i) the articles of incorporation, bylaws, articles of organization, operating agreement or other organization documents of the Credit Parties, (ii) any material Contractual Obligation to which such Person is a party or (iii) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject, except in the case of clause (b)(ii) and (b)(iii) where such conflict could not reasonably be expected to have a Material Adverse Effect and (c) will not result in, or require, the creation or imposition of any Lien on any Credit Party's properties or revenues pursuant to any Requirement of Law or Contractual Obligation other than the Liens arising under or contemplated in connection with the Credit Documents or Permitted Liens.

(c) After giving effect to this Temporary Waiver, the representations and warranties contained in the Credit Agreement and the other Credit Documents are true and correct in all material respects, and no Event of Default has occurred and is continuing as of the date hereof other than the Specified Events of Default.

SECTION 8. Miscellaneous.

(a) Continuing Effectiveness of Credit Documents. All terms of the Credit Agreement and the other Credit Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable (except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability) obligations of the Credit Parties party thereto.

(b) Reaffirmation of Obligations and Acknowledgment of Indebtedness. Each Credit Party hereby acknowledges that the Credit Documents and the Obligations constitute the valid and binding obligations of such Credit Party enforceable against such Credit Party, and each Credit Party hereby reaffirms its obligations under the Credit Documents. Additionally, each Credit Party hereby acknowledges that, as of the date hereof: (a) the Borrower is indebted to the Lenders in the principal amount of at least \$32,500,000.00 with respect to the Term Loans; (b) the Borrower is indebted to the Lenders in the principal amount of at least \$0.00 respect to the Revolving Loans (inclusive of outstanding Letters of Credit); and (c) the aggregate face amount of all issued and outstanding Letters of Credit is \$1,479,746.67.

(c) Acknowledgment of Perfection of Security Interest. Each Credit Party hereby acknowledges that, as of the date hereof, the security interests and liens granted to the Administrative Agent and the Lenders under the Security Agreement and the other Credit Documents are in full force and effect, are properly perfected and are enforceable in accordance with the terms of the Security Agreement and the other Credit Documents and extends to all of the Obligations.

(d) Effect of Agreement. Except as set forth expressly herein, all terms of the Credit Agreement and the other Credit Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable (except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability) obligations of the Credit Parties to the Lenders and the Administrative Agent. The execution, delivery and effectiveness of this Temporary Waiver shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lenders under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement or any Default or Event of Default other than the Specified Events of Default. This Temporary Waiver shall constitute a Credit Document for all purposes of the Credit Agreement.

(e) Governing Law. This Temporary Waiver shall be governed by, and construed in accordance with, the internal laws of the State of New York.

(f) No Novation. This Temporary Waiver is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement and the other Credit Documents or an accord and satisfaction in regard thereto.

(g) Counterparts. This Temporary Waiver may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Temporary Waiver by facsimile transmission, electronic transmission (including delivery of an executed counterpart in .pdf format) shall be as effective as delivery of a manually executed counterpart hereof.

(h) Binding Nature. This Temporary Waiver shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-titles, and assigns. No third party beneficiaries are intended in connection with this Temporary Waiver.

(i) Entire Understanding. This Temporary Waiver sets forth the entire understanding of the parties with respect to the matters set forth herein and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

(j) Release. Each Credit Party hereby releases, acquits, and forever discharges the Administrative Agent and each of the Lenders, and each and every past and present subsidiary, affiliate, stockholder, officer, director, agent, servant, employee, representative, and attorney of the Administrative Agent and the Lenders, from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including reasonable attorneys' fees) of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, which such Credit Party may have or claim to have now or which may hereafter arise out of or connected with any act of commission or omission of the Administrative Agent or the Lenders existing or occurring prior to the date of this Temporary Waiver or any instrument executed prior to the date of this Temporary Waiver including, without limitation, any claims, liabilities or obligations arising with respect to the Credit Agreement or the other of the Credit Documents. The provisions of this paragraph shall be binding upon each Credit Party and shall inure to the benefit of the Administrative Agent, the Lenders, and their respective heirs, executors, administrators, successors and assigns.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Temporary Waiver under Credit Agreement to be executed as of the date first above written.

BORROWER:

FLUENT, LLC

By: _____
Name:
Title:

[Signature Page to Temporary Waiver]

CITIZENS BANK, N.A., as a Lender, Issuing Lender, Swingline
Lender and as Administrative Agent on behalf of the Lenders

By: _____
Name:
Title:

[Signature Page to Temporary Waiver]

BANKUNITED, N.A., as a Lender

By: _____
Name:
Title:

[Signature Page to Temporary Waiver]

FIRST-CITIZENS BANK & TRUST COMPANY
(successor by purchase to the Federal Deposit Insurance
Corporation as receiver for Silicon Valley Bridge Bank,
N.A. (as successor to Silicon Valley Bank)), as a Lender

By: _____
Name:
Title:

[Signature Page to Temporary Waiver]

Exhibit A

Specified Events of Default

1. The Credit Parties failed to comply with the Total Leverage Ratio covenant for the fiscal quarter ended September 30, 2023, as required by Section 5.9(a) of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.
2. The Credit Parties failed to provide written notice of the name change of Fluent Insurance Agency, LLC to Purpose Insurance Agency, LLC, pursuant to Section 6.7 of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.

THIRD TEMPORARY WAIVER AND AMENDMENT TO CREDIT AGREEMENT

THIS THIRD TEMPORARY WAIVER AND AMENDMENT TO CREDIT AGREEMENT (this "Waiver and Amendment") is entered into as of January 26, 2024 by and among FLUENT, LLC, a Delaware limited liability company (the "Borrower"), the Required Lenders party hereto, and CITIZENS BANK, N.A., a national banking association, as administrative agent for the Lenders under the Credit Agreement (as hereinafter defined) (in such capacity, the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement (as defined below).

WHEREAS, the Borrower, the Guarantors, certain banks and financial institutions from time to time party to the Credit Agreement (the "Lenders") and the Administrative Agent are parties to that certain Credit Agreement, dated as of March 31, 2021 (as amended by that certain First Amendment to Credit Agreement, dated as of September 3, 2021, that certain Second Amendment to Credit Agreement, Waiver, Acknowledgment and Joinder, dated as of December 19, 2022, that certain Third Amendment to Credit Agreement, dated as of May 15, 2023, that certain Fourth Amendment to Credit Agreement, dated as of August 21, 2023, and as the same may be further amended, modified, extended, restated, replaced or supplemented from time to time, including by this Waiver and Amendment, the "Credit Agreement");

WHEREAS, the Credit Parties, the Lenders, and the Administrative Agent entered into that certain Temporary Waiver Under Credit Agreement on November 15, 2023 (the "First Waiver Effective Date"), and the waiver provided for thereunder was set to expire January 15, 2024;

WHEREAS, the Credit Parties, the Lenders, and the Administrative Agent entered into that certain Second Temporary Waiver Under Credit Agreement (the "Second Temporary Waiver") on January 17, 2023, and the waiver provided for thereunder will expire on January 26, 2024;

WHEREAS, those certain Events of Default listed on Exhibit A attached hereto have occurred and are continuing or are anticipated to occur and continue (the "Specified Events of Default");

WHEREAS, counsel to the Administrative Agent has engaged a financial advisor (the "Financial Advisor") to, among other things, assist counsel to the Administrative Agent in evaluating and assessing the Borrower's preparation of an annual operating budget, including cash flow projections of the Parent and its Subsidiaries for the four fiscal quarter period ending on December 31, 2024, prepared on a quarterly basis (the "2024 Budget"), and to provide the Administrative Agent and the Lenders with its evaluation of the 2024 Budget; and

WHEREAS, the Borrower has requested that the Administrative Agent and Required Lenders (i) continue to temporarily waive the Specified Events of Default and (ii) amend certain provisions of the Credit Agreement, and, subject to the satisfaction of the conditions set forth herein, the Administrative Agent and the Required Lenders signatory hereto are willing to waive such Specified Events of Default, on a temporary basis, and make such amendments to the Credit Agreement, on a permanent basis, in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1. Acknowledgment and Temporary Waiver.

(a) Each Credit Party acknowledges that: (i) each of the Specified Events of Default has occurred and is continuing (or is anticipated to occur and continue) and has not been cured; and (ii) if the Specified Events of Default are not waived, an Event of Default shall be deemed to be continuing.

(b) Subject to the terms and conditions set forth in this Waiver and Amendment, including without limitation the conditions to effectiveness set forth in Section 2 below, the limitations set forth in Section 3 below, and the covenants set forth in Section 5 below, and at the request of the Credit Parties, the Administrative Agent and the Lenders party hereto, as of the Third Waiver Effective Date (as defined below), hereby agree to temporarily waive the Specified Events of Default as of the First Waiver Effective Date until the earlier of: (1) the occurrence of any Event of Default other than the Specified Events of Default; (2) April 30, 2024, or (3) the failure by the Credit Parties to comply with all requirements in this Waiver and Amendment (such occurrence, the "Waiver Termination Date"). As used herein, the term "Waiver Period" shall mean the period beginning on the Third Waiver Effective Date and ending on the Waiver Termination Date. Upon the Waiver Termination Date: (i) the waiver set forth in this Section 1(b) shall be deemed of no further force and effect; and (ii) the Specified Events of Default shall be deemed to be continuing.

(c) Acknowledgment of Rights and Remedies.

(i) Each Credit Party (i) acknowledges that the Specified Events of Default have occurred and are continuing (or are anticipated to occur and continue); and (ii) acknowledges and agrees that but for the terms of this Waiver and Amendment, the Administrative Agent may, with the consent or at the direction of the Required Lenders, proceed to enforce its rights and remedies, on behalf of the Lenders, under the Credit Documents to collect the Obligations owing under the Credit Agreement and the other Credit Documents.

(ii) Each Credit Party acknowledges that on and after the Waiver Termination Date, the Administrative Agent may, with the consent or at the direction of the Required Lenders, proceed on behalf of the Lenders and in accordance with the terms of the Credit Agreement and any other Credit Documents, whether with respect to the Specified Events of Default or other Events of Default, if any, to enforce any or all of its rights and remedies under or in respect of this Waiver and Amendment, the Credit Agreement, any of the other Credit Documents or applicable law, including, without limitation, the right: (i) to commence any legal or other action to collect any or all of the Obligations from any or all of the Credit Parties and any other person liable therefor and/or any Collateral; (ii) to foreclose or otherwise realize on any or all of the Collateral and/or as appropriate, set-off or apply to the payment of any or all of the Obligations, any or all of the Collateral; (iii) to vote Collateral consisting of equity interests by proxy; (iv) to exercise dominion over cash in deposit accounts; (v) to take any other enforcement action or otherwise exercise any or all rights and remedies provided for by any or all of the Credit Agreement, the other Credit Documents or applicable law; and (vi) to reject any subsequent waiver, financial restructuring or other proposal made by or on behalf of the Credit Parties, or any of them, or any creditor or equity holder, in each case in accordance with the Credit Documents.

(d) No Permanent Waiver or Amendment. Except as expressly set forth herein, nothing in this Waiver and Amendment, nor any of the Required Lenders' or the Administrative Agent's entry into this Waiver and Amendment or any of the documents referenced herein, their negotiations with any party with respect to any Credit Document, their conduct of any analysis or investigation of any Collateral for the Obligations or any Credit Document, their acceptance of any payment from any Credit Party or any other party, or any other action or failure to act on the part of the Administrative Agent or the Lenders, shall: (i) constitute an extension, modification or permanent waiver of, or give rise to any obligation on the part of the Administrative Agent and the Lenders to extend, modify or permanently waive, any term, condition or other aspect of the Credit Agreement or the other Credit Documents; (iii) extend the terms of the Credit Agreement or the due date of any of the Obligations; or (iv) give rise to any defenses or counterclaims to the right of the Administrative Agent and the Lenders, from and after the Waiver Termination Date, to compel payment of the Obligations or to otherwise enforce their rights and remedies described in the Credit Agreement, the other Credit Documents, or otherwise provided by applicable law. Except as expressly limited herein, the Administrative Agent and the Required Lenders hereby expressly reserve all of their rights and remedies described in the Credit Agreement and the other Credit Documents, or otherwise provided by applicable law that may exist by virtue of the Specified Events of Default, and from and after the Waiver Termination Date, the Administrative Agent and the Lenders shall be entitled to enforce such rights and remedies according to the original terms of the Credit Documents. This Waiver and Amendment shall not constitute a course of dealing with the parties hereto at variance with the Credit Agreement such as to require further notice by the Administrative Agent or the Lenders to require strict compliance with the terms of the Credit Agreement and the other Credit Documents in the future. The Credit Parties acknowledge and expressly agree that the Administrative Agent and the Required Lenders reserve the right to, and do in fact, require strict compliance with all terms and provisions of the Credit Agreement and the other Credit Documents.

SECTION 2. Conditions to Effectiveness. Notwithstanding any other provision of this Waiver and Amendment and without affecting in any manner the rights of the Administrative Agent and the Lenders hereunder, it is understood and agreed that this Waiver and Amendment shall not become effective, and the Credit Parties shall have no rights under this Waiver and Amendment, until satisfaction of the following conditions precedent (the date on which all such conditions precedent are satisfied, the "Third Waiver Effective Date"):

(a) the Administrative Agent shall have received executed counterparts to this Waiver and Amendment from each of the Credit Parties, the Required Lenders and the Required Revolving Lenders;

(b) payment by the Borrower of (i) all outstanding fees and expenses required to be paid under the Credit Agreement, including, but not limited to, fees and expenses of the Administrative Agent and its advisors (including, but not limited to, counsel and financial advisors) and (ii) the fee due and payable pursuant to that certain Fee Letter dated as of the date hereof;

(c) payment by Borrower of a waiver fee to the Administrative Agent for the benefit of the Lenders party hereto in the aggregate amount of \$103,125.00 on a *pro rata* basis;

(d) the representations and warranties in Section 7 of this Waiver and Amendment being true and accurate.

SECTION 3. Limitations to this Waiver and Amendment. Each Credit Party hereby agrees that, notwithstanding the waiver set forth in Section 1(b), it shall not, nor will it permit any Subsidiary to, without the prior written consent of the Administrative Agent, during the Waiver Period:

(a) create or incur any new Indebtedness pursuant to Section 6.1(i) of the Credit Agreement;

(b) create or incur any new Indebtedness pursuant to Section 6.1(j) of the Credit Agreement;

(c) create, incur, or assume any new Liens pursuant to Section 6.2(cc) of the Credit Agreement;

(d) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(iv)(A)(3) of the Credit Agreement;

(e) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(vi) of the Credit Agreement;

(f) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(viii) of the Credit Agreement;

(g) permit the sale, lease or transfer of property or assets pursuant to Section 6.4(a)(xiv) of the Credit Agreement;

(h) make any Investment pursuant to Section 6.5(e) of the Credit Agreement;

(i) make any Investment pursuant to Section 6.5(g) of the Credit Agreement;

(j) make any Investment pursuant to Section 6.5(h)(i) of the Credit Agreement;

(k) make any Investment pursuant to Section 6.5(h)(ii) of the Credit Agreement;

(l) make any Investment pursuant to Section 6.5(k) of the Credit Agreement;

(m) make any Investment pursuant to Section 6.5(p) of the Credit Agreement;

(n) make any Investment pursuant to Section 6.5(q) of the Credit Agreement;

(o) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(d) of the Credit Agreement;

(p) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(e) of the Credit Agreement;

(q) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(h) of the Credit Agreement; and

(r) directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment pursuant to Section 6.9(i) of the Credit Agreement.

Failure to comply with the foregoing shall constitute an immediate Event of Default under the Credit Agreement.

SECTION 4. Amendments to Credit Agreement. Effective as of the Third Waiver Effective Date, the Credit Agreement shall be amended as follows:

(a) The definition of "Applicable Margin" set forth in Section 1.1 of the Credit Agreement shall be permanently amended by adding the following sentence at the end of such section:

Notwithstanding anything herein to the contrary, at all times on and after January 1, 2024 the Applicable Margin for (i) Revolving Loans and Term Loans that are Alternate Base Rate Loans shall be 3.00%, (ii) Revolving Loans and Term Loans that are SOFR Loans shall be 4.00% and (iii) the Letter of Credit Fee shall be 4.00%.

(b) The definition of "Maturity Date" set forth in Section 1.1 of the Credit Agreement shall be amended and restated in its entirety as follows:

"Maturity Date" shall mean September 30, 2025.

SECTION 5. Covenants. As a material inducement to the execution by the Administrative Agent and the Required Lenders of this Waiver and Amendment, in addition to the Credit Parties' other covenants set forth in the Credit Agreement and the other Credit Documents, each Credit Party agrees, as applicable, that it shall comply with each of the following covenants on and after the Third Waiver Effective Date and that the failure to comply with any of such covenants after the applicable due date shall constitute an immediate Event of Default under the Credit Agreement, which is not a Specified Event of Default:

(a) Additional Reporting. In addition to any and all reporting requirements set forth in the Credit Agreement, the Borrower shall provide to the Administrative Agent (for subsequent distribution to Lenders) the following during the Waiver Period, which in each case shall be in form and substance acceptable to Administrative Agent in its sole discretion:

(i) On each Monday, a thirteen-week cash report for the subsequent thirteen-week period setting forth all forecasted receipts and disbursements on a weekly basis ("Cash Forecast") and a variance report (A) comparing the Credit Parties' actual cash receipts, disbursements, and cash flows for the immediate preceding week to projected cash receipts, disbursements, and cash flows for such week as set forth in the immediately prior Cash Forecast, (B) comparing the material variances to the amounts set forth in the applicable Cash Forecast, and (C) including footnotes or other similar notations describing any material differences in the actual versus forecasted results (and the Credit Parties' shall provide the Administrative Agent access to the Credit Parties' management team to discuss material variances);

(ii) On or prior to the twentieth (20th) day of each calendar month (commencing on February 20, 2024), (A) a copy of the Consolidated balance sheet of the Parent and its Subsidiaries as of the end of the preceding monthly period and related Consolidated statements of income and retained earnings and of cash flows for the Parent and its Subsidiaries for such preceding monthly period and for the portion of the fiscal year ending with such preceding monthly period, in each case a report setting forth all variances on a line-item and aggregate basis, from the amount set forth for such period as compared to the 2024 Budget provided pursuant to Section 5(a)(iv) of this Amendment and Waiver and including management discussion and analysis of operating results inclusive of operating metrics in comparative form, and (B) a certificate of a Responsible Officer substantially in the form of Exhibit 5.2(b) of the Credit Agreement stating that (x) such financial statements present fairly in all material respects the financial position of the Credit Parties and their Subsidiaries on a consolidated basis for the periods indicated in conformity with GAAP (subject, in the case of interim statements, to normal recurring year end audit adjustments and the absence of footnotes) applied on a consistent basis and (y) such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and such certificate shall include the calculations in reasonable detail required to indicate compliance with Section 5.9 of the Credit Agreement as of the last day of such monthly period;

(iii) On or prior to the fifteenth (15th) day of each calendar month (commencing on February 15, 2024), a copy of the projected profit and loss statements for the Parent and its Subsidiaries for such monthly period and for the portion of the fiscal year ending with such period, setting forth in comparative form the profit and loss statement for the corresponding period or periods of the preceding fiscal year;

(iv) On or prior to January 31, 2024, in accordance with Section 5.1(c) of the Credit Agreement, the 2024 Budget, together with a summary of the material assumptions made in the preparation of such 2024 Budget;

(v) On or before January 31, 2024, a copy of their cost reduction action plan (the "Action Plan"), with specific identification of each area of savings (including corresponding projected savings over an identified period of time), management team responsibilities, and estimated timeline;

(vi) Beginning the week ending February 9, 2024, on each Monday, a report assessing the Credit Parties' progress under and execution of the Action Plan against the timeline set forth in the Action Plan, which report shall include identification of material variances and footnotes or other similar notations describing any material differences in the actual versus planned results (and the Credit Parties' shall provide the Administrative Agent access to the Credit Parties' management team to discuss material deviations); and

(vii) On or prior to the fifteenth (15th) day of each calendar month (commencing on February 15, 2024), a report comparing the performance of the Credit Parties' licensed agents against the corresponding expected performance identified in the 2024 Budget.

(b) Financial Advisor. Pursuant to Section 9.5(a) of the Credit Agreement, the Administrative Agent shall continue to retain the Financial Advisor. The Credit Parties stipulate, acknowledge, and agree that the Credit Parties shall continue to timely pay the reasonable and documented costs and expenses of the Administrative Agent in retaining the Financial Advisor.

(c) Lender Calls. Beginning the week starting January 29, 2024 and during the third week of each month thereafter, the management of the Borrower shall host a conference call for the Lenders to discuss the Borrower's financial statements and financial performance. No fewer than three days prior to each conference call, the Borrower shall notify the Administrative Agent of the time and date of such conference call and shall provide the Administrative Agent (for distribution to the Lenders) with access instructions to the conference call.

(d) Domestic Unrestricted Cash. During the period beginning on the Third Waiver Effective Date through and including the Waiver Termination Date, the Credit Parties shall, and shall cause each of its Subsidiaries, to (i) maintain Domestic Unrestricted Cash on the balance sheet of the Credit Parties and their Subsidiaries (but excluding any cash received on such date in connection with any Loan or other incurrence of Indebtedness) in an amount equal to or greater than \$7,500,000 and (ii) on each Monday (or if such Monday is not a Business Day, the next succeeding Business Day), furnish to Administrative Agent (which will promptly be distributed to Lenders) an officer's certificate prepared by the chief financial officer or other Responsible Officer of the Borrower with knowledge as to the financial condition of the Credit Parties and their Subsidiaries (x) stating that, as of the Friday preceding the delivery of such officer's certificate, the Credit Parties and their Subsidiaries are in compliance with Section 5(c) of this Waiver and Amendment, and (y) attaching account balances as of the Friday preceding the delivery of such officer's certificate.

(e) Waiver Milestones. The Credit Parties shall:

(i) On or before January 31, 2024, provide evidence of a duly executed engagement letter (in form and substance reasonably satisfactory to the Administrative Agent) with a reputable investment banker acceptable to the Administrative Agent, the scope of which shall include delivery to the Administrative Agent on or before February 29, 2024 of a review of all strategic options available for the Credit Parties in connection with a Transaction Commitment (as defined below) (it being understood that such review shall be in form and substance satisfactory to the Administrative Agent with a written report of the same); and

(ii) On or before March 31, 2024, Borrower shall provide to the Administrative Agent one or more of the following in form and substance acceptable to Administrative Agent in its absolute and sole discretion (each, a "Transaction Commitment"): (w) one or more commitment letters to provide Borrower with additional capital in exchange for equity in one or more of the Credit Parties; (x) a commitment by a third party to provide subordinated debt to the Credit Parties; (y) a purchase agreement related to the sale of a divested business segment to a third party; or (z) a commitment letter provided by a third party, or third parties, for financing in an amount sufficient to repay all outstanding Obligations under the Credit Agreement; provided that any such Transaction Commitment, or any such Transaction Commitments in the aggregate, provided by Borrower must: (A) set forth terms that are acceptable to the Administrative Agent in its absolute and sole discretion; (B) be provided by a reputable counterparty that is acceptable to the Administrative Agent in its absolute and sole discretion; (C) be in form and substance satisfactory to the Administrative Agent in its absolute and sole discretion, and (D) provide for net proceeds to the Credit Parties of not less than \$10,000,000.

SECTION 6. Revolving Loans, Swingline Loans, and Letters of Credit. Notwithstanding any of the waivers set forth in this Waiver and Amendment, the Credit Parties acknowledge and agree that they will not request any additional Revolving Loans, Swingline Loans or Letters of Credit from any Lender and that notwithstanding the temporary waiver set forth in Section 1(b) hereof, as a condition to the Lenders providing the waivers set forth in Section 1(b) hereof, no Lender is obligated to provide nor shall any Lender provide any Revolving Loans, Swingline Loans or Letters of Credit pursuant to the Credit Agreement during the Waiver Period.

SECTION 7. Representations. To induce the Required Lenders and the Administrative Agent to enter into this Waiver and Amendment, each Credit Party hereby represents and warrants to the Lenders and the Administrative Agent that:

(a) Each of the Credit Parties has full power and authority and the legal right to make, deliver and perform this Waiver and Amendment and has taken all necessary limited liability company, partnership or corporate action, as applicable, to authorize the execution, delivery and performance by it of the Waiver and Amendment. The Waiver and Amendment has been duly executed and delivered on behalf of each Credit Party. The Waiver and Amendment constitutes a legal, valid and binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(b) The execution, delivery and performance by each Credit Party of this Waiver and Amendment (a) will not violate any Requirement of Law or any Contractual Obligation of any Credit Party, except those as to which waivers or consents have been obtained or those where such violation could not reasonably be expected to have a Material Adverse Effect, (b) will not conflict with, result in a breach of or constitute a default under (i) the articles of incorporation, bylaws, articles of organization, operating agreement or other organization documents of the Credit Parties, (ii) any material Contractual Obligation to which such Person is a party or (iii) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject, except in the case of clause (b)(ii) and (b)(iii) where such conflict could not reasonably be expected to have a Material Adverse Effect and (c) will not result in, or require, the creation or imposition of any Lien on any Credit Party's properties or revenues pursuant to any Requirement of Law or Contractual Obligation other than the Liens arising under or contemplated in connection with the Credit Documents or Permitted Liens.

(c) After giving effect to this Waiver and Amendment, the representations and warranties contained in the Credit Agreement and the other Credit Documents are true and correct in all material respects, and no Event of Default has occurred and is continuing as of the date hereof other than the Specified Events of Default.

SECTION 8. Miscellaneous.

(a) Continuing Effectiveness of Credit Documents. All terms of the Credit Agreement and the other Credit Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable (except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability) obligations of the Credit Parties party thereto.

(b) Reaffirmation of Obligations and Acknowledgment of Indebtedness. Each Credit Party hereby acknowledges that the Credit Documents and the Obligations constitute the valid and binding obligations of such Credit Party enforceable against such Credit Party, and each Credit Party hereby reaffirms its obligations under the Credit Documents. Additionally, each Credit Party hereby acknowledges that, as of the date hereof: (a) the Borrower is indebted to the Lenders in the principal amount of at least \$31,250,000.00 with respect to the Term Loans; (b) the Borrower is indebted to the Lenders in the principal amount of at least \$0.00 respect to the Revolving Loans (inclusive of outstanding Letters of Credit); and (c) the aggregate face amount of all issued and outstanding Letters of Credit is \$1,479,746.67.

(c) Acknowledgment of Perfection of Security Interest. Each Credit Party hereby acknowledges that, as of the date hereof, the security interests and liens granted to the Administrative Agent and the Lenders under the Security Agreement and the other Credit Documents are in full force and effect, are properly perfected and are enforceable in accordance with the terms of the Security Agreement and the other Credit Documents and extends to all of the Obligations.

(d) Effect of Agreement. Except as set forth expressly herein, all terms of the Credit Agreement and the other Credit Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable (except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability) obligations of the Credit Parties to the Lenders and the Administrative Agent. The execution, delivery and effectiveness of this Waiver and Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lenders under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement or any Default or Event of Default other than the Specified Events of Default. This Waiver and Amendment shall constitute a Credit Document for all purposes of the Credit Agreement.

(e) Governing Law. This Waiver and Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York.

(f) No Novation. This Waiver and Amendment is not intended by the parties to be, and shall not be construed to be, a novation of the Credit Agreement and the other Credit Documents or an accord and satisfaction in regard thereto.

(g) Counterparts. This Waiver and Amendment may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Waiver and Amendment by facsimile transmission, electronic transmission (including delivery of an executed counterpart in .pdf format) shall be as effective as delivery of a manually executed counterpart hereof.

(h) Binding Nature. This Waiver and Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors, successors-in-titles, and assigns. No third party beneficiaries are intended in connection with this Waiver and Amendment.

(i) Entire Understanding. This Waiver and Amendment sets forth the entire understanding of the parties with respect to the matters set forth herein and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

(j) Release. Each Credit Party hereby releases, acquits, and forever discharges the Administrative Agent and each of the Lenders, and each and every past and present subsidiary, affiliate, stockholder, officer, director, agent, servant, employee, representative, and attorney of the Administrative Agent and the Lenders, from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including reasonable attorneys' fees) of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, which such Credit Party may have or claim to have now or which may hereafter arise out of or connected with any act of commission or omission of the Administrative Agent or the Lenders existing or occurring prior to the date of this Waiver and Amendment or any instrument executed prior to the date of this Waiver and Amendment including, without limitation, any claims, liabilities or obligations arising with respect to the Credit Agreement or the other of the Credit Documents. The provisions of this paragraph shall be binding upon each Credit Party and shall inure to the benefit of the Administrative Agent, the Lenders, and their respective heirs, executors, administrators, successors and assigns.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Waiver and Amendment under Credit Agreement to be executed as of the date first above written.

BORROWER:

FLUENT, LLC

By: _____

Name: Don Patrick

Title: Chief Executive Officer

[Signature Page to Waiver and Amendment]

CITIZENS BANK, N.A., as a Lender, Issuing Lender, Swingline
Lender and as Administrative Agent on behalf of the Lenders

By: _____
Name:
Title:

[Signature Page to Waiver and Amendment]

BANKUNITED, N.A., as a Lender

By: _____
Name:
Title:

[Signature Page to Waiver and Amendment]

FIRST-CITIZENS BANK & TRUST COMPANY
(successor by purchase to the Federal Deposit Insurance
Corporation as receiver for Silicon Valley Bridge Bank, N.A.
(as successor to Silicon Valley Bank)), as a Lender

By: _____
Name:
Title:

[Signature Page to Waiver and Amendment]

Exhibit A

Specified Events of Default

1. The Credit Parties failed to comply with the Total Leverage Ratio covenant for the fiscal quarters ended September 30, 2023 and December 31, 2023, as required by Section 5.9(a) of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.
2. The Credit Parties failed to provide written notice of the name change of Fluent Insurance Agency, LLC to Purpose Insurance Agency, LLC, pursuant to Section 6.7 of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.
3. The Credit Parties failed to comply with the Fixed Charge Coverage Ratio covenant for the fiscal quarter ended December 31, 2023, as required by Section 5.9(b) of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.
4. The Credit Parties anticipate that they will fail to comply with the Total Leverage Ratio covenant for the fiscal quarter ending March 31, 2024, as required by Section 5.9(a) of the Credit Agreement, which constitutes an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.
5. The Credit Parties anticipate that they will fail to comply with the Fixed Charge Coverage Ratio covenant for the fiscal quarter ending March 31, 2024, as required by Section 5.9(b) of the Credit Agreement, which will constitute an Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement.



300 Vesey Street
New York, NY 10282

info@fluentco.com
646.669.7272

As of February 1, 2024

Ryan Perfit
CRIO, LLC
1332 Park Place
Brooklyn, NY 11213

Dear Ryan:

We refer to the consulting agreement dated January 20, 2023 between you and Fluent, Inc. ("Original Agreement").

The Original Agreement is hereby amended effective as of February 1, 2024 by modifying Section 2 to provide for a month-to-month extension of the Initial Term, as extended, beyond January 31, 2024 for up to six months. The term as extended hereby may be terminated by either party on 15 days prior written notice.

Except as modified herein, the terms of the Original Agreement shall remain in full force and effect.

Sincerely,

Daniel J Barsky, General Counsel

Agreed to and accepted by:

Ryan Perfit
Date: _____

CREDIT AGREEMENT

Dated as of April 2, 2024

by and among

FLUENT, LLC,
as the Borrower

The Other Credit Parties Party Hereto,

CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS
and the other Lenders Party Hereto,

and

CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS,
as Administrative Agent,

with

CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS,
as Sole Lead Arranger and Sole Bookrunner

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CREDIT AGREEMENT

This **CREDIT AGREEMENT** (this "Agreement") is entered into as of April 2, 2024, among:

- (a) **FLUENT, LLC**, a Delaware limited liability company (the "Borrower");
- (b) **FLUENT, INC.**, a Delaware corporation ("Parent"), as a Guarantor;
- (c) the other Credit Parties from time to time party hereto;
- (d) **CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS** and each other Lender from time to time party hereto; and
- (e) **CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS**, as Administrative Agent (as defined below).

RECITALS:

WHEREAS, the Borrower has requested that the Lenders provide certain extensions of credit, and the Lenders are willing to do so on the terms and conditions set forth herein;

WHEREAS, the Borrower and the other Credit Parties desire to secure all of their Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Secured Parties, a security interest in and lien upon the Collateral;

WHEREAS, subject to the terms hereof, each Credit Party is willing to guaranty all of the Obligations of each other Credit Party;

WHEREAS, the Credit Parties are members of a group of related entities through common ownership, the success of any of which is dependent in part on the success of the other members of such group; and

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Account" means all rights to the payment of money for goods sold or services rendered owing to any Credit Party, consisting of "accounts" (as such term is defined in the UCC) of the Credit Parties, including, without limitation, (a) the unpaid portion of the obligation of a customer of a Credit Party in respect of the rendition of services by a Credit Party, as stated on the respective invoice of a Credit Party and (b) the unpaid portion of the obligation of a customer of a Credit Party in respect of the rendition of services by a Credit Party but not yet invoiced.

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Acquisition" means any transaction or series of related transactions resulting, directly or indirectly, in: (a) the acquisition by any Person of (i) all or substantially all of the assets of another Person or (ii) all or substantially all of any business line, unit or division of another Person, (b) the acquisition by any Person (i) of in excess of 50% of the Capital Stock of any other Person, or (ii) otherwise causing any other Person to become a Subsidiary of such Person, or (c) a merger, amalgamation consolidation, or any other combination of any Person with another Person (other than a Person that is a Credit Party) in which a Credit Party or any of its Subsidiaries is the surviving Person.

"Act" has the meaning specified in Section 10.15.

"AdParlor Sale" means the sale of the Capital Stock in (or all or substantially all of the assets of) AdParlor, LLC and its Subsidiaries to an unaffiliated third-party purchaser.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than 1.50%, then Adjusted Term SOFR shall be deemed to be 1.50% for purposes of this Agreement.

"Adjustment Date" means, (a) as to the first Adjustment Date, January 1, 2025, and (b) thereafter, the first day of each Fiscal Quarter following such date.

"Administrative Agent" means SLR, acting as administrative agent for the Secured Parties, or any successor appointed in accordance with this Agreement.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agency Account Agreement" means any deposit account control agreement, securities account control agreement or other similar agreement entered into by a Credit Party, the Administrative Agent and the applicable financial institution, in form and substance reasonably satisfactory to the Administrative Agent.

"Agency Fee" has the meaning specified in Section 2.07(b).

"Aggregate Commitments" means, as at any date of determination thereof, the aggregate of the Commitments of all of the Lenders, as reduced from time to time pursuant to the terms and conditions hereof. As of the Closing Date, the Aggregate Commitments are \$50,000,000.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Anti-Corruption Laws" means any applicable Laws relating to anti-bribery or anti-corruption (governmental or commercial), including, without limitation, Laws that prohibit the corrupt payment, offer, promise, receipt, request or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, including the U.S. Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act of 2010, each as amended, any Law enacted in connection with, or arising under, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and any other Law of any foreign or domestic jurisdiction of similar effect or that relates to bribery or corruption.

“Applicable Percentage” means (a) in respect of the Term Loan Facility, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan Facility represented by (i) on or prior to the Closing Date, such Lender’s Term Loan Commitment at such time and (ii) thereafter, the Outstanding Amount of such Lender’s Term Loans at such time, and (b) with respect of the Revolving Credit Facility at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by (i) such Lender’s Revolving Credit Commitment at such time and (ii) the Outstanding Amount of such Lender’s Revolving Credit Loans at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means,

(a) on the Closing Date and for each period commencing on an Adjustment Date through the date immediately preceding the next Adjustment Date, the percentage per annum in the table set forth below corresponding to the Consolidated Fixed Charge Coverage Ratio (as determined on each Adjustment Date based on the immediately preceding Fiscal Quarter for which a Compliance Certificate was required to have been delivered to the Administrative Agent) set forth in the table below.

Level	Consolidated Fixed Charge Coverage Ratio	Applicable Rate
1	Less than 1.10:1.00	5.25%
2	Greater than or equal to 1.10:1.00	5.00%

The Applicable Rate for the period commencing on the Closing Date and ending on December 31, 2024 shall be set at Level 1 specified in the table set forth above.

In the event that (x) an Event of Default has occurred and is continuing or (y) the Administrative Agent is unable to determine the Applicable Rate due to the failure of the Borrower to deliver a Compliance Certificate or other information necessary for the calculation of any amount included as a component of the calculation of the Consolidated Fixed Charge Coverage Ratio, then, at the Administrative Agent’s election, effective as of the applicable Adjustment Date and through the date immediately preceding the next Adjustment Date, the Applicable Rate shall conclusively be presumed to equal Level 1 set forth above specified in the table set forth above until the Applicable Rate can be determined in accordance with the terms hereof and no Event of Default has occurred and is continuing.

In the event that any Compliance Certificate or component information is inaccurate, and such inaccuracy, if corrected, would have led to the imposition of a higher Applicable Rate for any period than the Applicable Rate actually applied for such period, then (i) the Borrower shall deliver, within three (3) consecutive calendar days following delivery of such inaccurate Compliance Certificate, to the Administrative Agent a corrected Compliance Certificate for such period, (ii) the Applicable Rate shall be determined based on the corrected Compliance Certificate for such period, and (iii) the Borrower shall, concurrently with the delivery of such corrected Compliance Certificate, pay to the Administrative Agent (for the account of the Lenders that hold the Commitments at the time such payment is received, regardless of whether those Lenders held the Commitments during the relevant period) the accrued additional interest owing as a result of such increased Applicable Rate for such period. This paragraph shall not limit the rights of the Administrative Agent or the Lenders with respect to Section 2.06(b) and Article VIII hereof, and shall survive the termination of this Agreement.

"Applicable Revolving Credit Percentage" means with respect to any Lender at any time, such Lender's Applicable Percentage in respect of the Revolving Credit Facility at such time.

"Approved Fund" means any Fund (other than a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person) that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means SLR, in its capacity as sole lead arranger and sole book runner.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent and the Borrower.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP (subject to Section 1.03(b)), and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP (subject to Section 1.03(b)) if such lease were accounted for as a capital lease.

"Audited Financial Statements" means the audited consolidated balance sheets of the Parent and its Subsidiaries for the fiscal year most recently ended prior to the Closing Date, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Parent and its Subsidiaries, including the notes thereto.

"Bankruptcy Code" means Title 11 of the United States Code as now and hereinafter in effect and any successors to such statutes.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of: (a) one and one half percent (1.50%); (b) the Federal Funds Rate plus one half (1/2) of one percent (1%); and (c) the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the FRB in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent) or any similar release by the FRB (as reasonably determined by the Administrative Agent). Any change in the Base Rate due to a change in any of the foregoing shall take effect at the opening of business on the day specified in the public announcement of such change.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Borrower" has the meaning set forth in the preamble of this Agreement.

"Borrowing" means a Term Borrowing or a Revolving Credit Borrowing, as the context may require.

"Borrowing Base" means, as reflected in the most recent Borrowing Base Certificate delivered in accordance with this Agreement, an amount in Dollars equal to the sum of:

(a) 97.5% of the amount of Eligible Domestic Investment Grade Accounts at such date (provided, that, beginning on October 2, 2024 such advance rate shall be reduced by 0.50% on the first day of the first five Fiscal Quarters following such date and, on and after the first day of the fifth Fiscal Quarter following such date, such advance rate shall be 95.0%); *plus*

(b) 95.0% of the amount of Eligible Domestic Non-Investment Grade Accounts at such date (provided, that, beginning on October 2, 2024 such advance rate shall be reduced by 0.50% on the first day of the first five Fiscal Quarters following such date and, on and after the first day of the fifth Fiscal Quarter following such date, such advance rate shall be 92.5%); *plus*

(c) 90.0% of the amount of Eligible Unbilled Domestic Accounts at such date (provided, that, beginning on October 2, 2024 such advance rate shall be reduced by 0.50% on the first day of the first ten Fiscal Quarters following such date and, on and after the first day of the tenth Fiscal Quarter following such date, such advance rate shall be 85.0%); *plus*

(d) 90.0% of the amount of Eligible Foreign Accounts at such date (provided, that, beginning on October 2, 2024 such advance rate shall be reduced by 0.50% on the first day of the first ten Fiscal Quarters following such date and, on and after the first day of the tenth Fiscal Quarter following such date, such advance rate shall be 85.0%); *plus*

(e) 90.0% of the amount of Eligible Unbilled Foreign Accounts at such date (provided, that, beginning on October 2, 2024 such advance rate shall be reduced by 0.50% on the first day of the first ten Fiscal Quarters following such date and, on and after the first day of the tenth Fiscal Quarter following such date, such advance rate shall be 85.0%); *plus*

(f) 100% of Reserved Cash; *minus*

(g) Reserves established by the Administrative Agent from time to time in its Permitted Discretion in accordance with this Agreement.

Notwithstanding the foregoing, the amount of the "Borrowing Base" attributable to (i) the sum of Eligible Unbilled Domestic Accounts and Eligible Unbilled Foreign Accounts shall not exceed 45.0% of the "Borrowing Base" after giving effect to such limitation and (ii) the sum of Eligible Foreign Accounts plus Eligible Unbilled Foreign Accounts shall not exceed 30.0% of the "Borrowing Base" after giving effect to such limitation.

"Borrowing Base Certificate" means the certificate in substantially the form of Exhibit E hereto or in such other form reasonably acceptable to the Administrative Agent, signed by a Financial Officer of the Borrower and delivered to the Administrative Agent and the Lenders pursuant to Sections 4.01(c), 6.04(c), or any other provision hereof.

"Borrowing Request Notice" means a notice of a Borrowing, which, if in writing, shall be substantially in the form of Exhibit A.

"Breakage Costs" has the meaning specified in Section 3.04.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located.

"Capital Stock" means any and all shares, limited liability company interests, partnership interests, other interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"Capitalized Leases" means leases under which a Credit Party is the lessee or obligor, the discounted future rental payment obligations under which are required to be capitalized on the balance sheet of the lessee or obligor in accordance with GAAP (subject to Section 1.03(b)) and the amount of Indebtedness represented by such obligations shall be the Attributable Indebtedness in respect thereof.

"Cash Dominion Trigger Event" means either of (a) the occurrence of an Event of Default, or (b) Excess Availability being less than the greater of (i) 15.0% of the Line Cap and (ii) \$6,250,000 in the case of clause (b), for a period of three (3) consecutive Business Days.

"Cash Dominion Trigger Period" means the period commencing on the occurrence of a Cash Dominion Trigger Event, and continuing until the date that (a) no Event of Default shall be continuing and (b) Excess Availability is greater than or equal to the greater of (i) 15.0% of the Line Cap and (ii) \$6,250,000, in each case, for a period of at least three (3) consecutive Business Days.

"Cash Equivalents" means any of the following types of Investments, to the extent owned by a Credit Party or Subsidiary thereof:

(a) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof maturing within one year from the date of acquisition thereof;

(b) commercial paper maturing no more than 270 days from the date of creation thereof and having the highest or next highest rating obtainable from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc. determined at the time of investment;

(c) certificates of deposit, banker's acceptances and time deposits maturing no more than 180 days from the date of creation thereof issued or guaranteed by, or placed with, and demand deposit and money market deposit accounts issued or offered by, (i) any Lender or (ii) any commercial bank, that at the time of investment, (x) has total assets in excess of \$250,000,000, (y) a senior unsecured rating of "A" or better by a nationally recognized rating agency and (z) is organized under the laws of the United States of America, any state thereof or is the principal banking subsidiary of a bank holding company organized under the laws of the United States or any state thereof; and

(d) money market mutual funds that invest solely in one or more of the investments described in clauses (a) through (c) above.

"Cash Release Conditions" has the meaning specified in Section 2.03(b).

"Casualty Event" means, with respect to any property (including any interest in property) of a Credit Party, any loss of, damage to, recall, or condemnation or other taking of, such property for which a Credit Party receives insurance proceeds, proceeds of a condemnation award or other compensation.

"CERCLA" has the meaning specified in the definition of "Environmental Laws".

"Change in Law" means the occurrence, after the date of this Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) any Person or two or more Persons, other than the Specified Holders, acting in concert shall have acquired, by contract or otherwise, control over the Capital Stock of the Parent to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing 30.0% or more of the combined voting power of such Capital Stock; or

(b) Parent shall cease to own and control legally and beneficially, either directly or indirectly, Capital Stock in the Borrower representing 100% of the combined voting power of all of Capital Stock entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such Capital Stock that such Person has the right to acquire pursuant to any option right).

"Closing Date" means April 2, 2024.

"Closing Date Perfection Certificate" means the Perfection Certificate delivered by the Credit Parties to the Administrative Agent on the Closing Date attached hereto as Exhibit H.

"Closing Fee" has the meaning specified in Section 2.07(a).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means all of the property, rights and interests of the Credit Parties that are subject to the Liens created by the Security Documents (provided that in no event shall the term "Collateral" include any Excluded Assets and provided further, that if and when any property shall cease to be Excluded Assets, such property shall be deemed at all time from and after such date to constitute Collateral). Collateral shall include Reserved Cash.

"Collection Account" has the meaning specified in Section 6.16(b).

"Commitment" means a Term Loan Commitment or a Revolving Credit Commitment, as the context may require.

"Committed Loan" means a Term Loan or a Revolving Credit Loan, as the context may require.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Concentration Account" has the meaning specified in Section 6.16(a).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated or consolidated" means, with reference to any term defined herein, shall mean that term as applied to the accounts of the Credit Parties, consolidated in accordance with GAAP.

"Consolidated Capital Expenditures" means, with respect to the Credit Parties and their Subsidiaries on a Consolidated basis, for any period the sum of (without duplication) all expenditures paid in cash by the Credit Parties and their Subsidiaries during such period for items that would be classified as "property, plant or equipment" (including charges and expenses relating to capitalized software development for such period) or comparable items on the Consolidated balance sheet of the Credit Parties and their Subsidiaries in accordance with GAAP. The term "Consolidated Capital Expenditures" shall not include (a) any Permitted Acquisition that constitute Investments not prohibited hereunder, (b) capital expenditures in respect of the reinvestment of proceeds from Casualty Events in accordance with the terms of Section 2.03(d) but only to the extent such capital expenditure occurs during the same Measurement Period as the reinvestment of the proceeds received by the Credit Parties or their respective Subsidiaries, (c) expenditures made in connection with the acquisition, replacement, substitution, improvement or restoration of assets (or the acquisition of other capital assets used or useful in the business of the Credit Parties and their respective Subsidiaries) to the extent financed (i) from insurance, warranty or indemnity proceeds (or other similar recoveries) paid on account of the loss of or damage to the assets being replaced or restored, (ii) with cash awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, or (iii) with Net Cash Proceeds of asset dispositions (or a sale, transfer or disposition of assets excluded from such definition) that are reinvested in accordance with the terms of Section 2.03(c); provided that, with respect to each of clauses (i) through (iii), only to the extent such capital expenditure occurs during the same Measurement Period as proceeds or cash awards are received by the Credit Parties or their respective Subsidiaries, (d) expenditures that are accounted for as capital expenditures of the Credit Parties and their respective Subsidiaries that are actually reimbursed by a third party (other than a Credit Party or any Affiliate of a Credit Party), (e) expenditures made to effect leasehold improvements to any real property leased by Parent or its Subsidiaries, to the extent such expenditures (x) have been reimbursed by the landlord or paid directly by the landlord and (y) occur during the same Measurement Period as such landlord reimbursements are received by the Credit Parties or their respective Subsidiaries, and (f) the purchase price of equipment to the extent purchased substantially contemporaneously with the trade in or exchange of existing equipment (to the extent of the value of such trade or exchange).

"Consolidated EBITDA" means, with respect to the Credit Parties and their Subsidiaries, on a consolidated basis, for any period, without duplication, an amount equal to: (a) Consolidated Net Income for such period plus (b) the sum of, without duplication, the following to the extent deducted in calculating Consolidated Net Income for such period:

- (i) any provision for federal, state, local or foreign taxes based on income or profits or capital gains;

- (ii) Consolidated Interest Expense;
 - (iii) depreciation and amortization expense;
 - (iv) (A) transaction costs in connection with the closing of the Loan Documents in an aggregate amount not to exceed \$2,600,000, and (B) transaction costs in connection with the closing of consents, amendments, and other modifications to the Loan Documents; plus
 - (v) non-cash charges, losses or expenses (excluding reserves for future cash charges);
- and minus

(c) without duplication, to the extent included in the calculation of Consolidated Net Income of the Credit Parties for such period in accordance with GAAP, non-cash gains or income and non-cash charges previously added back to Consolidated Net Income in determining Consolidated EBITDA to the extent such non-cash charges have become cash charges during such period.

"Consolidated Fixed Charge Coverage Ratio" means the ratio, determined on a Consolidated basis for the Credit Parties and their Subsidiaries for the applicable Measurement Period, of (a) (i) Modified Consolidated EBITDA, *minus* (ii) cash Consolidated Capital Expenditures, that are not duplicative of amounts deducted in the calculation of Modified Consolidated EBITDA, made during such Measurement Period that are not financed, *minus* (iii) the aggregate amount of federal, state, local and foreign income taxes based on income or profits or capital gains paid in cash, in each case, of or by the Credit Parties and their Subsidiaries for the most recently completed Measurement Period included in the calculation of Consolidated EBITDA during such Measurement Period to (b) Consolidated Fixed Charges.

"Consolidated Fixed Charges" means, for any period, for the Credit Parties and their Subsidiaries on a Consolidated basis, the sum of, without duplication, (a) Consolidated Interest Expense paid in cash during such period, net of interest income paid or payable in cash during such period, (b) all regularly scheduled principal repayments made in cash in respect of Consolidated Funded Indebtedness during such period and (c) all Restricted Payments (other than Restricted Payments made by a Credit Party to another Credit Party), including, for the avoidance of doubt, all payments in connection with a Permitted Acquisition constituting earn-outs, profit sharing, working capital adjustments or similar payments, made in cash during such period.

"Consolidated Funded Indebtedness" means, as of any date of determination, all Indebtedness of the Credit Parties and their Subsidiaries on a Consolidated basis of the type described in clauses (a), (b) (excluding the amount of such letters of credit, bankers' acceptances, bank guaranties, surety bonds and similar instruments that remain undrawn or as to which demand for payment has not yet been made), (d), (f) and (g) of the definition of "Indebtedness" and with respect to Guarantees in respect of any of the foregoing.

"Consolidated Interest Expense" means, for any period, for the Credit Parties and their Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Credit Parties and their Subsidiaries in connection with borrowed money (including capitalized cash interest) or in connection with the deferred purchase price of assets to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Credit Parties and their Subsidiaries with respect to such period under Capitalized Leases that is treated as interest in accordance with GAAP.

"Consolidated Net Income" means, at any date of determination for any period of determination, the net income (or loss) of the Credit Parties and their Subsidiaries on a consolidated basis for such period; provided that Consolidated Net Income shall exclude (a) income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Governing Documents or any agreement, instrument or Law applicable to such Subsidiary during such period and is not actually distributed during such period to a Credit Party, except that equity of a Credit Party in any net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income and (b) any income (or loss) for such period of any Person if such Person is not a Subsidiary, except equity of a Credit Party in the net income of any such Person for such period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to a Credit Party or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to a Credit Party as described in clause (a) of this proviso).

"Contract" means all of a Credit Party's now owned and hereafter acquired consumer credit agreements, accounts, lease contracts, instruments, notes, documents, chattel paper, and all other forms of obligations owing to such Credit Party.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Corresponding Loan Amount" has the meaning assigned to such term in Section 10.19.

"Credit Card Issuer" shall mean any person (other than the Borrower or other Credit Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the Administrative Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to a Credit Parties' sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Card Receivables" means each "payment intangible" (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Credit Party resulting from charges by a customer of a Credit Party on credit or debit cards issued by such Credit Card Issuer in connection with the sale of goods by a Credit Party, or services performed by a Credit Party, in each case in the ordinary course of its business.

"Credit Parties" or "Credit Party" means, collectively, the Borrower and the other Guarantors or individually, the Borrower or any of the Guarantors.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, winding-up, administration or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means when used with respect to Obligations, an interest rate or rate equal to the interest rate or rate otherwise applicable thereto, including any Applicable Rate (and if no rate is specified, a rate per annum equal to the Adjusted Term SOFR), plus 2.00% per annum.

"Defaulting Lender" means, subject to Section 2.14(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied and the Required Lenders have not advised the Administrative Agent that such condition has been met, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied) and the Required Lenders have not advised the Administrative Agent that such condition has been met, (c) has failed, within three (3) Business Days after written request by the Administrative Agent, to confirm in writing to the Administrative Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each Lender promptly following such determination.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"Determination Date" means the Closing Date and the first Business Day of each calendar month thereafter.

"Dilution Ratio" means, as of any date of determination, a percentage, as determined by the Administrative Agent in its Permitted Discretion based on the most recent field examination conducted by or on behalf of the Administrative Agent, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, allowances, credits, or other dilutive items with respect to the Credit Parties' Accounts during such period, by (b) the sum of (i) the Credit Parties' billings with respect to Accounts during such period and (ii) the Credit Parties' unbilled receivables with respect to Accounts during such period.

"Dilution Reserve" means, at any date, the product of (a) the applicable Dilution Ratio at such time multiplied by (b) the aggregate amount of Eligible Accounts at such time.

"Disqualified Stock" means any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is one hundred twenty (120) days following the Maturity Date (excluding any provisions requiring redemption upon a "change of control" or similar event; provided that such "change of control" or similar event results in the substantially concurrent or prior payment in full in cash of the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted), the termination of all commitments to lend hereunder and the termination of this Agreement), (b) is convertible into or exchangeable for (i) Indebtedness or (ii) any Capital Stock referred to in (a) above, in each case, at any time on or prior to the date that is one hundred twenty (120) days following Maturity Date, or (c) entitles the holder thereof to receive scheduled dividends or distributions in cash substantially concurrently or prior to the time that the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) are paid in full in cash, the commitments to lend hereunder are terminated and the termination of this Agreement has occurred.

"Dollar" and "\$" mean lawful money of the United States.

"Early Termination Premium" means an early termination fee that the Borrower shall pay to the applicable Lenders concurrently with the repayment of Term Loans and/or reduction or termination of Revolving Credit Commitments, as applicable, payable in an amount equal to (i) 3.00% of the principal amount of the Loans paid or Revolving Credit Commitments reduced to the extent such payment or reduction occurs before the one-year anniversary of the Closing Date, (ii) 2.00% of the principal amount of the Loans paid or Revolving Credit Commitments reduced to the extent such payment or reduction occurs on or after the one-year anniversary of the Closing Date but before the two-year anniversary of the Closing Date, (iii) 1.00% of the principal amount of the Loans paid or Revolving Credit Commitments reduced to the extent such payment or reduction occurs on or after the two-year anniversary of the Closing Date but before the three-year anniversary of the Closing Date, and (iv) 0.00% of the principal amount of the Loans paid or Revolving Credit Commitments reduced to the extent such payment or reduction occurs on or after the three-year anniversary of the Closing Date.

"Early Termination Premium Trigger Event" means:

- (a) Except for any mandatory prepayment pursuant to Section 2.03(g) or Section 2.03(h), any prepayment by any Credit Party of all, or any part, of the principal balance of any Term Loan for any reason (including, but not limited to, any optional prepayment or mandatory prepayment, and any refinancing thereof), any full or partial termination by the Borrower of the Revolving Credit Commitments, and whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement or any institution of any Insolvency Proceeding;
- (b) the acceleration of the Obligations for any reason, including, but not limited to, acceleration in accordance with Section 8.02, including as a result of the commencement or any institution of any Insolvency Proceeding;
- (c) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to the Administrative Agent, for the account of the Lenders in full or partial satisfaction of the Obligations; or

- (d) the termination of this Agreement for any reason.

Solely for the purposes of the definition of the term Early Termination Premium, and for no other purpose, if an Early Termination Premium Trigger Event occurs under clause (a) (ii), (b), (c) or (d) above, the entire outstanding principal amount of the Term Loans shall be deemed to have been prepaid and the entire amount of the Revolving Credit Commitments will be deemed to have been terminated, in each case on the date on which such Early Termination Premium Trigger Event occurs.

“Electronic Medium” means the electronic medium through which notices and other communications are sent (including e-mail) pursuant to procedures approved by the Administrative Agent and otherwise in accordance with Section 10.02(b).

“Eligible Accounts” means collectively, Eligible Domestic Accounts, Eligible Domestic Investment Grade Accounts, Eligible Domestic Non-Investment Grade Accounts, Eligible Unbilled Domestic Accounts, Eligible Foreign Accounts and Eligible Unbilled Foreign Accounts.

“Eligible Assignee” means any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), a Credit Party or any Affiliate or Subsidiary of a Credit Party) that meets the requirements to be an assignee under Section 10.06(b)(iii) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Eligible Domestic Accounts” means (without duplication of any Eligible Foreign Account) those Accounts created and owned by a Credit Party in the ordinary course of its business, that arise out of such Credit Party's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by the Administrative Agent in the Administrative Agent's Permitted Discretion to address the results of any information with respect to the Credit Parties' business or assets of which the Administrative Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) the Administrative Agent from time to time after the Closing Date. Any changes to the eligibility criteria set forth below shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such change in eligibility and shall not be duplicative of any other eligibility criteria. In determining the amount to be included, Eligible Domestic Accounts shall be calculated net of customer deposits, unapplied cash, taxes, finance charges, service charges, discounts, credits, allowances and rebates. Eligible Domestic Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within the earlier of (i) (x) with respect to the Account Debtors specified on Schedule 1.01A(i) (and such other Account Debtors as may be approved by the Administrative Agent from time to time in writing in its sole discretion), so long as such Account Debtors continue to maintain an Investment Grade Rating, one hundred ten (110) days of original invoice date and (y) otherwise, ninety (90) days of original invoice date or (ii) sixty (60) days of due date,

(b) Accounts owed by an Account Debtor (or its Affiliates) where fifty percent (50%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with selling terms of more than sixty (60) days (or, in the case of Accounts of Account Debtors specified on Schedule 1.01A(i) (and such other Account Debtors as may be approved by the Administrative Agent from time to time in writing in its sole discretion), so long as such Account Debtors continue to maintain an Investment Grade Rating, ninety (90) days),

(d) Accounts with respect to which the Account Debtor is an Affiliate of a Credit Party or an employee or agent of a Credit Party or any Affiliate of a Credit Party,

(e) (i) Accounts that are not evidenced by an invoice which has been delivered to the applicable Account Debtor or (ii) any Account for which the documents and instruments (including, without limitation, any contract evidencing such Account, or the origination thereof) (w) are not governed by the Laws of a state of the United States, (x) do not comply in all material respects with all applicable Laws, (y) cannot be enforced in accordance with their terms, (z) for which the cancellation or rescission periods related thereto (if applicable) have not expired, or (iii) any Account that is not in full force and effect or does not represent a legal, valid and binding obligation of the Account Debtor,

(f) Accounts that are not payable in Dollars,

(g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or (ii) is not organized under the laws of the United States, any state thereof or the District of Columbia,

(h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which a Credit Party has complied with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States or any other Governmental Authority (other than Accounts with respect to which such Credit Party has complied with any applicable state assignment of claims act),

(i) Accounts with respect to which the Account Debtor is a creditor of a Credit Party, or with respect to which the Account Debtor has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose Eligible Domestic Accounts owing to a Credit Party exceed (x) twenty percent (20%) with respect to any such Account Debtor who has an Investment Grade Rating, (y) fifteen percent (15%) with respect to Moon Active Ltd. and its Affiliates and (z) ten percent (10%) for all other Account Debtors (such percentage, as applied to a particular Account Debtor, being subject to reduction by the Administrative Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by the Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Credit Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, the Administrative Agent in its Permitted Discretion determines to be doubtful, including by reason of the Account Debtor's financial condition,

(m) (i) any Account with respect to which a Credit Party does not have good and marketable title and the right to grant a Lien on, or pledge, assign and deliver, such Account to the Administrative Agent (other than to the extent any prohibition would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, or 9-409 of the UCC) free from all Liens or claims whatsoever, or (ii) Accounts that are not subject to a valid and perfected first priority the Administrative Agent's Lien,

(n) Accounts with respect to which the services giving rise to such Account have not been fully earned by performance and/or not billed to the Account Debtor as evidence by a "final" reconciled invoice which has been delivered to the applicable Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by a Credit Party of the subject contract for goods or services, or (ii) that represent credit card sales or Credit Card Receivables, or

(q) Accounts owned by a target acquired in connection with a Permitted Acquisition or permitted Investment, or Accounts owned by a Person that is joined to this Agreement as a Credit Party pursuant to the provisions of this Agreement, until the completion of a field examination with respect to such Accounts, in each case, satisfactory to the Administrative Agent in its Permitted Discretion.

"Eligible Domestic Investment Grade Accounts" means Eligible Domestic Accounts owing by an Account Debtor who has an Investment Grade Rating.

"Eligible Domestic Non-Investment Grade Accounts" means Eligible Domestic Accounts which are not Eligible Domestic Investment Grade Accounts.

"Eligible Foreign Accounts" means (without duplication of any Eligible Domestic Account) those Accounts created and owned by a Credit Party in the ordinary course of its business, that arise out of such Credit Party's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by the Administrative Agent in the Administrative Agent's Permitted Discretion to address the results of any information with respect to the Credit Parties' business or assets of which the Administrative Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) the Administrative Agent from time to time after the Closing Date. Any changes to the eligibility criteria set forth below shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such change in eligibility and shall not be duplicative of any other eligibility criteria. In determining the amount to be included, Eligible Foreign Accounts shall be calculated net of customer deposits, unapplied cash, taxes, finance charges, service charges, discounts, credits, allowances and rebates. Eligible Foreign Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within the earlier of (i) ninety (90) days of original invoice date or (ii) sixty (60) days of due date,

(b) Accounts owed by an Account Debtor (or its Affiliates) where fifty percent (50%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with selling terms of more than sixty (60) days,

(d) Accounts with respect to which the Account Debtor is an Affiliate of a Credit Party or an employee or agent of a Credit Party or any Affiliate of a Credit Party,

(e) (i) Accounts that are not evidenced by an invoice which has been delivered to the applicable Account Debtor or (ii) any Account for which the documents and instruments (including, without limitation, any contract evidencing such Account, or the origination thereof) (w) are not subject to a contract governed by the Laws of a state of the United States (other than Accounts of Account Debtors located in a province of Canada (or in other jurisdictions as may be determined by the Administrative Agent in its Permitted Discretion), whose contract will meet the requirements of this clause (w) if governed by the Laws of a province of Canada or the Laws of a state of the United States), unless the Administrative Agent agrees otherwise in writing in its sole discretion (provided that the Administrative Agent agrees that Accounts owed by Account Debtors set forth on Schedule 1.01A(ii) shall not be excluded as a result of this clause (w) but for the avoidance of doubt will continue to be subject to the other eligibility criteria set forth in this Agreement), (x) do not comply in all material respects with all applicable Laws, (y) cannot be enforced in accordance with their terms, (z) for which the cancellation or rescission periods related thereto (if applicable) have not expired, or (iii) any Account that is not in full force and effect or does not represent a legal, valid and binding obligation of the Account Debtor,

(f) Accounts that are not payable in Dollars and Accounts the payment instructions for which do not require the Account Debtor to make payment to a deposit account domiciled in the United States,

(g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in, and is not organized under the laws of, Canada, the United Kingdom, Ireland, Germany, Austria, the Netherlands, France, Spain, Israel, Singapore or Australia or any other jurisdiction in which the Borrower fails to comply with any requirements set forth in the Security Agreement as determined by the Administrative Agent in its Permitted Discretion; provided that, following the date that is thirty (30) days after the Closing Date (or such longer period as the Administrative Agent may reasonably agree in writing), any such Accounts with respect to which the Account Debtor either maintains its chief executive office in, or is organized under the laws of, Germany, Austria, France, Spain, Israel or Singapore shall be covered by credit insurance in form, substance and amount, and by an insurer, reasonably satisfactory to the Administrative Agent, or (ii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, in each case unless (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to the Administrative Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Administrative Agent and, if requested by Administrative Agent, is directly drawable by Administrative Agent or (B) such Account is otherwise reasonably acceptable in all respects to the Administrative Agent (subject to such lending formula with respect thereto as the Administrative Agent may reasonably determine),

(h) Accounts with respect to which the Account Debtor is any Governmental Authority,

(i) Accounts with respect to which the Account Debtor is a creditor of a Credit Party, or as to which the Account Debtor has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose Eligible Foreign Accounts owing to a Credit Party exceed (x) fifteen percent (15%) with respect to Moon Active Ltd. and its Affiliates and (y) ten percent (10%) for all other Account Debtors (such percentage, as applied to a particular Account Debtor, being subject to reduction by the Administrative Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by the Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Credit Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, the Administrative Agent in its Permitted Discretion determines to be doubtful, including by reason of the Account Debtor's financial condition,

(m) (i) any Account with respect to which a Credit Party does not have good and marketable title and the right to grant a Lien on, or pledge, assign and deliver, such Account to the Administrative Agent (other than to the extent any prohibition would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, or 9-409 of the UCC or pursuant to any similar provisions of any foreign laws) free from all Liens or claims whatsoever, or (ii) Accounts that are not subject to a valid and perfected first priority the Administrative Agent's Lien,

(n) Accounts with respect to which the services giving rise to such Account have not been fully earned by performance and/or not billed to the Account Debtor as evidence by a "final" reconciled invoice which has been delivered to the applicable Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the Credit Parties of the subject contract for goods or services, or (ii) that represent credit card sales or Credit Card Receivables, or

(q) Accounts owned by a target acquired in connection with a Permitted Acquisition or permitted Investment, or Accounts owned by a Person that is joined to this Agreement as a Credit Party pursuant to the provisions of this Agreement, until the completion of a field examination with respect to such Accounts, in each case, satisfactory to the Administrative Agent in its Permitted Discretion.

"Eligible Unbilled Domestic Accounts" means all Accounts with respect to which the invoice and other necessary billing documentation have not been submitted to the applicable Account Debtor in connection with a completed (or contracted) sale of goods or rendition of services, but which otherwise satisfy the criteria for "Eligible Domestic Accounts" (as set forth in the definition thereof), until the earlier of (a) such Account has converted into a billed Account or (b) the thirtieth (30th) day of the subsequent month following the completion (or contracting) of the sale of goods or rendition of services (for the avoidance of doubt, and by way of an example only, if such Eligible Unbilled Domestic Accounts were earned and accrued in the month of March, with regards to this clause (b) they would remain eligible until the 30th day of April), and so long as (i) no additional goods need be provided to or further services need be performed for the applicable Account Debtor by the Credit Party as a condition to such Account Debtor's obligation to pay such Credit Party, (ii) such Account is verifiable by the Administrative Agent, and (iii) such Account was not previously an Eligible Unbilled Domestic Account that had ceased to be an Eligible Unbilled Domestic Account.

"Eligible Unbilled Foreign Accounts" means all Accounts with respect to which the invoice and other necessary billing documentation have not been submitted to the applicable Account Debtor in connection with a completed (or contracted) sale of goods or rendition of services, but which otherwise satisfy the criteria for "Eligible Foreign Accounts" (as set forth in the definition thereof), until the earlier of (a) such Account has converted into a billed Account or (b) the thirtieth (30th) day of the subsequent month following the completion (or contracting) of the sale of goods or rendition of services (for the avoidance of doubt, and by way of an example only, if such Eligible Unbilled Foreign Accounts were earned and accrued in the month of March, with regards to this clause (b) they would remain eligible until the 30th day of April), and so long as (i) no additional goods need be provided to or further services need be performed for the applicable Account Debtor by the Credit Party as a condition to such Account Debtor's obligation to pay such Credit Party, (ii) such Account is verifiable by the Administrative Agent, and (iii) such Account was not previously an Eligible Unbilled Foreign Account that had ceased to be an Eligible Unbilled Foreign Account.

"Enhanced Collateral Reporting Period" means a period commencing on the date (a) (i) the Consolidated Fixed Charge Coverage Ratio shall have been less than 1.10:1.00 (as determined based on the immediately preceding Fiscal Month for which a Compliance Certificate was required to have been delivered to the Administrative Agent) and (ii) Excess Availability shall have been less than the greater of (x) 17.5% of the Line Cap or (y) \$7,500,000 (the "Enhanced Collateral Reporting Start Date") and (b) continuing until the date (i) the Consolidated Fixed Charge Coverage Ratio shall have been equal to or greater than 1.10:1.00 (as determined based on the immediately preceding Fiscal Month for which a Compliance Certificate was required to have been delivered to the Administrative Agent) and (ii) Excess Availability shall have been equal to or greater than the greater of (x) 17.5% of the Line Cap or (y) \$7,500,000, in the case of this clause (ii), for at least five consecutive weeks after the Enhanced Collateral Reporting Start Date; provided, that an Enhanced Collateral Reporting Period shall be deemed to be in effect immediately upon the occurrence and during the continuance of any Specified Event of Default.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any Hazardous Materials into the environment, including those related to discharges to waste or public systems and including without limitation, those arising under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA") and the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of a Credit Party, any other Credit Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permits" means any, approval, identification number, license or other authorization required under any Environmental Law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Credit Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Credit Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Credit Party or any ERISA Affiliate.

"Erroneous Payment" has the meaning assigned to such term in Section 10.19.

"Erroneous Payment Return Deficiency" has the meaning assigned to such term in Section 10.19.

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Accounts" means any deposit account, securities account or commodities account (a) that is used exclusively and for the sole purpose of making payroll and withholding tax payments related thereto and other employee wage and benefits payments and accrued and unpaid employee compensation payments (including salaries, wages, benefits and expense reimbursements, 401(k) and other retirement plans and employee benefits, including rabbi trusts for deferred compensation and health care benefits), (b) that is used for the sole purpose of paying taxes, including sales taxes, (c) that no less frequently than on each Business Day automatically transfer all amounts contained therein to a deposit account subject to an Agency Account Agreement, (d) that is the Well Fargo Bank, N.A. account of FM Canada whose account number has been disclosed to the Administrative Agent in writing prior to the Closing Date, (e) that contains cash or Cash Equivalents to secure letter of credit reimbursement obligations to the extent such letters of credit are permitted under Section 7.02(f) and prohibit the granting of a Lien; provided that all cash or Cash Equivalents remaining in such account after the expiry or draw of such letter of credit shall be transferred to a deposit account subject to an Agency Account Agreement (f) that has an average daily balance for any Fiscal Month of less than (i) \$25,000 for each such account at any time and (ii) \$100,000 at any time in the aggregate for all such accounts under this clause (e).

"Excluded Assets" has the meaning assigned to such term in the Security Agreement.

"Excluded Subsidiary" means (a) FM Canada, so long as FM Canada does not account for more than 5.00% of the Consolidated total assets of the Credit Parties or more than 5.00% of the Consolidated total revenues of the Credit Parties based on the most recently available financial statements; provided that, if FM Canada accounts for more than 5.00% of the Consolidated total assets of the Credit Parties or more than 5.00% of the Consolidated total revenues of the Credit Parties based on the most recently available financial statements, FM Canada shall cease to be an Excluded Subsidiary and shall comply with Sections 6.14 and 6.16 within the time periods set forth therein, (b) any Subsidiary to the extent the Administrative Agent and the Borrower mutually determine the cost and/or burden of obtaining a Guarantee from such Subsidiary outweigh the benefit to the Lenders and (c) until the thirtieth (30th) day following the Closing Date, the True North Loyalty Entities, provided that if the True North Loyalty Sale has not occurred by such date (unless such date shall be extended in writing by the Administrative Agent in its reasonable discretion), each of the True North Loyalty Entities shall cease to be an Excluded Subsidiary and shall immediately comply with Sections 6.14 and 6.16.

"Excess Availability" means, as of any date of determination, an amount equal to the lesser of (a) the amount of the Revolving Credit Commitments less the Total Revolving Credit Outstandings and (b) the Borrowing Base less Total Outstandings.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, excise Taxes or similar Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender or any other Recipient of a payment hereunder, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient on the date such Recipient becomes a party to this Agreement or of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by any Credit Party under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Extraordinary Receipts" means any cash received by or paid to any Credit Party not in the ordinary course of business (and not consisting of Net Cash Proceeds received as a result of any Casualty Event, asset disposition or so long as no Specified Event of Default shall have occurred and be continuing, insurance proceeds received by any Credit Party as an expense reimbursement), including tax refunds, pension plan reversions, proceeds of insurance, eminent domain or condemnation awards and similar proceedings (and payments in lieu thereof), indemnity payments (including, without limitation, in connection with any Acquisition) and any purchase price adjustments (including, without limitation, in connection with any Acquisition), in each case, except to the extent that such amounts (x) constitute reimbursement or compensation for amounts previously paid by Parent or any of its Subsidiaries to a third party that is not an Affiliate in respect of any such event or (y) so long as no Specified Event of Default shall have occurred and be continuing, are payable to a Person that is not an Affiliate of the Parent or any of its Subsidiaries.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FM Canada" means Fluent Media Canada, Inc., a British Columbia corporation.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one one-hundredth (1/100) of one percent (1%)) charged to major financial institutions reasonably acceptable to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

"Financial Officer" means, with respect to any Person, its chief financial officer, treasurer, controller or assistant controller or other officer reasonably acceptable to the Administrative Agent.

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally end on the last day of each calendar month in accordance with the fiscal accounting calendar of the Parent and its Subsidiaries.

"Fiscal Quarter" means each period of three Fiscal Months, commencing on the first day of a Fiscal Year.

"Fiscal Year" means the fiscal year of the Parent and its Subsidiaries for accounting and tax purposes, ending on December 31st.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which a Credit Party is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Plan" means any employee benefit plan or arrangement (a) maintained or contributed to by a Credit Party or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of a Credit Party or Subsidiary.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governing Documents" means, with respect to any Person, its certificate or articles of incorporation, certificate of change of name (if any), certificate of formation, or, as the case may be, certificate of limited partnership, its by-laws, memorandum and articles of association, operating agreement or, as the case may be, partnership agreement or other constitutive documents and all shareholder agreements, voting trusts and similar arrangements applicable to any of its Capital Stock.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, municipal or provincial, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Granting Lender" has the meaning specified in Section 10.06(g).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness payable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means the Borrower, each other Person party to the Guaranty as a guarantor thereunder and each other Person, if any, that executes a guaranty or other similar agreement in favor of the Administrative Agent in connection with the transactions contemplated by this Agreement and the other Loan Documents; provided that no Excluded Subsidiary shall be a Guarantor. As of the Closing Date, in addition to Borrower, the Guarantors are set forth in Schedule A to the Closing Date Perfection Certificate.

"Guaranty" means as the context may require that certain (a) Guaranty dated as of the Closing Date, entered into by the Guarantors and the Administrative Agent and/or (b) any other guarantee granted by a Credit Party as required by Section 6.12 which shall be in form and substance reasonably satisfactory to the Administrative Agent

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services, including, without limitation, purchase price adjustments, earn out obligations, and similar obligations, in each case, that are recognized as a liability on the balance sheet of such Person in accordance with GAAP;

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all Disqualified Stock or obligations to purchase, redeem, retire or defease Disqualified Stock; and

(h) all Guarantees of such Person in respect of any of the foregoing.

Notwithstanding the foregoing, in no event shall the following constitute Indebtedness: (i) deferred revenues, liabilities associated with customer prepayments and deposits (including cash that is received from clients of AdParlor, LLC for media reimbursement and owing to third party media suppliers), trade payables and accrued expenses incurred in accordance with customary practices and other accrued obligations that constitute transfer pricing and accruals for payroll and other operating expenses accrued in the ordinary course of business, in each case incurred in the ordinary course of business, (ii) operating leases, (iii) customary obligations under employment agreements and deferred compensation or (iv) deferred tax liabilities.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person or unless such Person expressly does not have liability for such obligations of a joint venture or partnership. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capitalized Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payments hereunder or any other Loan Documents and (b) to the extent not otherwise described in clause (a) herein, Other Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Insolvency Proceeding" means, collectively, any corporate action, legal proceedings or other step taken or commenced by or against any Person under any provision of the Bankruptcy Code or under any Debtor Relief Law.

"Intellectual Property" has the meaning provided therefor in the Security Agreement.

"Intellectual Property License" has the meaning provided therefor in the Security Agreement.

"Inventory" means all goods held for sale in which a Credit Party now has or hereafter acquires title to.

"Intercompany Note" means a promissory note evidencing intercompany Indebtedness between and among the Credit Parties, subject to the terms of a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent.

"Interest Payment Date" means, as to any Loan, (a) the first Business Day of each calendar month, (b) on any date of prepayment, with respect to the principal amount of Loans being prepaid, and (c) the Maturity Date. For purposes of clarity, Interest Payment Date relates to payment of interest on account of the prior Interest Period ended immediately prior to (but excluding) such Interest Payment Date.

"Interest Period" means, as to each Loan, the period commencing on the first day of each calendar month and ending on the last day of such calendar month.

"Investment" means, all expenditures made and all liabilities incurred (contingently or otherwise) for the acquisition of Capital Stock, assets that constitute a business unit or Indebtedness of, or for loans, advances or capital contributions to, or in respect of any Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or interest in, another Person (but excluding any prepayments or deposits paid to customers in the ordinary course of business). In determining the aggregate amount of Investments outstanding at any particular time: (a) the amount of any Investment represented by a guaranty shall be taken at the principal amount of the obligations guaranteed and still outstanding; (b) there shall be deducted in respect of each such Investment any amount received as a return of capital thereon; and (c) there shall not be deducted from the aggregate amount of Investments any decrease in the value, write-downs or write-offs with respect thereof.

"Investment Grade Rating" shall mean, an Account Debtor on an Account so long as the long-term senior unsecured publicly held debt rating or corporate family rating of such Account Debtor is equal to or higher than Baa3 (or its equivalent) by Moody's or BBB (or its equivalent) by S&P.

"IP Security Agreement" means collectively, (a) the Intellectual Property Security Agreement dated as of the Closing Date, made by each Credit Party thereto in favor of the Administrative Agent, on behalf of itself and the other Secured Parties and (b) each other intellectual property security agreement, patent security agreement, trademark security agreement and copyright security agreement required to be delivered pursuant to Section 6.12 in form and substance reasonably satisfactory to the Administrative Agent.

"IRS" means the United States Internal Revenue Service.

"Junior Promissory Note" means that certain Amended and Restated Junior Secured Promissory Note, dated as of March 17, 2023, by and between Fluent, LLC, a Delaware limited liability company, as Maker, and Freedom Debt Relief, LLC, a Delaware limited liability company, as Payee (as amended, restated, supplemented or otherwise modified from time to time in a manner not materially adverse to the interests of the Administrative Agent and the Lenders).

"Laws" means, collectively, all international, foreign, Federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" means (a) at any time on or prior to the Closing Date, any lender that has a Term Loan Commitment and/or a Revolving Credit Commitment at such time, and (b) at any time after the Closing Date, any lender that holds Term Loans, Revolving Credit Loans, and/or a Revolving Credit Commitment at such time.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Lien" means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Line Cap” means, as of any date of determination, the lesser of (a) the sum of the Revolving Credit Commitments plus the Total Term Loan Outstandings at such time and (b) the Borrowing Base as of such date of determination.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Credit Loan or Protective Advance.

“Loan Account” has the meaning specified in Section 2.16(a).

“Loan Documents” means this Agreement, each Note, each Security Document, the Guaranty, each Borrowing Base Certificate, each Compliance Certificate, and each other agreement, document or instrument executed and delivered by any Credit Party in favor of any of the Secured Parties in connection with any Loan Document, whether or not specifically mentioned herein or therein.

“Material Adverse Effect” means a material adverse change in, or a material adverse effect on, (a) the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Credit Parties and their Subsidiaries; (b) the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of the Credit Parties to perform their obligations under any Loan Document; or (c) (i) the legality, validity, binding effect or enforceability against the Credit Parties of any Loan Document or (ii) the perfection or priority of the liens granted to the Administrative Agent under any Loan Document.

“Material Agreements” means (a) each document or agreement set forth on Schedule 20 to the Closing Date Perfection Certificate and (b) each other document or agreement to which a Credit Party is a party involving aggregate consideration payable to or by such Credit Party of \$7,500,000 or more during any Fiscal Year.

“Maturity Date” means April 2, 2029.

“Maximum Rate” has the meaning specified in Section 10.09.

“Measurement Period” means, at any date of determination, the most recently completed trailing twelve month period of the Credit Parties and their Subsidiaries for which financial statements have or should have been delivered in accordance with Section 6.04(a) or 6.04(b).

“Modified Consolidated EBITDA” means for the Credit Parties and their Subsidiaries for the applicable Measurement Period, Consolidated EBITDA for such trailing twelve month period *minus* capitalized software development costs for such period.

Notwithstanding the foregoing, for all purposes of this Agreement, Modified Consolidated EBITDA for the historical Fiscal Month periods set forth in the table below shall be deemed to be the amounts set forth in the table below opposite the relevant period:

Fiscal Month	Modified Consolidated EBITDA
March 2023	\$ 348,397
April 2023	\$ 2,699,533
May 2023	\$ 1,581,166
June 2023	\$ 77,767
July 2023	\$ (1,151,973)
August 2023	\$ (1,784,214)
September 2023	\$ (527,476)
October 2023	\$ (892,630)
November 2023	\$ 837,957
December 2023	\$ 804,062
January 2024	\$ (59,731)
February 2024	\$ (172,990)

"Mortgages" means each mortgage or deed of trust with respect to Real Estate executed and delivered to the Administrative Agent, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which a Credit Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including a Credit Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Net Cash Proceeds" means, with respect to any event or transaction described in Sections 2.03(c) through (f), the cash proceeds received in respect of such event or transaction, including (a) any cash received in respect of any non-cash proceeds (including, without limitation, the monetization of notes receivables), but only as and when received or (b) in the case of a Casualty Event, insurance proceeds, proceeds of a condemnation award or other compensation payments, in each case, net of the sum of (w) all reasonable actual fees and out-of-pocket expenses (including underwriting discounts and commissions, appraisals, and brokerage, legal, advisory, banking, title and recording tax expenses and commissions) paid by any Credit Party or a Subsidiary to third parties (other than Affiliates) in connection with such event (but excluding amounts payable hereunder), (x) all taxes paid or reasonably estimated by the Borrower to be payable by Parent or any of its Subsidiaries as a result thereof or amounts distributed or expected to be distributed pursuant to Section 7.04(a) to pay taxes arising therefrom, (y) reserves for indemnities, until such reserves are no longer needed, and (z) in the case of a sale or other disposition of an asset described Sections 2.03(c) and (d), the amount of all payments required to be made by any Credit Party (or to establish an escrow for the repayment of) on any Indebtedness by the terms thereof (other than the Obligations) secured by such asset to the extent the lien in favor of the holder of such Indebtedness is permitted by Section 7.03(a)(viii); provided that such payments made shall not exceed the amount of cash proceed received by such Credit Party or the aggregate amount of such Indebtedness.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01, and (b) has been approved by the Required Lenders.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" means a Term Loan Note or a Revolving Credit Note.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Loan Document or otherwise with respect to any Loan (including, without limitation, the Early Termination Premium), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees (including, without limitation, the Early Termination Premium) that accrue after the commencement by or against any Credit Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing, or similar taxes, charges or levies that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such taxes, charges or levies that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 10.13).

"Outstanding Amount" means, with respect to the Term Loans, the Revolving Credit Loans and Protective Advances on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and any prepayments or repayments of the Term Loans, the Revolving Credit Loans or Protective Advances occurring on such date.

"Parent" means Fluent, Inc., a Delaware corporation.

"Participant" has the meaning specified in Section 10.06(d).

"Participant Register" has the meaning specified in Section 10.06(d).

"Payment Recipient" has the meaning assigned to such term in Section 10.19.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Credit Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Perfection Certificates" means, collectively, (a) the Closing Date Perfection Certificate and (b) thereafter, the most recent Perfection Certificate delivered by the Credit Parties following the Closing Date to the Administrative Agent and in a form substantially consistent with the Closing Date Perfection Certificate or otherwise reasonably acceptable to the Administrative Agent in accordance with this Agreement.

"Permitted Acquisition" means any Acquisition by a Credit Party or any Subsidiary to the extent that such Acquisition has been consented to by the Administrative Agent and Required Lenders.

"Permitted Discretion" means a determination made in good faith and in the exercise of commercially reasonable (from the perspective of a secured asset-based lender) credit or business judgment and in accordance with customary business practices for comparable secured asset-based lending transactions. As it relates to the establishment or adjustment of Reserves (or the modification of eligibility standards and criteria), the exercise of Permitted Discretion shall require that (a) such establishment, adjustment or imposition after the Closing Date be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or are materially different from the facts or events occurring or known to the Administrative Agent on the Closing Date, unless the Borrower and the Administrative Agent otherwise agree in writing, (b) the contributing factors to the imposition of any Reserves shall not duplicate the exclusionary criteria set forth in the eligibility criteria for the assets in the Borrowing Base and vice versa and (c) the amount of any such Reserve so established or the effect of any adjustment shall be a reasonable quantification (as determined by the Administrative Agent in its Permitted Discretion) of the incremental impact of the Borrowing Base attributable to the event, condition or other matter that is the basis for such Reserve or adjustment.

"Permitted Liens" means those Liens permitted by Section 7.03.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of a Credit Party or any ERISA Affiliate or any such Plan to which a Credit Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Pledge Agreements" means, collectively, (a) the Pledge Agreement dated as of the Closing Date, by and among the Credit Parties and the Administrative Agent and (b) any other pledge agreement granted by any Credit Party as required by Section 6.12 which shall be in form and substance reasonably satisfactory to the Administrative Agent.

"Prepayment Notice" means the certificate in substantially the form of Exhibit F hereto, or in such other form reasonably acceptable to the Administrative Agent, to be signed by a Financial Officer of the Borrower and delivered to the Administrative Agent and the Lenders pursuant to Section 2.03 hereof.

"Protective Advances" has the meaning specified in Section 2.15.

"PTO" means the United States Patent and Trademark Office (or any successor office).

"RCRA" has the meaning specified in the definition of "Environmental Laws".

"Real Estate" means all real property at any time owned by any Credit Party.

"Recipient" means the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder.

"Register" has the meaning specified in Section 10.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers and advisors of such Person and of such Person's Affiliates.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

"Required Lenders" means, as of any date of determination, Lenders having or holding more than 50% of the Total Outstandings and Commitments. The Total Outstandings and Commitments of any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Reserved Cash" means cash held in the Reserved Cash Account.

"Reserved Cash Account" means a deposit account reasonably acceptable to the Administrative Agent in the name and sole dominion and control of the Administrative Agent for the deposit of Reserved Cash.

"Reserved Cash Release Notice" means a notice requesting release of Reserved Cash, which shall be substantially in the form of Exhibit J.

"Reserves" means, subject to adjustment from time to time as set forth in Section 2.17, the sum (without duplication) of (a) Dilution Reserves, and (b) such additional reserves, in amounts and with respect to such matters (whether or not constituting a Default or Event of Default), as the Administrative Agent in its Permitted Discretion deems necessary or appropriate to impose from time to time, in each case whether before or during the continuance of a Default or Event of Default. Without limiting the generality of the foregoing, the Administrative Agent may establish Reserves to ensure the payment of (i) accrued interest expense, (ii) insurance claims, including self-funded insurance claims and credit insurance, (iii) outstanding Taxes, and other charges imposed by any Governmental Authority, (iv) past-due payables of the Credit Parties and their Subsidiaries to the extent the Administrative Agent, in its Permitted Discretion, determines would have a negative impact on the business operations of the Credit Parties and their Subsidiaries or the collectability of Collateral, or (v) other liabilities, including, without limitation, ad valorem taxes, real estate, personal property, intellectual property, sales and other taxes, or reserves to reflect events, conditions, contingencies or risks which affect the Collateral, or the Administrative Agent's access to such Collateral, or its value or the enforceability, perfection, or priority of the Administrative Agent's security interest in the Collateral or the Administrative Agent's judgment that any collateral report or financial information relating to the Credit Parties may be incomplete, inaccurate, or misleading in any material respect, in each case, subject to the Administrative Agent's Permitted Discretion.

"Restricted Payment" means any (a) dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of any Credit Party or any Subsidiary, (b) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination by such Credit Party or Subsidiary of its Capital Stock, or on account of any return of capital to the stockholders, partners or members (or the equivalent Person thereof) of any Credit Party or any Subsidiary, (c) any management, advisory, consulting, or similar fees paid to any Affiliate of any Credit Party (other than (x) any such amounts payable to the Credit Parties and their Subsidiaries and (y) to the extent pursuant to any employment or similar services agreements with employees, directors or officers thereof entered into in the ordinary course of business), and (d) any payment on account of a Permitted Acquisition.

"Revolving Credit Loan" means an advance made by any Lender under the Revolving Credit Facility.

"Revolving Credit Availability Period" means, in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earlier of (a) the Maturity Date, (b) the date of termination of the Revolving Credit Facility pursuant to Section 2.04(b), and (c) the date of termination of the Revolving Credit Commitments of the respective Lenders to make Revolving Credit Loans pursuant to Section 8.02.

"Revolving Credit Borrowing" means a borrowing consisting of simultaneous Revolving Credit Loans made by each of the Lenders pursuant to Section 2.01(b).

"Revolving Credit Commitments" means, as to each Lender, its obligation to make Revolving Credit Loans to the Borrower during the Revolving Credit Availability Period pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 with respect to the Revolving Credit Loans. As of the Closing Date, the Revolving Credit Commitments are \$30,000,000.

"Revolving Credit Exposure" means, as to any Lender at any time, the aggregate Outstanding Amount at such time of its Revolving Credit Loans.

"Revolving Credit Facility" means, at any time, (a) at any time during the Revolving Credit Availability Period in respect of such Revolving Credit Facility, the *sum of* (i) the aggregate amount of the Revolving Credit Commitments at such time, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of all Lenders outstanding at such time, and (b) thereafter, the aggregate Outstanding Amount of the Revolving Credit Loans of all Lenders outstanding at such time.

"Revolving Credit Note" means a promissory note made by the Borrower in favor of a Lender evidencing the Revolving Credit Loans made by such Lender, substantially in the form of Exhibit B-2.

"Sanction(s)" means any international economic sanction administered or enforced by OFAC, the United Nations Security Council, the European Union or any member state of the European Union, the governmental institutions and agencies of the United Kingdom (including, without limitation, His Majesty's Treasury of the United Kingdom) or other relevant sanctions authority.

"Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at, or as otherwise published from time to time.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means (a) a Person named on the list of "Specially Designated Nationals and Blocked Persons" maintained by OFAC available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or as otherwise published from time to time, (b) a Person named on the lists maintained by the United Nations Security Council available at http://www.un.org/sc/committees/list_comp.html, or as otherwise published from time to time, (c) a Person named on the lists maintained by the European Union available at http://eeas.europa.eu/cfsp/sanctions/consolidated_en.htm, or as otherwise published from time to time, (d) a Person named on the lists maintained by His Majesty's Treasury available at http://www.hm-treasury.gov.uk/fin_sanctions_index.htm, or as otherwise published from time to time, or (e) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

"SARA" has the meaning specified in the definition of "Environmental Laws".

"Secured Parties" means, collectively, the Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05 and the other Persons the Obligations owing to which are secured by the Collateral under the terms of the Security Documents.

"Security Agreements" means, collectively, (a) that certain the Security Agreement dated as of the Closing Date, entered into by the Credit Parties and the Administrative Agent, and (b) any other security agreement granted by any Credit Party as required by Section 6.12 which shall be in form and substance reasonably acceptable to the Administrative Agent.

"Security Documents" means the Guaranty, the Security Agreements, the IP Security Agreement, the Pledge Agreements, the Mortgages, the Agency Account Agreements, Uniform Commercial Code financing statements and other equivalent registrations in the U.S., and any other collateral document required to be executed or delivered pursuant to, or in connection with, this Agreement or any other Loan Document (including without limitation, account receivables notices or any other notice or documents with respect to Eligible Foreign Accounts), to secure the repayment of the Obligations or to ensure the validity, attachment, perfection or priority of the Administrative Agent's lien in all of the Collateral, all in form and substance reasonably acceptable to the Administrative Agent.

"Senior Management" means with respect to the any of the Credit Parties or any of its Subsidiaries, its chairman, president, Financial Officer, chief executive officer, chief operating officer, directors or general counsel.

"SLR" means Crystal Financial LLC d/b/a SLR and its successors and permitted assigns.

"SLR Entity" shall mean SLR or any of its Affiliates.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the Term SOFR Administrator.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"SPC" has the meaning specified in Section 10.06(g).

"Specified Event of Default" means (i) any Event of Default arising under Sections 8.01(a), (b) (solely relating to a failure to comply with Sections 6.04(a), 6.04(b), 6.04(c), 6.15, 6.16 or 7.12), (d)(ii), (e), or (m), (ii) acceleration of the Obligation pursuant to Section 8.02 as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise) or (iii) Excess Availability is a negative amount.

"Specified Existing Debt" means all Indebtedness owing under that certain Credit Agreement, dated as of March 31, 2021, by and among the Borrower, the guarantors thereto, lenders party thereto and Citizens Bank, N.A., as administrative agent (as amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date).

"Specified Holders" means (a) each of the Persons that are holders of Capital Stock of Parent listed on Schedule 1.01B and (b) in the case of any Person specified in clause (a) above, (i) his or her or its executor, administrator, testamentary trustee, legatee or beneficiaries or (ii) a trust, the beneficiaries of which, or a corporation or partnership, the equity holders or partners of which, include only such Persons.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person; provided that, notwithstanding anything else herein to the contrary, TAPP Market Influencers, LLC and TAPP Influencers Corp. shall be deemed not to be Subsidiaries so long as (x) such entities continue to constitute "variable interest entities" and (y) no Credit Party owns any Capital Stock in TAPP Market Influencers, LLC or TAPP Influencers Corp. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Parent.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Borrowing" means a borrowing consisting of simultaneous Term Loans made by each of the Lenders pursuant to Section 2.01(a).

"Term Loan" means an advance made by any Lender under the Term Loan Facility.

"Term Loan Commitment" means, as to each Lender, its obligation to make Term Loans to the Borrower on the Closing Date pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 with respect to the Term Loans. As of the Closing Date, the Term Loan Commitments are \$20,000,000.

"Term Loan Facility" means (a) on the Closing Date, the aggregate amount of the Term Loan Commitments at such time and (b) thereafter, the aggregate principal amount of all Term Loans of all Lenders outstanding at such time.

"Term Loan Note" means a promissory note made by the Borrower in favor of a Lender evidencing the Term Loans made by such Lender, substantially in the form of Exhibit B-1.

"Term SOFR" means for any Determination Date, the Term SOFR Reference Rate for a tenor of three (3) months on the day (such day, the "Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Determination Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator.

"Term SOFR Adjustment" means 0.26161% per annum.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Threshold Amount" means \$500,000.

"Total Outstandings" means, without duplication, the sum of (a) the Total Term Loan Outstandings and (b) the Total Revolving Credit Outstandings.

"Total Revolving Credit Outstandings" means the aggregate Outstanding Amount of all Revolving Credit Loans.

"Total Term Loan Outstandings" means the aggregate Outstanding Amount of all Term Loans.

"Trade Date" has the meaning specified in Section 10.06(b)(i).

"True North Loyalty Entities" means (a) True North Loyalty, LLC, a Delaware limited liability company, (b) BXY Ventures LLC, a Nevada limited liability company, (c) Member Services, LLC, a Delaware limited liability company, (d) True Identity, LLC, a Delaware limited liability company, (e) ClickGen, LLC, a Delaware limited liability company, and (f) Project Peachtree, LLC, a Delaware limited liability company.

"True North Loyalty Sale" means the sale of the Capital Stock in (or all or substantially all of the assets of) the True North Loyalty Entities to an unaffiliated third-party purchaser.

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"United States" and "U.S." mean the United States of America.

"Unused Facility Fee" has the meaning specified in Section 2.07(a).

"Unused Revolving Credit Facility Amount" means the daily average amount by which (a) the Revolving Credit Commitments exceeds (b) the Total Revolving Credit Outstandings, subject to adjustment as provided in Section 2.14.

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e)(ii)(B)(III).

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Governing Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word " from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Credit Parties and their Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio, negative covenant or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio, negative covenant or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio, covenant or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, any lease that is treated as an operating lease for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Leases in the financial statements.

1.04 Rounding. Any financial ratios required to be maintained by any of the Credit Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day (and such extension of time shall be reflected in computing interest or fees, as the case may be).

1.06 Rates. Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, Adjusted Term SOFR, Term SOFR, any component definition thereof or rates referred to in the definition thereof or any alternative, successor or replacement rate thereto, including whether the composition or characteristics of any such alternative, successor or replacement rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as the Base Rate, Adjusted Term SOFR or Term SOFR prior to its discontinuance or unavailability. Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower (provided that, for the avoidance of doubt, nothing in this sentence shall modify or supersede the express terms of this Agreement and the other Loan Documents). Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, Adjusted Term SOFR or Term SOFR, in each case pursuant to the terms of this Agreement, and shall have no liability to any Credit Party, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II THE COMMITMENTS AND LOANS

2.01 Loans.

(a) Term Loans. Subject to the terms and conditions set forth herein and in reliance upon the representations and warranties of the Credit Parties contained herein, each Lender, severally and not jointly, agrees to make a single loan to the Borrower on the Closing Date in an aggregate amount equal to the amount of such Lender's Term Loan Commitment. Amounts borrowed under this Section 2.01(a) and repaid may not be reborrowed.

(b) Revolving Credit Loans. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, each Lender having a Revolving Credit Commitment severally and not jointly agrees to make its Applicable Percentage of Revolving Credit Loans to the Borrower from time to time, on any Business Day during the Revolving Credit Availability Period, in an aggregate amount equal to the lesser of (i) the amount of such Lender's Revolving Credit Commitment less such Lender's Applicable Revolving Credit Percentage of Revolving Credit Exposure, or (ii) such Lender's Applicable Revolving Credit Percentage of (A) the Borrowing Base (based upon the Borrowing Base Certificate delivered by the Borrower to the Administrative Agent pursuant to clause (ii) below) less (B) the Total Outstandings. Amounts borrowed under this Section 2.01(b) and repaid may be reborrowed. No Revolving Credit Loan shall be funded unless the following terms and conditions are satisfied or waived in writing by the Administrative Agent in its sole discretion with each Revolving Credit Borrowing:

(i) each of the conditions set forth in Section 4.02 shall have been satisfied as of, and on, the date of such Revolving Credit Borrowing; and

(ii) the proceeds of the Revolving Credit Loans are used for the purposes described in Section 6.11.

The request by the Borrower and acceptance by the Borrower of the proceeds of a Revolving Credit Loan shall be deemed to constitute, as of the date of the funding of such Revolving Credit Loan, (i) a representation and warranty by the Borrower that the conditions in this Section 2.01(b) are satisfied and (ii) a reaffirmation by each Credit Party of the granting and continuance of the Administrative Agent's Liens, on behalf of itself and the Secured Parties, pursuant to the Loan Documents.

2.02 Borrowings of Committed Loans.

(a) Each Borrowing shall be made upon the Borrower's irrevocable notice to the Administrative Agent via a Borrowing Request Notice appropriately completed and signed by a member of Senior Management of the Borrower, which may be given by any Electronic Medium. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. Eastern time two (2) Business Days prior to the requested date of any Borrowing. Each Borrowing Request Notice shall specify (i) the Borrower requesting such Borrowing and (ii) the requested date of the Borrowing (which shall be a Business Day) and the principal amount of Committed Loans to be borrowed. Only the Borrowing Request Notice relating to Loans on the Closing Date shall request the making of the Term Loan. The Borrower may not submit more than two (2) Borrowing Request Notices for Loans during any week except with the consent of the Administrative Agent in its sole discretion. Each Borrowing of any Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof.

(b) Following receipt of a Borrowing Request Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans. For each Borrowing, each Lender shall make the amount of its Committed Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. Eastern time (or such later time as may be agreed upon by a Lender and the Administrative Agent) on the Business Day specified in the applicable Borrowing Request Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Borrowing, Section 4.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent by transfer of such funds (such transfer to be initiated no later than 6:00 p.m. Eastern time) in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

2.03 Prepayments; Mandatory Repayments.

(a) Voluntary Prepayments of Loans.

(i) Revolving Loans may be borrowed, repaid and prepaid, and reborrowed, in each case without premium or penalty and otherwise on the terms and conditions set forth in this Agreement.

(ii) The Borrower may, upon notice to the Administrative Agent pursuant to a Prepayment Notice, at any time or from time to time voluntarily prepay Term Loans in whole or in part; provided that (i) the Borrower shall pay each Lender its Applicable Percentage of the Early Termination Premium, if applicable, on the amount prepaid concurrently with such prepayment, (ii) such notice must be received by the Administrative Agent not later than 2:00 p.m. Eastern time three (3) Business Days prior to any such date of prepayment, (iii) any prepayment of Term Loans shall be in a principal amount of \$500,000 or a whole multiple of \$500,000 in excess thereof; or, if less, the entire principal amount thereof then outstanding, and (iv) any prepayment of Term Loans shall be made with a commensurate pro rata reduction of the Revolving Credit Commitment in accordance with Section 2.04. Each such notice shall specify the date and amount of such prepayment of the Term Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term Loan shall be accompanied by the applicable Early Termination Premium, all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.04.

(b) Negative Excess Availability: Application of Reserved Cash; Release of Reserved Cash. Subject to Section 2.15, if for any reason at any time, Excess Availability is less than \$0, the Borrower shall immediately (but in any case no later than one (1) Business Day) repay all outstanding Revolving Credit Loans in an aggregate amount equal to such deficiency; provided, that if the principal amount of all Revolving Credit Loans have been reduced to zero following such repayment and a deficiency still exists, the Borrower shall immediately provide additional Reserved Cash to the Reserved Cash Account in such amount that would eliminate such deficiency completely.

Subject to the conditions listed herein, the Borrower may request that the Administrative Agent release Reserved Cash in the Reserved Cash Account to the Borrower in an amount not to exceed the lesser of (A) the amount of the then existing Reserved Cash Account, and (B) the difference between (1) an amount equal to one hundred percent (100%) of the then existing Borrowing Base (calculated on a *pro forma* basis after giving effect to such proposed release of Reserved Cash), less (2) the Total Outstandings (to the extent such difference under this clause (B) is a positive number). Each request to release Reserved Cash shall be made upon the Borrower's irrevocable notice to the Administrative Agent via a Reserved Cash Release Notice appropriately completed and signed by a member of Senior Management of the Borrower, which may be given by any Electronic Medium. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. Eastern time two (2) Business Days prior to the requested date of such release of Reserved Cash. Any such request to release Reserved Cash shall be subject to the following conditions precedent (the "Cash Release Conditions"): (I) no Default or Event of Default shall have occurred or be existing on the date of and after giving effect to the release of any Reserved Cash; (II) concurrently with such request, the Borrower shall deliver to the Administrative Agent an updated Borrowing Base Certificate, which shall set forth the Borrowing Base based on the balances as of the close of business on the prior Saturday and calculated on a *pro forma* basis after giving effect to such proposed release of Reserved Cash, and (III) such request shall specify the amount of Reserved Cash that the Borrower is requesting be released, and shall be accompanied by the calculations and such other information that Administrative Agent shall reasonably request to confirm compliance with the terms of this paragraph. Upon satisfaction of the Cash Release Conditions, the Administrative Agent shall arrange for the release of the requested Reserved Cash to the Borrower's operating account. The provisions of this Section 2.03(b) shall not be deemed a waiver in any respect of any Event of Default relating to a breach of Section 7.12(a).

(c) Asset Dispositions. Within two (2) Business Days of receipt by any Credit Party of Net Cash Proceeds (so long as no Event of Default shall have occurred and be continuing, in an amount in excess of \$150,000), from any asset disposition of Collateral (excluding dispositions of Inventory in the ordinary course of business), the Borrower shall prepay the Obligations in an aggregate amount equal to the sum of (i) 100% of such Net Cash Proceeds so received plus (ii) the applicable Early Termination Premium (such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 2.05(b) and shall result in a pro rata repayment of the Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause); provided, that (A) (1) any Net Cash Proceeds received by any Credit Party as a result of the AdParlor Sale (" AdParlor Sale Proceeds") may, at the option of the Borrower, be applied on or prior to the first anniversary of the Closing Date to (x) make a repayment of outstanding Revolving Credit Loans (without any reduction of the Revolving Credit Commitments) or (y) make a pro rata repayment of the Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause (y)) (in the case of clauses (x), without any Early Termination Premium being payable in connection therewith and in the case of clause (y), with an Early Termination Premium being payable on AdParlor Sale Proceeds in excess of \$10,000,000), (2) if no Revolving Credit Loans are outstanding at such time (including after giving effect to any prepayment made pursuant to the foregoing clauses (A)(1)(x) or (y)), then any such excess AdParlor Sale Proceeds may be retained by such Credit Party and (3) if an Event of Default has occurred and is continuing at the time of such prepayment, then the amount of AdParlor Sale Proceeds that may be applied or otherwise retained pursuant to this clause (A) shall not exceed \$10,000,000 (with any amount of AdParlor Sale Proceeds in excess of \$10,000,000 being required to be applied pursuant to this Section 2.03(c) without giving effect to this clause (A)) and (B) Net Cash Proceeds received by any Credit Party as a result of the True North Loyalty Sale after the Closing Date shall be used by the Borrower to repay the Total Revolving Credit Outstandings (without a permanent reduction of the Revolving Credit Commitment); provided, further, that so long as no Event of Default shall have occurred and is continuing, at the election of the Borrower, any Credit Party may reinvest any Net Cash Proceeds that are subject to this Section 2.03(c) (other than Net Cash Proceeds received from the sale of (i) the Capital Stock of the Borrower or its Subsidiaries or (ii) all or substantially all or a material portion of the assets of any Credit Party or any business line, unit or division of a Credit Party or its Subsidiaries) in assets used or useful in the business of any other Credit Party within six (6) months after the date of such asset disposition (or, if within such six-month period, Parent or any of its Subsidiaries enters into a binding commitment to so reinvest such Net Cash Proceeds, then such amounts shall be required to be reinvested within three (3) months following the initial six-month period during which Parent or any of its Subsidiaries so committed to such plan of reinvestment), or, in each case, such longer period of time as agreed in writing by the Administrative Agent's in its sole discretion, the consummation of such reinvestment to be certified by the Borrower in writing to the Administrative Agent within such period, as extended hereunder; provided, further, that any Net Cash Proceeds not so reinvested within such six-month period (or, to the extent applicable, such nine-month period) shall be immediately applied (together with the Early Termination Premium) to the prepayment of the Obligations as set forth in Section 2.05(c).

(d) Casualty Events and Extraordinary Receipts. Within two (2) Business Days of receipt by any Credit Party of Net Cash Proceeds from any Casualty Event with respect to Collateral or any Extraordinary Receipts (in each case of such Net Cash Proceeds or Extraordinary Receipts, so long as no Event of Default shall have occurred and be continuing, in an amount in excess of \$50,000), the Borrower shall prepay the Obligations in an amount equal to the sum of (i) 100% of (A) Net Cash Proceeds received by any Credit Party from Casualty Events with respect to Collateral and (B) all Extraordinary Receipts plus (ii) the applicable Early Termination Premium (in each case, such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 2.05(c) and shall result in a pro rata repayment of Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause); provided that so long as no Event of Default shall have occurred and is continuing, at the election of the Borrower, any Credit Party may reinvest all or any portion of such Net Cash Proceeds and/or Extraordinary Receipts, as applicable, in assets used or useful in the business of any other Credit Party within six (6) months after the date of such Casualty Event or receipt of such Extraordinary Receipt (or, if within such six-month period, Parent or any of its Subsidiaries enters into a binding commitment to so reinvest such Net Cash Proceeds and/or Extraordinary Receipts, as applicable, then such amounts shall be required to be reinvested within three (3) months following the initial six-month period during which Parent or any of its Subsidiaries so committed to such plan of reinvestment), or, in each case, such longer period of time as agreed in writing by the Administrative Agent's in its sole discretion and the consummation of such reinvestment to be certified by the Borrower in writing to the Administrative Agent within such period; provided, however, that any Net Cash Proceeds not so reinvested within such six-month period (or, to the extent applicable, such 12-month period) shall be immediately applied (together with the Early Termination Premium) to the prepayment of the Obligations as set forth in Section 2.05(c).

(e) Issuance of Equity. Within two (2) Business Days of the sale or issuance by any Credit Party or any Subsidiaries (other than any sale or issuance to a Credit Party) of any its Capital Stock, the Borrower shall prepay the Obligations in an amount equal to the sum of (i) 100% of such Net Cash Proceeds so received plus (ii) the applicable Early Termination Premium (such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 2.05(c) and shall result in a pro rata repayment of Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause).

(f) Incurrence of Indebtedness. Immediately upon the incurrence or issuance by any Credit Party or any of its Subsidiaries of any Indebtedness (other than Indebtedness permitted pursuant to Section 7.02), the Borrower shall prepay the Obligations in an amount equal to the sum of (i) 100% of such Net Cash Proceeds so received plus (ii) the applicable Early Termination Premium (such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 8.03).

(g) Mandatory Prepayment of Revolving Loans. If for any reason, Total Revolving Credit Outstandings exceeds the Revolving Credit Commitments, including without limitation, as a result of Section 2.04(b), then the Borrower shall immediately prepay Revolving Credit Loans in an aggregate amount equal to such excess.

(h) Mandatory Prepayments Related to Cash Dominion Trigger Period. Upon the occurrence and during the continuance of a Cash Dominion Trigger Period, the Borrower shall prepay the principal amount of Revolving Credit Loans outstanding, if any, to the extent required by Section 6.16(b) hereof.

2.04 Termination or Reduction of Commitments .

(a) Term Loan Facility. The aggregate Term Loan Commitments of the Lenders on the Closing Date shall be automatically and permanently reduced to zero upon the making of the Term Loans on the Closing Date.

(b) Revolving Credit Facility. The Borrower may, upon notice to the Administrative Agent from the Borrower, terminate the Revolving Credit Commitments, or from time to time permanently reduce the Revolving Credit Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrower shall pay the applicable Early Termination Premium in connection with such termination or reduction as set forth in Section 2.07(d), (iv) the Borrower shall not terminate or reduce the Revolving Credit Commitments if, after giving effect to any concurrent prepayment or repayment of the Revolving Credit Loans in accordance with Section 2.03, the sum of the Total Revolving Credit Outstandings exceeds the Revolving Credit Commitments, and (v) any reduction or termination of Revolving Credit Commitment shall be accompanied by a pro rata repayment of the Term Loan in accordance with Section 2.03(a)(ii). The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Revolving Credit Commitments. Any reduction of the Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Lender according to its Applicable Revolving Credit Percentage. All fees accrued until the effective date of any termination of the Revolving Credit Commitments, together with the applicable Early Termination Premium, shall be paid on the effective date of such termination.

2.05 Repayment of Loans; Application of Payments.

(a) Maturity. In addition to the repayment of the Loans pursuant to Section 2.03, the Borrower shall repay to the Lenders on the Maturity Date, (i) the aggregate principal amount of the Term Loans on such date, together with all other Obligations in respect thereof, (ii) the aggregate principal amount of Revolving Credit Loans outstanding on such date, together with all other Obligations in respect thereof, and (iii) all other Obligations. The Borrower hereby unconditionally promises to pay to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent.

(b) Application of Payments. Subject to clause (c) below, repayments required pursuant to Sections 2.03(b) through (f) shall be applied to the Obligations as follows:

(i) First, to pay outstanding Protective Advances funded by the Administrative Agent;

(ii) Second, to pay Obligations owing to the Administrative Agent and Lenders constituting (a) indemnities and expenses then due and payable under this Agreement and the other Loan Documents and (b) the fees then due and payable under Section 2.07 (b), ratably among such Persons in proportion to the respective amounts described in this clause payable to them;

(iii) Third, to pay Obligations constituting accrued and unpaid interest and fees (including without limitation, the Early Termination Premium) due and payable to, the Lenders by the Borrower under this Agreement and the other Loan Documents ratably among them in proportion to the respective amounts described in this clause Third payable to them;

(iv) Fourth, to repay principal on the Term Loans and Revolving Credit Loans ratably among the holders thereof in proportion to the respective amounts described in this clause Fourth payable to them; and

(v) Fifth, thereafter to the Borrower's operating account.

All payments applied to the Loans pursuant to this Section 2.05 shall (x) be applied to the Loans owing to the Lenders in accordance with their respective Applicable Percentages, (y) be subject to any applicable Early Termination Premium, and (z) be accompanied by accrued interest to the extent required by Section 2.06 and Breakage Costs to the extent required by Section 3.04.

The Administrative Agent reserves the right in its Permitted Discretion at any time to repay the outstanding Obligations with any or all of the Reserved Cash or funds held in the Reserved Cash Account and in such event, Reserved Cash or funds held in the Reserved Cash Account shall be applied as follows: First, to repay the principal balance of the Revolving Credit Loans (but so long as no Default or Event of Default shall have occurred and be continuing at such time, without any permanent reduction of Revolving Credit Commitments); and Second, to repay the principal balance of the Term Loans, subject to any applicable Early Termination Premium and, in each case, shall be applied to the principal balance of the Loans based on the pro rata share of each Lender (for the avoidance of doubt, the remittance of additional Reserved Cash pursuant to Section 2.03(b) above shall not be deemed a prepayment for the purposes of Section 2.03(b) and any applicable Early Termination Premium unless and until such Reserved Cash is applied to prepay the Term Loans or results in a Revolving Credit Commitment reduction). The Administrative Agent shall provide notice of such application of Reserved Cash (which notice may be same day) in writing to the Borrower, unless the Administrative Agent determines in its Permitted Discretion that the provision of such notice would impair the collectability or repayment of the Obligations.

(c) Following the occurrence and during the continuance of an Event of Default, or during the continuance of a Cash Dominion Trigger Event, the Administrative Agent may (and at the direction of the Required Lenders, shall) apply all funds transferred and credited to the Collection Account (or otherwise on account of the payment of the Obligations) to the Obligations in accordance with Section 8.03.

2.06 Interest.

(a) Subject to the provisions of subsection (b) below, each Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted Term SOFR for such Interest Period plus the Applicable Rate.

(b) Following the occurrence and during the continuance of an Event of Default, the Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws unless otherwise agreed to in writing by the Administrative Agent.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest accruing at the Default Rate shall be due and payable on demand by the Administrative Agent. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.07 Fees.

(a) The Borrower shall pay to the Administrative Agent, for the ratable benefit of the Lenders (including SLR and its Affiliates), a one-time closing fee (the "Closing Fee") in an aggregate amount equal to \$750,000. The Closing Fee shall be fully earned and due and payable in full upon the Closing Date.

(b) The Borrower shall pay an aggregate annual agency fee (the "Agency Fee") of \$50,000 to the Administrative Agent, for the ratable benefit of the Administrative Agent and its Affiliates, in advance on the Closing Date and on each anniversary thereof, until the Obligations have been paid and satisfied in full. The Agency Fee shall be fully earned upon becoming due and payable.

(c) The Borrower shall pay to the Administrative Agent for the account of the Lenders in accordance with their Applicable Revolving Credit Percentages, an unused facility fee (the "Unused Facility Fee") equal to 0.50% ~~times~~ the Unused Revolving Credit Facility Amount for the applicable calendar month for which such Unused Facility Fee is due. The Unused Facility Fee shall accrue at all times on and following the Closing Date so long as the Revolving Credit Commitments are outstanding, including at any time during which one or more of the conditions in Section 4.02 is not met, and shall be due and payable monthly in arrears on the first day of each calendar month, commencing with the first such date to occur after the Closing Date, and on the Maturity Date. The Unused Facility Fee shall be calculated monthly in arrears and shall be fully earned upon becoming due and payable.

(d) Upon the occurrence of an Early Termination Premium Trigger Event, the Borrower agrees to pay to the Administrative Agent, for the ratable benefit of the Lenders, the Early Termination Premium. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, it is understood and agreed that if the Obligations are accelerated as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise), the Early Termination Premium, if any, determined as of the date of acceleration, will also be due and payable and will be treated and deemed as though the Term Loans were prepaid and the Revolving Credit Commitments were terminated as of such date and shall constitute part of the Obligations for all purposes herein. Any Early Termination Premium payable in accordance with this Section 2.07(d) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Early Termination Premium Trigger Event, and each of the Credit Parties agree that it is reasonable under the circumstances currently existing. The Early Termination Premium shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH OF THE CREDIT PARTIES EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE FEE IN CONNECTION WITH ANY SUCH ACCELERATION. Each of Credit Party expressly agrees that (A) the Early Termination Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (B) the Early Termination Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (C) there has been a course of conduct between the Lenders and the Credit Parties giving specific consideration in this transaction for such agreement to pay the Early Termination Premium, (D) the Credit Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.07(d), (E) the agreement of the Credit Parties to pay the Early Termination Premium is a material inducement to the Lenders to provide the Commitments and make the Loans, and (F) the Early Termination Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of any such Early Termination Premium Trigger Event.

(e) Each Borrower's obligation to pay the foregoing fees described in this Section 2.07 will not be subject to counterclaim or setoff for, or be otherwise affected by, any claim or dispute such Borrower may have. All of the fees described above in this Section 2.07 shall be nonrefundable for any reason whatsoever and shall be in addition to any other fees, costs and expenses payable pursuant to this Agreement and the other Loan Documents.

2.08 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.09 Evidence of Debt. The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

2.10 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 1:00 p.m. Eastern time on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 1:00 p.m. Eastern time shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of Adjusted Term SOFR and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to such Loans made. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(i) Payments by Borrower; Presumptions by Administrative Agent . Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of Adjusted Term SOFR and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Loans set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds promptly (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of each of the Lenders hereunder to make Term Loans and Revolving Credit Loans, and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.11 Sharing of Payments by Lenders . If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans to any assignee or participant, other than to the Borrower or any Subsidiary of the Borrower (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.12 Collateral and Guarantees.

(a) Collateral. The Loans and the other Obligations shall be secured by valid, first priority (subject to Permitted Liens), perfected and enforceable Liens in favor of the Administrative Agent, for the benefit of the holders of the Obligations, in all of the Collateral subject to the terms of this Agreement and the Security Documents.

(b) Guarantees. Payment of the Loans and the other Obligations shall be unconditionally guaranteed by each Guarantor subject to the terms of the Guaranty.

(c) Further Assurances. Each Credit Party covenants and agrees that it shall comply with all terms and conditions of each of the Security Documents and that such Credit Party shall at any time and from time to time at the request of the Administrative Agent or the Required Lenders, execute and deliver such instruments and documents and do such acts and things as the Administrative Agent may reasonably request in order to provide for, perfect or protect the Lien of the Administrative Agent in the Collateral.

2.13 [Reserved].

2.14 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Committed Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.15 Protective Advances.

(a) The Administrative Agent shall be authorized, in its discretion, at any time, whether or not a Default or Event of Default exists or any of the conditions in Section 4.02 are not satisfied, to make loans, disbursements and advances (" Protective Advances") to the Borrower, on behalf of all Lenders, that the Administrative Agent, in its Permitted Discretion, deems are necessary or desirable (i) to preserve or protect any Collateral or the Credit Parties' business operations, (ii) to enhance the collectability or repayment of the Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Credit Parties pursuant to the terms of this Agreement, including payments of principal, interest, fees, premiums (including, without limitation, any Early Termination Premium), reimbursable expenses (including costs, fees and expenses as described in Section 10.04) and other sums payable under the Loan Documents; provided that prior to an Event of Default and absent exigent circumstances, the Administrative Agent shall use reasonable efforts to notify the Borrower after paying any such amount or taking any such action. All Protective Advances shall bear interest at the Base Rate (or, during such time as an Event of Default has occurred and is continuing, the Default Rate). All Protective Advances shall be Obligations secured by the Collateral, shall constitute Loans and shall be payable by the Borrower on demand by the Administrative Agent. Any funding of Protective Advances shall not constitute a waiver by the Administrative Agent or the Lenders of any Event of Default. Other than with respect to the notice and consultation rights expressly provided above, in no event shall the Borrower or any other Credit Party be deemed to be a beneficiary of this Section nor authorized to enforce any of its terms.

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. Each Lender shall transfer (a "Transfer") the amount of such Lender's Applicable Percentage of the outstanding principal amount of the applicable Protective Advance with respect to such purchased interest and participation promptly when requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, but in any case not later than 1:00 p.m., Eastern time, on the Business Day notified (if notice is provided by the Administrative Agent prior to 12:00 p.m. Eastern time), and otherwise on the immediately following Business Day (the "Transfer Date"). Transfers may occur during the existence of a Default or Event of Default. If any such amount is not transferred to the Administrative Agent by any Lender on such Transfer Date, the Administrative Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon, for each day from and including the Transfer Date to but excluding the date of payment to the Administrative Agent, at Adjusted Term SOFR. From and after the date, if any, on which any Lender is required to fund, and funds, its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

2.16 Loan Account.

(a) The Administrative Agent shall maintain in accordance with its usual and customary practices an account or accounts (" Loan Account") evidencing the Indebtedness of the Borrower resulting from each Loan from time to time. Any failure of the Administrative Agent to record anything in the Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of the Borrower to pay any amount owing hereunder.

(b) Entries made in the Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies the Administrative Agent in writing within thirty (30) days after receipt or inspection that specific information is subject to dispute.

(c) The Administrative Agent is authorized to, and at its sole election may, charge to the Loan Account on behalf of the Borrower and cause to be paid all fees, expenses, charges, costs and interest and principal, other than principal of the Committed Loans, then due and payable by the Borrower under this Agreement or any of the other Loan Documents, even if the amount of such charges would cause Excess Availability to be less than \$0. At the Administrative Agent's option and to the extent permitted by law, any charges so made shall constitute part of the Obligations hereunder. The Administrative Agent shall provide reasonable notice to the Borrower of any such charges.

2.17 Reserves and Eligibility Criteria. The Administrative Agent may, from time to time in the exercise of its Permitted Discretion, (a) establish, modify or eliminate Reserves and (b) adjust the eligibility criteria or establish new eligibility criteria with respect to components of the Borrowing Base; provided that, notwithstanding the foregoing or anything contrary in this Agreement, no Reserves shall be established or changed and no modifications to eligibility criteria or standards made, in each case, except upon not less than three (3) Business Days' prior written notice to the Borrower, which notice shall include a reasonably detailed description of such Reserve being established or the modification to eligibility criteria or standards being made (during which period (i) the Administrative Agent shall, if requested, discuss any such Reserve, change or modification with the Borrower and (ii) the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve, change or modification thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change or modification thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent); provided, further, that such notice period shall not apply (x) in such circumstances where the Administrative Agent determines in its Permitted Discretion that the provision of such notice would impair the collectability or repayment of the Obligations (in which case the Administrative Agent shall notify the Borrower as promptly as such circumstances permit) and (y) to changes to Reserves solely for purposes of correcting mathematical or clerical errors, it being understood that no Default or Event of Default shall be deemed to result therefrom, if applicable, for a period of one (1) Business Day.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Credit Party, then the Administrative Agent or such Credit Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Credit Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment to a Recipient, then (A) the Credit Party or Administrative Agent shall withhold or make such deductions as are determined by the Credit Party or Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Credit Party or Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Credit Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment to a Recipient, then (A) such Credit Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Credit Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Credit Parties. Without limiting the provisions of subsection (a) above, the Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse the Administrative Agent for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Credit Parties shall, and do hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Credit Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (y) the Administrative Agent and the Credit Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Credit Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Credit Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Credit Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Credit Parties shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders: Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Credit Party is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax (or any substantively comparable subsequent versions thereof or successors thereto);

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed copies of IRS Form W-8ECI (or any substantively comparable subsequent versions thereof or successors thereto);

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code a certificate substantially in the form of Exhibit G (a "U.S. Tax Compliance Certificate"), as applicable and duly executed copies of IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or any substantively comparable subsequent versions thereof or successors thereto), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto), a U.S. Tax Compliance Certificate in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(E) On or prior to the date it becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower either (i) a PDF copy of IRS Form W-9, or (ii) if the Administrative Agent is not a U.S. Person (a) two duly completed originals of IRS Form W-8ECI with respect to payments to be received under the Loan Documents for its own account and (b) with respect to payments received on account of any Lender, a PDF copy of IRS Form W-8IMY evidencing its agreement with the Borrower to be treated as a U.S. Person for U.S. federal withholding purposes and assuming primary responsibility for U.S. federal income tax withholding. Notwithstanding anything to the contrary in this Section 3.01(e)(ii)(E), the Administrative Agent shall not be required to deliver any documentation pursuant to this Section 3.01(e)(ii)(E) that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Credit Party or with respect to which any Credit Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Credit Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Credit Party, upon the request of the Recipient, agrees to repay the amount paid over to the Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Credit Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Credit Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Inability to Determine Rates; Illegality

(a) If the Administrative Agent determines (which determination shall be conclusive absent manifest error) in connection with any request for a Loan that (a) adequate and reasonable means do not exist for determining Adjusted Term SOFR or (b) Adjusted Term SOFR (or such replacement convention) with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Loans at an interest rate based on Adjusted Term SOFR (or such replacement convention) shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice and during such time, all such outstanding Loans shall bear interest at the Base Rate plus the Applicable Rate (or at the Default Rate if an Event of Default has occurred that is continuing). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of Loans bearing interest at Adjusted Term SOFR (or such replacement convention) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Loans bearing interest at the Base Rate plus the Applicable Rate (or at the Default Rate if an Event of Default has occurred that is continuing) in the amount specified therein.

(b) If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted in writing that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain, fund or charge interest with respect to any Loan, or to determine or charge interest rates, in each case, based upon Adjusted Term SOFR, or to give effect to its obligations as contemplated hereby with respect to such Loan, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or continue Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Until such circumstances giving rise to the determination no longer exist, as set forth in a written notice provided by such Lender to the Administrative Agent and the Borrower, all outstanding Loans of such Lender and Loans thereafter made by such Lender shall bear interest at the Base Rate plus Applicable Rate plus 2.00% per annum (or at the Default Rate if an Event of Default has occurred that is continuing) in the amount specified therein.

3.03 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition (other than any condition related to Taxes), cost or expense affecting this Agreement or Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, by an amount that such Lender deems to be material, of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, by an amount that such Lender deems to be material, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), by an amount that such Lender deems to be material, then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.04 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of (a) any continuation, payment or prepayment of any Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, or automatic, by reason of acceleration or otherwise); (b) any failure by a Credit Party (for a reason other than the failure of such Lender to make a Loan) to prepay or borrow any Loan on the date or in the amount notified by the Borrower or (c) any assignment of a Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13, including any loss of anticipated profits but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained (all of such losses, costs or expenses, together with any administrative fees referred to in the following sentence, are referred to herein collectively as the "Breakage Costs"). The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.04, each Lender shall be deemed to have funded each Loan made by such Lender through a matching deposit for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

3.05 Mitigation Obligations; Replacement of Lenders .

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.03, or requires a Credit Party to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.03, then at the request of the Borrower such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.03, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.03, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender as the case may be (it being understood that the Borrower shall be given a reasonable opportunity to reimburse such costs or expenses). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.03, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.05(a), the Borrower may replace such Lender in accordance with Section 10.13.

3.06 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder and resignation of the Administrative Agent.

ARTICLE IV CONDITIONS PRECEDENT TO LOANS

4.01 Conditions to the Closing Date. The obligation of each Lender to make its initial Loans hereunder is subject to satisfaction of the following conditions precedent to the Administrative Agent satisfaction:

(a) The Administrative Agent receipt of the following, each of which shall be originals or facsimile or other electronic image transmission (e.g., "PDF" or "TIF" via electronic mail) (followed promptly by originals) unless otherwise specified, each properly executed by a member of the Senior Management of the signing Credit Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) (A) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Credit Parties, and (B) executed counterparts of each Security Document sufficient in number for distribution to the Administrative Agent and the Credit Parties, and an executed Note for each Lender who requests a Note;

(ii) an officer's certificate of each Credit Party executing a Loan Document, (A) certifying and attaching true, correct and complete copies of: (1) the certificate of formation, certificate of incorporation, articles of incorporation (or such equivalent thereof) of such Credit Party, and, where applicable, certified as of a recent date from the Secretary of State (or applicable Governmental Authority) of the jurisdiction in which such Credit Party is incorporated or formed, (2) the by-laws, limited liability company agreement, articles of association, partnership agreement or other applicable Governing Document of such Credit Party, and (3) the resolutions or votes of the board of directors or board of managers or partners (or equivalent thereof) of such Credit Party, authorizing such Credit Party's entry into the Loan Documents to which it is a party; and (B) certifying the incumbency of members of the Senior Management of such Credit Party authorized to act in connection with this Agreement and the other Loan Documents to which such Credit Party is a party and providing a specimen signature of such members of the Senior Management of such Credit Party who will be signing Loan Documents on the Closing Date and thereafter;

(iii) such documents and certifications as the Administrative Agent may require to evidence that each Credit Party executing a Loan Document is validly existing and in good standing (where applicable) in its jurisdiction of incorporation or formation, as applicable;

(iv) a favorable legal opinion of Willkie Farr & Gallagher LLP, special New York counsel to the Credit Parties, addressed to the Administrative Agent and each Lender, as to matters concerning the Credit Parties and the Loan Documents as the Administrative Agent may reasonably request; and

(v) a certificate of a member of the Senior Management of the Borrower certifying that (1) the condition specified in Sections 4.02(b) has been satisfied, (2) there has been no event or circumstance since December 31, 2023 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (3) all consents, licenses, and approvals required in connection with the execution, delivery and performance by each Credit Party and the validity against each Credit Party of the Loan Documents to which such Credit Party is a party have been obtained.

(b) The Administrative Agent shall have received duly executed Agency Account Agreements, signed by each of the applicable parties thereto, for each deposit account or securities account required to be subject to an Agency Account Agreement pursuant to the terms of Section 6.16 hereof.

(c) The Administrative Agent shall have received a duly completed Borrowing Base Certificate together with such supporting materials as requested by the Administrative Agent, dated as of the Closing Date, demonstrating that Excess Availability is equal to or greater than \$3,500,000 more than the greater of (i) \$3,000,000 and (ii) 7.5% of the Line Cap as of the Closing Date after giving effect to (A) the funding of the Term Loan hereunder and (B) the consummation of the transactions and payment of all fees and expenses in connection therewith, with a certification that all accounts payable, lease payments, payments due under Indebtedness (other than the Obligations) and taxes, in each case which are due and payable at such time have been paid current and excluding good faith disputes and any other items disclosed to the Administrative Agent in writing prior to the Closing Date and approved by the Administrative Agent.

(d) The Administrative Agent shall have received certificates of insurance from an independent insurance broker naming the Administrative Agent as additional insured or lender's loss payee thereunder, identifying insurers, types of insurance, insurance limits, and policy terms, and otherwise describing the insurance obtained in accordance with the provisions of this Agreement and the other Loan Documents, which shall be in amounts, types and terms and conditions reasonably satisfactory to the Administrative Agent.

(e) The Security Documents shall be effective to create in favor of the Administrative Agent a legal, valid and enforceable first priority security interest in and Lien upon the Collateral.

(f) The Administrative Agent shall have received from each Credit Party executing a Loan Document, a completed and executed Closing Date Perfection Certificate and the results of UCC and intellectual property searches with respect to the Collateral, indicating no Liens other than Permitted Liens and otherwise in form and substance reasonably satisfactory to the Administrative Agent.

(g) The Administrative Agent shall have received a payoff letter in form and substance satisfactory to the Administrative Agent evidencing that the Specified Existing Debt has been or concurrently with the Closing Date shall be repaid in full, together with such other financing statement terminations, notices of termination and releases, requested by the Administrative Agent.

(h) The Administrative Agent shall have received an officer's certificate of the Borrower dated as of the Closing Date and signed by a Financial Officer as to the Solvency of the Credit Parties and their Subsidiaries, on a consolidated basis, immediately after giving effect to the Loans hereunder and the other transactions contemplated hereby occurring on the Closing Date.

(i) The Administrative Agent shall have received a business plan and integrated multi-year projections of the Parent and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Parent and the other Credit Parties, in form and substance acceptable to the Administrative Agent, of (i) Excess Availability and (ii) consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries through the Fiscal Year ending December 31, 2023 and 2024 on a month-by-month basis and quarterly for each Fiscal Year thereafter through and including the Fiscal Year ending December 31, 2028.

(j) The Administrative Agent shall have been satisfied with results of all business and legal due diligence, including, without limitation:

(i) the capital structure of the Credit Parties and their Affiliates;

(ii) the results of commercial finance examinations (including a "bring down" commercial field exam);

(iii) the financial statements and projections referred to in Section 5.02;

(iv) all background checks on Senior Management, documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation, in each case, to the Administrative Agent's reasonable satisfaction; and

(v) to the extent a Credit Party constitutes a "legal entity customer" under the Beneficial Ownership Regulation and to the extent requested by any Lender, a completed Beneficial Ownership Certification in relation to each such Credit Party.

(k) The Administrative Agent shall have received evidence to its satisfaction of the closure of all of the Credit Parties' bank accounts other than those listed on Schedule 10 to the Closing Date Perfection Certificate.

(l) [Reserved].

(m) The Administrative Agent shall have received (i) an initial Borrowing Request Notice and disbursement instructions from the Borrower, indicating how the proceeds of the Term Loans are to be disbursed and (ii) a sources and uses and funds flow memorandum, in each case, in form, scope and substance reasonably satisfactory to the Administrative Agent.

(n) Any fees required to be paid under the Loan Documents on or before the Closing Date shall have been paid.

(o) The Borrower shall have paid out of the proceeds of the initial funding of the Term Loans all fees, charges and disbursements of counsel to the Administrative Agent, the Lenders and the Arranger to the extent invoiced prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent, the Lenders and the Arranger).

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or reasonably acceptable or satisfactory to such Person unless the Administrative Agent shall have received notice from such Person prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Loans. The obligation of each Lender to honor any Borrowing Request Notice is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Credit Party contained in Article V and any other Loan Document, shall be true and correct in all material respects (but without any duplication of any materiality qualifications) on and as of the date of such Loans, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (but without any duplication of any materiality qualifications) as of such earlier date, and except that for purposes of Section 4.02, the representations and warranties contained in Section 5.02 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively of Section 6.04.

(b) No Default or Event of Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds thereof (including, without limitation, as to Section 7.12).

(c) The Borrower shall have delivered to the Administrative Agent a Borrowing Request Notice in accordance with the requirements hereof and a Borrowing Base Certificate (such Borrowing Base Certificate to be the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.04(c) modified to reflect Total Outstandings on such date).

Each Borrowing Request Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a), (b), and (c) have been satisfied on and as of the date of the applicable Loan.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each Credit Party signatory hereto represents and warrants to the Lenders and the Administrative Agent for itself and on behalf of its Subsidiaries as follows:

5.01 Corporate Authority, Etc.

(a) **Existence, Qualification and Power.** Each Credit Party and each Subsidiary thereof (i) is duly organized, incorporated or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (ii) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (iii) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (a)(ii) and (iii) of this Section 5.01, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) **Authorization; No Contravention.** The execution, delivery and performance by each Credit Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (i) contravene the terms of any of such Person's Governing Documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (other than a Permitted Lien) under, or require any payment to be made under (A) any Material Agreement to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Law; except in each case referred to in clauses (b)(ii) and (iii) of this Section 5.01, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) **Governmental Authorization; Other Consents.** Except as could not reasonably be expected to result in a Material Adverse Effect, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Loan Document, (ii) the grant by any Credit Party of the Liens granted by it pursuant to the Security Documents, (iii) the perfection or maintenance by any Credit Party of the Liens created under the Security Documents (including the first priority nature thereof), or (iv) the exercise of the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents, except, in each case, for (x) approvals, consents, exemptions, authorizations, actions, notice and filing which have been duly obtained, taken, given or made and are in full force and effect and (y) filings which are necessary to perfect the security interests created under the Security Documents.

(d) **Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Credit Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Credit Party, enforceable against each Credit Party that is party thereto in accordance with its terms, subject to applicable Debtor Relief Laws and general principles of equity relating to enforceability (whether considered in a proceeding at law or in equity) but such principles do not make the remedies afforded by the Loan Documents inadequate for the practical realization of the principal benefits intended to be provided thereby.

5.02 Financial Statements; Projections.

(a) There has been furnished to the Administrative Agent (for distribution to each of the Lenders) a consolidated balance sheet of the Parent and its Subsidiaries as of December 31, 2023 in draft form, which is in form and substance satisfactory to the Administrative Agent, and a consolidated statements of income or operations, cash flows and shareholders' equity of the Parent and its Subsidiaries for the Fiscal Year then ended, which financial statements (i) have been prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and the results of operations for the Fiscal Year then ended and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as expressly noted therein, and (iii) show all material Indebtedness and other liabilities, direct or contingent, of the Parent and its Subsidiaries as of the date thereof, including liabilities for all federal and other material Taxes, material commitments and Indebtedness.

(b) There has been furnished to the Administrative Agent (for distribution to each of the Lenders) an unaudited consolidated balance sheet of the Parent and its Subsidiaries as of the close of the Fiscal Month ending January 31, 2024, and unaudited consolidated statements of income or operations and cash flow of the Parent and its Subsidiaries as of the close of such Fiscal Month, in each case, certified by a Financial Officer of the Parent. Such balance sheet and statement of income or operations and cash flows have been prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and the results of operations, cash flows and changes in shareholders' equity for the period covered thereby, subject to the absence of foot notes and to normal year-end audit adjustments. There are no contingent liabilities of the Parent or any Subsidiary as of such date involving material amounts, known to the officers of the Parent or any Subsidiary, required to be disclosed in such balance sheet and the notes related thereto in accordance with GAAP which were not disclosed in such balance sheet and the notes related thereto.

(c) There has been furnished to the Administrative Agent (for distribution to each of the Lenders) integrated multi-year projections of (x) Excess Availability and (y) the consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries for each Fiscal Month following the Closing Date through and including the Fiscal Year ending December 31, 2024 and for each Fiscal Quarter thereafter. Such projections have been prepared on a *pro forma* basis after giving effect to the transactions contemplated hereby. Such projections were prepared in good faith and based on assumptions that are believed in good faith to be reasonable in light of the facts and circumstances known on and as of the Closing Date (it being understood and agreed that such projections are as to future events and are not to be viewed as facts, subject to significant uncertainties and contingencies, many of which are beyond control, no assurance can be given that the projections will be realized, and actual results may materially differ from the projections).

5.03 Solvency. After giving effect to the Loans hereunder, the other transactions contemplated hereby, the Credit Parties and their Subsidiaries, on a consolidated basis, are Solvent.

5.04 No Material Adverse Change. Since December 31, 2023, there has occurred no Material Adverse Effect.

5.05 Ownership of Property; Liens. Each of the Credit Parties and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for any defects in such title in fee simple as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Credit Parties and their Subsidiaries is subject to no Liens, other than Permitted Liens.

5.06 Franchises, Patents, Copyrights, etc. Each Credit Party possesses or has a license or other right to use all Intellectual Property reasonably necessary for the conduct of its business without known material infringement or misappropriation of any rights of others, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Closing Date Perfection Certificate sets forth a true, correct and complete list of all U.S. Intellectual Property registrations and applications owned by each Credit Party as of the Closing Date. As of the Closing Date, the Credit Parties do not possess any Intellectual Property registered in a jurisdiction other than the United States. When delivered as required pursuant to Section 6.04(i), the most recently delivered Perfection Certificate sets forth a true, correct and complete list of the Intellectual Property registration and applications owned by each Credit Party as of such date.

5.07 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Credit Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Credit Parties, any of its Subsidiaries or any member of the Senior Management of any Credit Party or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or (b) could reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect, except as specifically disclosed in Schedule 17 to the Closing Date Perfection Certificate.

5.08 No Default. Except as set forth on Schedule 5.08, neither any Credit Party nor any Subsidiary thereof is in default under or with respect to any Material Agreement that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.09 Compliance with Laws. Each Credit Party and each Subsidiary thereof is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, in each case, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.10 Tax Status. The Credit Parties (i) have filed or caused to be filed all federal state, foreign, provincial and income and all other tax returns, reports and declarations required by any jurisdiction to which any of them is subject and (ii) have paid all federal and all other material Taxes (including withholdings) required to have been paid including in their capacity as tax withholding agents, except those being contested in good faith and by appropriate proceedings and for which the Credit Parties have set aside on their books reasonably adequate provisions therefor in accordance with GAAP (unless foreclosure or other similar enforcement action has been commenced in respect thereof or any Lien has been filed or otherwise perfected therefor, in which case such exception does not apply). There is no proposed tax assessment or other claim against and no tax audit with respect to any Credit Party or any Subsidiary except (i) those being actively contested by a Credit Party or any Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. Proper and accurate amounts have been withheld by each Credit Party from its respective employees for all periods in compliance with all applicable and federal, state and material local and foreign laws and such withholdings have been timely paid to the respective Governmental Authorities.

5.11 Insurance. The properties of the Credit Parties are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Credit Parties operate, including without limitation and for the avoidance of doubt, business interruption insurance.

5.12 Investment Company Acts

. None of any Credit Party, any Person controlling any Credit Party, or any Subsidiary of any Credit Party is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.13 ERISA Compliance.

(a) Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code, along with its corresponding trust, either has received a favorable determination letter or is subject to an applicable opinion or advisory letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the best knowledge of each Credit Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status that would reasonably be expected to result in a Material Adverse Effect.

(b) There are no pending or, to the best knowledge of each Credit Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) no ERISA Event has occurred, and neither any Credit Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Credit Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither any Credit Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such Pension Plan to drop below 60% as of the most recent valuation date; (iv) neither any Credit Party nor any ERISA Affiliate has incurred any liability with respect to any Pension Plan to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither any Credit Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither any Credit Party nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan.

5.14 Regulations U and X. The proceeds of the Loans shall be used solely for the purposes specified in Section 6.11. No portion of any Loan is to be used for the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.

5.15 Jurisdiction of Organization; Chief Executive Office. Subject to any notices provided by the Credit Parties pursuant to Section 6.02, Schedule A to the Closing Date Perfection Certificate lists each Credit Party's jurisdiction of organization, legal name and the location of such Credit Party's chief executive office.

5.16 Fiscal Year. The Credit Parties have a fiscal year ending as set forth in the definition of "Fiscal Year".

5.17 Subsidiaries, etc. As of the Closing Date, the Credit Parties do not have any Subsidiaries except as set forth on Schedule 8(a) to the Closing Date Perfection Certificate and, as of the Closing Date, all of the outstanding Capital Stock in such Subsidiaries have been validly issued, fully paid and with respect to Subsidiaries that are corporations, nonassessable (except to the extent of such rights that may exist pursuant to non-waivable provisions of applicable Laws) in the amounts specified on Schedule 8(a) to the Closing Date Perfection Certificate, free and clear of all Liens (other than Permitted Liens).

5.18 Environmental Compliance. Except as specifically disclosed in Schedule 5.17, each Credit Party and each Subsidiary thereof is, and within the period of all applicable statutes of limitation have been, in compliance with the requirements of all Environmental Laws applicable to the business, operations and properties of such Credit Party and its Subsidiaries except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Credit Parties and their Subsidiaries hold all Environmental Permits (each of which is in full force and effect) required for any of their current operations or for any property owned, leased or otherwise operated by any of them, and are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits, in each case, except for such failures to hold or comply with such Environmental Permits could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.19 Labor Contracts. Except as set forth on Schedule 5.20, as of the Closing Date, none of the Credit Parties is party to any collective bargaining agreement. There are no material grievances, disputes or controversies with any union or other organization of any Credit Party's employees, or threats of strikes or work stoppages that would reasonably be expected to result in a Material Adverse Effect.

5.20 Disclosure. Each Credit Party has disclosed to the Administrative Agent all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, in each case, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other written information (other than projections, forecasts and other forward-looking information and information of an economic or industry-wide nature) furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading.

5.21 Anti-Corruption Laws; Sanctions Laws; Beneficial Ownership Certification .

(a) Each Credit Party, its Subsidiaries and their respective Related Parties are in compliance with applicable Anti-Corruption Laws in all material respects. Each Credit Party and each of its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Credit Party, its Subsidiaries and their respective Related Parties with applicable Anti-Corruption Laws. No Loan, use of the proceeds of any Loan or other transactions contemplated hereby, in each case, made or taken by a Credit Party or its Subsidiaries will violate Anti-Corruption Laws.

(b) No Credit Party, nor, to the knowledge of the Credit Parties, any director, officer, employee or agent thereof, is entity Person that is, or is owned or controlled by any Person that is (i) currently the subject of any applicable Sanctions, (ii) located, organized or residing in any Designated Jurisdiction, (iii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List or any similar list enforced by any other relevant sanctions authority, or (iv) or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of applicable Sanctions or who is located, organized or residing in any Designated Jurisdiction. Neither any Credit Party, nor any Subsidiary nor, to the knowledge of any Credit Party, any Affiliate of any Credit Party (x) is a Sanctioned Person, or (y) has any of its assets in Sanctioned Countries. No Loan, nor the proceeds from any Loan, has been used to lend, contribute, provide or has otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any applicable Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, the Arranger, or the Administrative Agent) of applicable Sanctions.

(c) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.22 Borrowing Base Certificates. Each Borrowing Base Certificate is true, complete and correct in all material respects.

5.23. Eligible Accounts. As to each Account that is identified by Borrower as an Eligible Account in a Borrowing Base Certificate submitted to the Administrative Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by rendition of services to such Account Debtor in the ordinary course of a Credit Party's business, (b) owed to a Credit Party without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Administrative Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

5.24. Bank Accounts. The Closing Date Perfection Certificate sets forth the true, correct and complete account numbers and location of all bank accounts of the Credit Parties as of the Closing Date.

ARTICLE VI AFFIRMATIVE COVENANTS

Each Credit Party signatory hereto covenants and agrees for itself and on behalf of its Subsidiaries that, so long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation remains outstanding:

6.01 Punctual Payment. Each Credit Party will duly and punctually pay or cause to be paid when due all principal and interest on the Loans, the fees and all other Obligations and amounts provided for in this Agreement and the other Loan Documents to which it is a party and will cause to be paid any amounts owing by any Credit Party, all in accordance with the terms of this Agreement and such other Loan Documents.

6.02 Maintenance of Office; Certain Changes. Each Credit Party shall furnish to the Administrative Agent prior written notice of any change in (i) any Credit Party's legal name and (ii) any Credit Party's organizational structure or jurisdiction of incorporation or formation, no later than ten (10) days (or such shorter period as the Administrative Agent may agree to in its sole discretion) prior to, and the acknowledgement of the Administrative Agent that all actions required by the Administrative Agent to continue the perfection of its Liens, shall have been completed, before any change in its name, or the type of its organization or jurisdiction of organization. Each Credit Party agrees not to effect or permit any change referred to in the preceding sentence until the Administrative Agent has confirmed in writing that all filings, publications and registrations have been made under the UCC or other applicable Law that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral (subject only to Permitted Liens) for its own benefit and the benefit of the other Secured Parties. Each Credit Party will furnish to the Administrative Agent written notice of any change in (i) the location of any Grantor's chief executive office, its principal place of business, any office in which it maintains books or records relating to any Collateral included in the Borrowing Base owned by it or any office or facility at which any Collateral included in the Borrowing Base owned by it is located (including the establishment of any such new office or facility) or location from which Accounts are invoiced or paid and (ii) any Credit Party's Federal Taxpayer Identification Number or organizational identification number, if any required on the financing statement to be filed against such Credit Party, in each case, not less than ten (10) calendar days (or such shorter period as the Administrative Agent may agree to in its sole discretion) after the occurrence of clauses (i) and (ii) of this sentence. Each Credit Party shall take any other action required to continue the perfection of the Administrative Agent's Liens on the Collateral.

6.03 Records and Accounts. Each Credit Party will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with, and all financial statements provided for herein shall be prepared in accordance with GAAP consistently applied; (b) maintain adequate accounts and reserves for all federal and all other material taxes (including income taxes, depreciation, depletion, obsolescence and amortization of its properties, contingencies and other reserves); and (c) at all times, maintain independent certified public accountants as the Credit Parties' accountants which shall be reasonably satisfactory to the Administrative Agent (provided that Grant Thornton, BDO, EisnerAmper, RMP Accounting and any of the "Big Four" accounting firms are deemed to be satisfactory to the Administrative Agent) .

6.04 Financial Statements, Certificates and Information. The Credit Parties will deliver to the Administrative Agent (for distribution to the Lenders):

(a) as soon as available, and in any event within one hundred (100) days after the close of each Fiscal Year, (i) balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders' equity for such Fiscal Year, on a consolidated basis for the Parent and its Subsidiaries, which consolidated statements shall be audited and certified without qualification by the Credit Parties' independent certified public accountants (except for any such qualification (x) relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Parent's independent certified public accountants or (y) as to the audit for the Fiscal Year ended December 31, 2023, any potential inability to satisfy a financial covenant set forth in Section 7.12 on a future date or in a future period) and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and other information reasonably acceptable to the Administrative Agent (provided that any such financial statements containing information of the type and scope consistent with the financial statements for the Fiscal Year ended December 31, 2022 shall be deemed to be reasonably acceptable to the Administrative Agent) and (ii) a Compliance Certificate duly executed by a Financial Officer of the Parent, which (A) attaches and certifies to the foregoing consolidated financial statements, (B) certifies that the information contained in such consolidated financial statements fairly presents in all material respects the financial condition of the Parent and its Subsidiaries on the dates indicated therein, (C) setting forth a calculation of Consolidated EBITDA and Modified Consolidated EBITDA on a trailing twelve month basis at the end of such Fiscal Year, (D) appends computations evidencing the Consolidated Fixed Charge Coverage Ratio for the Measurement Period ended as of the last day of such Fiscal Year, (E) appends computations relative to Section 7.12 and specifying whether the Parent and its Subsidiaries have complied with Section 7.12, (F) includes a management discussion and analysis (with reasonable detail and specificity) of the results of operations for such Fiscal Year and (G) states that such Financial Officer has reviewed this Agreement and the other Loan Documents and has no knowledge of any Default or Event of Default during such Fiscal Year, or if such Financial Officer has such knowledge, specifying each Default or Event of Default and the nature thereof;

(b) as soon as available, and in any event within thirty (30) days after the end of each Fiscal Month, including for the last Fiscal Month of the Fiscal Year (subject to subsequent audit adjustments) (i) unaudited balance sheets as of the end of such month and the related statements of income and cash flow for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Parent and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year (for such month and for the portion of the Fiscal Year then elapsed) and certified by a Financial Officer of the Parent as prepared in accordance with GAAP and fairly presenting the financial position and results of operations for such month and period, subject to normal year-end adjustments and the absence of footnotes, and (ii) a Compliance Certificate duly executed by a Financial Officer of the Parent, which, (A) attaches and certifies to the foregoing financial statements, (B) certifies that the information contained in such financial statements fairly presents in all material respects the financial condition of the Parent and its Subsidiaries on the date thereof (subject to year-end adjustments and the absence of footnotes), (C) sets forth in comparative form the results for and through such Fiscal Month (and for the portion of the Fiscal Year then elapsed) with the most recent projections delivered to the Administrative Agent pursuant to Section 6.04(d), (D) appends computations evidencing the Modified Consolidated EBITDA and Consolidated Fixed Charge Coverage Ratio for the Measurement Period ended as of the last day of such Fiscal Month, (E) appends computations relative to Section 7.12(a) and specifying whether the Parent and its Subsidiaries have complied with Section 7.12(a) as of the end of such Fiscal Month, and (F) states that such Financial Officer has reviewed this Agreement and the other Loan Documents and has no knowledge of any Default or Event of Default during such Fiscal Month, or if such Financial Officer has such knowledge, specifying each Default or Event of Default and the nature thereof to the Administrative Agent's reasonable satisfaction;

(c) not later than fifteenth (15th) day following the end of each Fiscal Month, (i) a Borrowing Base Certificate with respect to the Collateral of the Credit Parties as of the close of business of the last day of such previous Fiscal Month, accompanied by such supporting detail, documentation and information related thereto as the Administrative Agent shall reasonably request, and (ii) an accounts receivable aging report, and an accounts payable aging report, in each case, as of the close of business on the last day of such previous Fiscal Month, in each case, accompanied by such supporting detail, documentation and information as the Administrative Agent shall reasonably request, and such other data or information as the Administrative Agent may request; provided that during an Enhanced Collateral Reporting Period, the Borrower shall furnish such information on a weekly basis no later than on the Wednesday following the close of business of the immediately preceding week, with such information as of the Saturday of such preceding week;

(d) (i) not later than thirty (30) days after the end of each Fiscal Year, the annual budget for the following Fiscal Year, in form reasonably satisfactory to the Administrative Agent, of consolidated balance sheets and results of operations and cash flows of the Parent and its Subsidiaries on a monthly basis for such Fiscal Year (including the Fiscal Year in which the Maturity Date occurs), and (ii) promptly upon availability, any material revisions to such forecast with respect to such Fiscal Year, projections of Excess Availability and the Consolidated Fixed Charge Coverage Ratio for the next Fiscal Year on a month by month basis and on a quarterly basis, respectively;

(e) promptly following any Lender's request therefor, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering or terrorist financing rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation;

(f) promptly upon receipt thereof, copies of any detailed audit reports, financial control reports, management letters or recommendations submitted to the board of directors or other governing body (or the audit committee of the board of directors or other governing body) of the Credit Parties by independent accountants or internal auditors in connection with any audit of any of them;

(g) promptly, and in any event within three (3) Business Days after receipt by a member of Senior Management thereof by any Credit Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority concerning any material investigation or possible material investigation or other material inquiry by such agency regarding financial or other operational results of any Credit Party or any Subsidiary;

(h) (i) promptly following the reasonable request of the Administrative Agent, a report summarizing the insurance coverage in effect for each Credit Party (which may be in a form that is substantially consistent with Schedule 18 to the Closing Date Perfection Certificate) and (ii) within 30 days following the modification, renewal, replacement of any insurance policy of any Credit Party, updated insurance certificates and endorsements evidencing such coverage; and

(i) no later than thirty (30) days following the end of the Fiscal Year (or more frequently at the election of the Credit Parties), an updated Perfection Certificate as to each Credit Party in substantially the same form as the Perfection Certificate most recently delivered to the Administrative Agent (with such scope and detail as the Administrative Agent's may reasonably require) or a certificate confirming that there has been no change in such information since the Perfection Certificate delivered on the Closing Date or the most recent Perfection Certificate delivered pursuant to this Section 6.04;

(j) unless the Administrative Agent has “viewer access” with respect to each and all deposit accounts (including the Concentration Account), all securities accounts and all commodities accounts (other than Excluded Accounts) pursuant to Section 6.16 hereof, on Wednesday of each week, the Credit Parties shall provide the Administrative Agent a report with respect to all cash and Cash Equivalents held by the Credit Parties as of the immediately preceding Saturday or any more recent date (including, without limitation, all amounts thereof, and where such cash and Cash Equivalents are held); and

(k) (i) as and when required under the terms of any credit risk insurance policy maintained with respect to Eligible Foreign Accounts or Eligible Unbilled Foreign Accounts, a copy of any reporting required to be delivered to the insurance provider under such credit risk insurance policy, and (ii) proof of payment of each quarterly premium payment required to be made under such credit risk insurance policy by the due date for such payment.

6.05 Notices.

(a) **Defaults.** The Credit Parties will notify the Administrative Agent and each Lender in writing of the occurrence of any Default or Event of Default promptly after the occurrence thereof (but in any event within three (3) Business Days of the occurrence thereof (or, in the case of a Default under Section 8.01(c), within three (3) Business Days of Senior Management obtaining actual knowledge of the occurrence of such Default).

(b) **Material Adverse Effect.** The Credit Parties shall promptly (but in any event within three (3) Business Days) disclose in writing to the Administrative Agent (for distribution to each Lender) of any matter (including matters relating to litigation against the Credit Parties or violations of Environmental Law) that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) **ERISA Events and Plans.** The Credit Parties shall promptly disclose in writing to the Administrative Agent the occurrence of any ERISA Event that could reasonably be expected to result in a Material Adverse Effect and, promptly after the sending or filing thereof, upon request, shall provide the Administrative Agent with copies of any annual report filed in connection with each Plan or Foreign Plan;

(d) **Change in Accounting Policies or Financial Reporting.** The Credit Parties shall promptly disclose in writing to the Administrative Agent notice of (i) any material change in accounting policies or financial reporting practices by the Credit Parties or any Subsidiary of a Credit Party; provided, that no such change shall alter the accounting methodology for Accounts (including the aging of Accounts) without prior written consent of the Administrative Agent or (ii) discharge by any Credit Party of its independent accountants or any withdrawal or resignation by such independent accountants.

(e) **Notice of Tax Claims, Litigation and Judgments.** The Credit Parties will give notice to the Administrative Agent in writing within three (3) Business Days of any written notice of proposed assessment or written notice of the commencement of any material audit by any Governmental Authority for unpaid Taxes of any Credit Party or any Subsidiary that are due and payable, any commencement of any investigation, litigation or proceedings affecting any Credit Party or any Subsidiary to which any Credit Party or any Subsidiary of any Credit Party is or becomes a party involving any claim against any Credit Party that has resulted in or would reasonably be expected to result in (i) liabilities of more than the Threshold Amount that are not covered by insurance policies maintained in accordance with Section 6.07 against any Credit Party or any Subsidiary or (ii) a Material Adverse Effect. The Credit Parties will promptly give notice to the Administrative Agent and each Lender, in writing, in form and detail reasonably satisfactory to the Administrative Agent, of any judgment not covered by insurance, final or otherwise, against any Credit Party (x) affecting or with respect to this Agreement, any other Loan Document or any security interest or Lien created thereunder or (y) that would reasonably be expected to have a Material Adverse Effect.

(f) **Notification of Claim against Collateral.** The Credit Parties will, promptly notify the Administrative Agent in writing of any (a) Lien made or asserted against any of the Collateral (other than Permitted Liens), or (b) setoff, written demand, claims, withholdings or other defenses in amounts greater than the Threshold Amount to the extent not covered by insurance policies maintained in accordance with Section 6.07, or defenses to the Administrative Agent's rights with respect to the Collateral.

(g) **Notification of Additional Intellectual Property Rights.** Concurrently with the delivery of financial statements with respect to the last Fiscal Month of any Fiscal Quarter, the Credit Parties will notify the Administrative Agent in writing of any patents, or patent applications filed with the PTO during such Fiscal Quarter, registered copyrights or mask works registered with the United States Copyright Office (or any successor agency thereto) during such Fiscal Quarter, applications for registration of copyrights or mask works filed with the United States Copyright Office (or any successor agency thereto) during such Fiscal Quarter and trademark and service mark registrations with the PTO during such Fiscal Quarter, and trademark and service mark registration applications filed with the PTO during such Fiscal Quarter, in each case owned by a Credit Party and which qualify as Collateral and in each case to the extent not listed on the Perfection Certificate most recently delivered to the Administrative Agent in accordance with this Agreement.

(h) **Environmental Events.** The Credit Parties will promptly give notice to the Administrative Agent and each Lender (a) of any violation of any Environmental Law that any Credit Party reports in writing or is reportable by such Person in writing (or for which any written report supplemental to any oral report is made) to any Governmental Authority and (b) upon any member of Senior Management of any Credit Party becoming aware thereof, of any inquiry, proceeding, investigation, or other action, including a notice from any agency of potential Environmental Liability, of any Governmental Authority that, in the case of clauses (a) or (b) above, would reasonably be expected to result in a Material Adverse Effect.

(i) **Prepayment Events.** Promptly following the occurrence of any event for which the Borrower is required to make a prepayment under Sections 2.03(c) through (f), together with all supporting information reasonably requested by the Administrative Agent.

(j) **Change in CEO or CFO.** The Credit Parties shall provide to the Administrative Agent prompt written notice of any change in any Credit Party's chief executive officer or chief financial officer and such change in chief executive officer or chief financial officer shall be reasonably satisfactory to the Administrative Agent.

(k) **Fundamental Changes.** The Credit Parties shall provide to the Administrative Agent promptly written notice of the occurrence of any event described in Section 7.05(a).

Delivery by the Credit Parties to the Administrative Agent of any and all notices required to be delivered to the Lenders as herein required shall be deemed made upon receipt of such notices by the Administrative Agent.

6.06 Legal Existence; Maintenance of Properties.

(a) Except as permitted by Section 7.05, each Credit Party will do all things necessary to (i) maintain in full force and effect its legal existence and good standing under the laws of its jurisdiction of organization or incorporation, (ii) maintain its qualification to do business in each state or other jurisdiction in which the failure to do so would result in a Material Adverse Effect, and (iii) maintain all of its rights and franchises, except where the failure to maintain such right or franchise would not result in a Material Adverse Effect.

(b) Each Credit Party (i) will cause all of its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment, subject to ordinary wear and tear or except where the failure to do so would not reasonably be expected to have a Material Adverse Effect and (ii) will cause to be made all necessary repairs, renewals and replacement thereof, all as in the judgment of the Credit Parties may be necessary so that the business carried on in connection therewith may be properly conducted at all times; provided that nothing in this Section 6.06(b) shall prevent any Credit Party from discontinuing the operation and maintenance of any of its properties if such discontinuance is permitted by Section 7.05(b).

6.07 Insurance. Each Credit Party will maintain with financially sound and reputable insurers insurance (a) with respect to its properties and business against such casualties and contingencies as shall be in accordance with the general practices of businesses engaged in similar activities in similar geographic areas and in amounts, containing such terms, in such forms and for such periods as may be reasonable and prudent and in accordance with the terms of the Security Documents, (b) business interruption insurance, and (c) so long as required to maintain the eligibility of Eligible Foreign Accounts or Eligible Unbilled Foreign Accounts included in the Borrowing Base unless otherwise agreed in writing by the Administrative Agent in its Permitted Discretion, credit insurance in form, substance, amounts, periods, and by an insurer, as reasonably satisfactory to the Administrative Agent; provided that the Administrative Agent agrees that the insurance in place on the Closing Date with respect to clauses (a) and (b) above is with financially sound and reputable insurers. Such policies of insurance in respect of the preceding clause (a) and (c) shall name the Administrative Agent as an additional insured or lender's loss payee, as applicable and each Credit Party shall use commercially reasonable efforts to cause such policies of insurance to provide for not less than 30 days' prior notice (or not less than 10 days' in the case of the non-payment of premium) to the Administrative Agent of termination, lapse or cancellation of such insurance.

6.08 Taxes. Each Credit Party will duly pay and discharge, or cause to be paid and discharged, before the same shall become overdue, all federal and all other material Taxes, assessments and other governmental charges imposed upon it and its real properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all material claims for labor, materials, or supplies that if unpaid might by law become a Lien or charge upon any of its property; provided that any such Taxes, assessment, charge, levy or claim need not be paid if the validity or amount thereof shall be contested in good faith by appropriate proceedings and such Credit Party shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto; and provided further that the Credit Parties will (a) pay all such Taxes, assessments, charges, levies or claims forthwith upon the commencement of any proceedings to foreclose or otherwise enforce any Lien that may have attached as security therefor, (b) will withhold from each payment to be made to any of its past or present employees, officers or directors, and to any non-resident of the country in which it is a resident, the amount of all Taxes and all other deductions or withholdings required to be withheld therefrom and pay the same to the proper taxing authority within the time required under any applicable Law, and (c) collect from all Persons the amount of all Taxes required by applicable Law to be collected from them and remit the same to the proper taxing authority within the time required under any applicable Law, except in each case to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that (i) the Administrative Agent may, without limiting the generality of its discretionary rights with respect to Reserves, impose Reserves with respect to such Lien and (ii) the Credit Parties shall promptly provide the Administrative Agent written notice of the commencement of any such proceeding to foreclose or enforce such Lien. Each Credit Party shall file or cause to be filed all federal, state and all material local and foreign income tax returns, and all other tax returns, reports, and declarations required by any jurisdiction to which it is subject as required by applicable Law.

6.09 Compliance with Laws, Contracts, Licenses, Permits. Each of the Credit Parties will comply with (a) the applicable Laws wherever its business is conducted, including, without limitation, all Environmental Laws, (b) the provisions of its Governing Documents, (c) all agreements and instruments (including, without limitation, any lease agreements) by which it or any of its properties may be bound, and (d) all applicable decrees, orders, and judgments, provided, that in each case, such compliance shall be required by this Agreement only where noncompliance with this Section 6.09(a), (c) or (d) would result in a Material Adverse Effect. If any authorization, consent, approval, permit or license from any Governmental Authority or any central bank or other fiscal or monetary authority shall become necessary or required in order that any Credit Party may fulfill any of its obligations hereunder or any of the other Loan Documents to which such Credit Party is a party or to conduct its business in any jurisdiction in which it operates, each Credit Party will promptly take or cause to be taken all reasonable steps within the power of such Credit Party to obtain such authorization, consent, approval, permit or license, and upon the reasonable request of the Administrative Agent, to furnish the Administrative Agent and the Lenders with evidence thereof. In the event a Credit Party is unsuccessful in obtaining such authorization, consent, approval, permit or license, the Administrative Agent may without limiting the generality of its discretionary rights with respect to Reserves, impose Reserves in its Permitted Discretion with respect to any Collateral held by such Person which the Administrative Agent reasonably determines is affected by such failure to obtain such authorization, consent, approval, permit or license.

6.10 [Reserved].

6.11 Use of Proceeds. The proceeds of the Loans shall be used solely for (a) working capital and general corporate purposes, in each case subject to the restrictions set forth in this Agreement, (b) the payment of fees and expenses incurred in connection with the negotiation, execution and delivery of this Agreement and the other Loan Documents and (c) to repay the Specified Existing Debt in full.

6.12 Covenant to Guarantee Obligations and Give Security.

(a) Upon the formation or acquisition of any new direct or indirect Subsidiary (other than any Excluded Subsidiary) after the Closing Date by any Credit Party (or upon any Subsidiary ceasing to constitute an Excluded Subsidiary), then the Credit Parties shall, at the Credit Parties' expense, within thirty (30) days after such formation or acquisition (or such longer period acceptable to the Administrative Agent in its sole discretion):

(i) cause such Subsidiary to duly execute and deliver to the Administrative Agent a Guarantee guaranteeing the other Credit Parties' obligations under the Loan Documents,

(ii) furnish to the Administrative Agent a description of the real and personal properties of such Subsidiary, in detail reasonably satisfactory to the Administrative Agent;

(iii) cause such Subsidiary to duly execute and deliver to the Administrative Agent the Security Documents required to be so executed and delivered pursuant to the terms of the Loan Documents to secure payment of all the Obligations of such Subsidiary under the Loan Documents by granting Liens on all such real and personal properties of such Subsidiary that constitute Collateral,

(iv) cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take whatever action (including the filing of Uniform Commercial Code financing statements or similar filing in any applicable jurisdiction or such other actions as are necessary or desirable under any applicable Law) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent valid and subsisting Liens on the Collateral, enforceable against all third parties in accordance with their terms, and

(v) deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Credit Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request.

(b) Upon the acquisition of any property constituting Collateral (excluding any Excluded Assets) by any Credit Party following the Closing Date and upon the acquisition of any material assets located in any jurisdiction outside of the United States, if such property, in the judgment of the Administrative Agent, shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties (unless such property is specifically excluded as Collateral by the terms of the Security Documents), then the Credit Parties shall, at the Credit Parties' expense, within thirty (30) days after such acquisition (or such longer period acceptable to the Administrative Agent in its sole discretion):

(i) furnish to the Administrative Agent a description of the property so acquired in detail reasonably satisfactory to the Administrative Agent,

(ii) cause the applicable Credit Party to duly execute and deliver to the Administrative Agent the Security Documents (to the extent not already delivered) required to be so executed and delivered pursuant to the terms of the Loan Documents to secure payment of all the Obligations of the applicable Credit Party under the Loan Documents and constituting Liens on all such properties, and

(iii) deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Credit Parties reasonably acceptable to the Administrative Agent as to the matters contained in clause (ii) above, and as to such other matters as the Administrative Agent may reasonably request.

(c) within sixty (60) days after such acquisition (or such longer period acceptable to the Administrative Agent in its sole discretion) of any Real Estate (other than Excluded Assets) not subject to the Administrative Agent's first priority lien, cause the applicable Credit Party to take whatever action (including the recording of Mortgages in respect of fee owned real property, the delivery of title insurance, surveys and environmental reports, the filing of Uniform Commercial Code financing statements or similar filing in any applicable jurisdiction, the giving of notices and the endorsement of notices on title documents or such action necessary or desirable under applicable Law) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent valid and subsisting Liens on such Real Estate, enforceable against all third parties, and deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Credit Parties reasonably acceptable to the Administrative Agent as to the matters contained herein and as to such other matters as the Administrative Agent may reasonably request.

(d) At any time upon request of the Administrative Agent, promptly (i) execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such Security Documents, and (ii) execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable with respect to any interests of the Credit Parties (as of the Closing Date or thereafter) in any Accounts owed by Account Debtors headquartered outside the United States.

6.13 Conduct of Business. Except as permitted by Section 7.05, each Credit Party will not engage in any business materially different than the businesses engaged in by such Credit Party on the Closing Date, or such businesses as are reasonably related to the businesses engaged in by such Credit Party on the Closing Date.

6.14 Further Assurances. Each Credit Party will cooperate with the Administrative Agent and the Lenders execute such further instruments and documents as the Administrative Agent or the Lenders shall reasonably request to carry out to their reasonable satisfaction the transactions contemplated by this Agreement and the other Loan Documents.

6.15 Inspections; Collateral Reports, etc.

(a) **General.** No more than on one occasion in any 12-month period (or any number of occasions to the extent an Event of Default has occurred and is continuing), each Credit Party shall permit the Administrative Agent, at the Credit Parties' expense, to visit and inspect any of the properties of any Credit Party, to examine the books of account of such Credit Party's files and records regarding the Accounts, and other Collateral (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of such Credit Party with, and to be advised as to the same by, its and their officers, in each case, at such reasonable times and with prior notice as the Administrative Agent may reasonably request.

(b) **Commercial Field Exams.** From time to time upon the request of the Administrative Agent or the Required Lenders, at the Credit Parties' expense, the Credit Parties will cooperate with the Administrative Agent in the Administrative Agent's obtaining, a commercial field examination of an independent collateral auditor reasonably satisfactory to the Administrative Agent with respect to Accounts and other Collateral, which report shall indicate whether or not the information set forth in the Borrowing Base Certificates delivered to the Administrative Agent and Lenders are accurate and complete in all material respects based upon a review by such auditors of the Accounts (including verification with respect to the amount, aging, identity and credit of the respective account debtors and the billing practices of the applicable Credit Parties), Reserves, and other Collateral, and which shall indicate the adequacy of the Credit Parties' systems, processes and procedures with respect to the Collateral; provided that the Credit Parties shall not be required to incur, in any twelve (12) month period, the costs and expenses of more than two (2) such commercial field examinations unless an Event of Default has occurred and is continuing, in which case, there shall be no limit on the number of commercial field examinations made at the expense of the Credit Parties. For purposes of this Section 6.15(b), it is understood and agreed that a single field examination may consist of examinations conducted at multiple relevant sites, both domestic and international, and involve one or more relevant Credit Parties and their assets.

(c) **[Reserved]**.

(d) **Communications with Accountants.** Each Credit Party authorizes the Administrative Agent and the Lenders to communicate directly with such Credit Party's independent certified public accountants and authorizes such accountants to disclose to the Administrative Agent and the Lenders any and all financial statements and other supporting financial documents and schedules including copies of any management letter with respect to the business, financial condition and other affairs of such Credit Party. At the request of the Administrative Agent or any Lender, each Credit Party shall deliver a letter addressed to such accountants authorizing them to communicate directly with the Administrative Agent and the Lenders in accordance with the foregoing. It is understood that notwithstanding such authorization from the Credit Parties, such accountants may decline to communicate directly with the Administrative Agent and the Credit Parties shall only be required to use commercially reasonable efforts to cause such accountants to do so.

(e) **Accounts.** The Administrative Agent shall have the right to analyze and verify the Accounts in any manner and through any medium that it reasonably considers necessary in its Permitted Discretion, and the Credit Parties shall furnish all such assistance and information as the Administrative Agent may reasonably require in connection therewith. At any time a Specified Event of Default (or, in the case of any Account Debtors located outside of the United States or Canada, an Event of Default) has occurred and is continuing, the Administrative Agent may in its own name or in the name of others (including a Credit Party) communicate with Account Debtors on the Accounts to inform such Account Debtors of the Administrative Agent's payment instructions, in each case to the extent in compliance with all applicable Laws.

6.16 Cash Management.

(a) **General.** The Credit Parties shall, in each case, subject to Section 6.16(b) below, (i) instruct all account debtors of the Credit Parties to remit all cash proceeds of Accounts, check and other items of payment directly to depository accounts with financial institutions which have entered into Agency Account Agreements in form and substance reasonably satisfactory to the Administrative Agent (" Concentration Accounts"), and (ii) at all times ensure that all other cash, cash proceeds, checks and other items of payment of the Credit Parties not contained in Excluded Accounts, including (A) proceeds of any Collateral or any Net Cash Proceeds required to be applied to prepay the Loans pursuant to Sections 2.03(b) through (f) and (B) and amounts received by the Credit Parties in respect of the Accounts, in each case, be immediately deposited directly into a Concentration Account. The Credit Parties shall use commercially reasonable efforts to ensure that the Administrative Agent shall at all times have "viewer access" with respect to each and all Concentration Accounts (other than Excluded Accounts) to view in real time the balances and transactions relating to each such account via the relevant depository bank's online systems and internet banking platforms, and the Credit Parties agree to use commercially reasonable efforts to take all such actions as may be required or reasonably requested by the Administrative Agent to effect the foregoing.

(b) **Agency Account Agreements.** Each Agency Account Agreement shall require that, during the occurrence and continuation of a Cash Dominion Trigger Period and upon instruction of the Administrative Agent, each depositary bank party to such Agency Account Agreement transfer all cash receipts and other collections by ACH or wire transfer no less frequently than daily to an account in the name of the Administrative Agent designated by the Administrative Agent (the "Collection Account"); provided that so long as any Obligations are then outstanding, for the purposes of calculating interest, one Business Day shall be deemed added to the date such transfer is received. The Credit Parties hereby acknowledge and agree that (i) the Credit Parties have no right of withdrawal from the Collection Account, (ii) the funds on deposit in the Collection Account shall at all times be collateral security for all of the Obligations and (iii) during the continuance of such Cash Dominion Trigger Period, the funds on deposit in the Collection Account may be applied as provided in Section 2.05(c); provided that, if a Cash Dominion Trigger Period is no longer in effect, upon the request of the Borrower, the Administrative Agent shall promptly transfer any funds held in the Collection Account to a Concentration Account and/or the Reserved Cash Account, in each case as designated by the Borrower. In the event that, notwithstanding the provisions of this Section 6.16(a) or (b), any Credit Party receives or otherwise has dominion and control of any such proceeds or collections described above, such proceeds and collections shall be held in trust by such Credit Party for the Administrative Agent, and shall, not later than the Business Day after such Credit Party's knowledge of receipt thereof, be deposited into a Concentration Account, or during the occurrence and continuation of a Cash Dominion Trigger Period, the Collection Account, or dealt with in such other fashion as such Credit Party may be reasonably instructed by the Administrative Agent.

(c) **Other Accounts.** The Credit Parties shall cause all deposit accounts, all securities accounts and all commodities accounts (other than Excluded Accounts) of the Credit Parties to be subject to Agency Account Agreements as of the Closing Date (or, in the case of any such accounts opened after the Closing Date or that no longer constitute Excluded Accounts, within 30 days of the date such account has been opened or no longer constitutes an Excluded Account, as applicable (or such longer period acceptable to the Administrative Agent in its sole discretion) and, in any case, prior to depositing any funds or other assets therein).

6.17 Post-Closing Obligations. Each Credit Party agrees that it will complete each of the actions described on Schedule 6.17 as promptly as practicable, and in any event within the time periods set forth therein with respect to such action (or, in each case, such later date as the Administrative Agent reasonably agrees to in writing).

ARTICLE VII NEGATIVE COVENANTS

Each Credit Party signatory hereto covenants and agrees for itself and on behalf of its Subsidiaries that, so long as any Lender shall have any Commitment hereunder or any Loan or other Obligation remains outstanding:

7.01 Investments. None of the Credit Parties nor any of its Subsidiaries will make any Investment in any Person, except for Investments which consist of:

(a) Investments (i) comprised of notes payable, or stock or other securities issued by account debtors (that is not an Affiliate) to such Credit Parties with respect to settlement of such account debtor's accounts in the ordinary course of business or (ii) receivables owing to the Credit Parties or any of their Subsidiaries or any receivables and advances to suppliers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(b) Capital Stock (i) issued and outstanding on the Closing Date in its Subsidiaries in existence on the Closing Date, or (ii) issued to a Credit Party following the Closing Date by another Person that will become a Credit Party promptly following such issuance or capital contribution between such Persons;

(c) Investments (i) by and among Credit Parties, or by any Subsidiary that is not a Credit Party in any Credit Party, in each case, so long as, to the extent consisting of intercompany loans, the Administrative Agent has a first priority, perfected Lien in such intercompany loans and has received an Intercompany Note evidencing such intercompany loans, together with transfer powers executed in blank in connection therewith, (ii) by and among Subsidiaries that are not Credit Parties and (iii) so long as no Specified Event of Default exists, by the Credit Parties in Subsidiaries that are not Credit Parties in an aggregate amount not exceeding \$1,500,000 in any Fiscal Quarter and in an aggregate amount not exceeding \$6,000,000 in any Fiscal Year;

(d) Investments consisting of any Credit Party Guaranteeing (i) the Obligations of the Credit Parties and (ii) other Indebtedness if such Credit Party would be permitted to directly incur such Indebtedness under Section 7.02;

(e) Investments in cash or Cash Equivalents;

(f) Investments consisting of loans or advances to its respective employees on an arm's-length basis in the ordinary course of business for travel expenses, relocation costs and similar purposes (or such other purposes as would be consistent with past practices) up to a maximum of \$50,000 per employee at any one time outstanding and \$250,000 in the aggregate at any one time outstanding;

(g) Investments existing as of the Closing Date and set forth on Schedule 7.01;

(h) Permitted Acquisitions;

(i) Investments consisting of non-cash loans made by the Borrower to officers, directors and employees of the Borrower or any of its Subsidiaries which are used by such Persons to simultaneously purchase equity interests of the Parent in an amount not exceeding \$1,000,000 in the aggregate at any one time outstanding;

(j) Investments of the Borrower or any of its Subsidiaries in connection with the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Parent held by any employee, director, consultant or officer (or any spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees, estates, wealth management vehicles, or distributees of any of the foregoing) of the Borrower, any Credit Party or any Subsidiary of any Credit Party pursuant to any employee equity subscription agreement, stock option agreement or stock ownership arrangement approved by the board of directors of the Parent (including any treasury buybacks upon the vesting of any restricted stock units) or upon the death, disability, retirement or termination of employment of such employee, director, consultant or officer in an amount not exceeding \$1,000,000 in the aggregate per Fiscal Year.

(k) other Investments in an aggregate outstanding amount not exceeding \$500,000 at any time outstanding during the term of this Agreement.

Notwithstanding anything to the contrary set forth herein, (1) no Intellectual Property (or the identifiable products or the proceeds of any of the foregoing) shall be the subject of any Investment permitted pursuant to this Section 7.01 from any Credit Party in any non-Credit Party and (2) no other assets included in the determination of the Borrowing Base (for the avoidance of doubt, excluding any cash and Cash Equivalents that do not constitute Reserved Cash) shall be the subject of any Investment in or to any non-Credit Party as provided in this Section 7.01.

7.02 Restrictions on Indebtedness. None of the Credit Parties nor any of its Subsidiaries will incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(a) Indebtedness of the Credit Parties consisting of the Obligations under the Loan Documents;

(b) Indebtedness of any Credit Party outstanding as of the Closing Date and reflected on Schedule 7.02 hereto and any refinancing thereof or amendments or modifications thereof that do not have the effect of increasing the principal amount thereof, changing the amortization thereof (other than to extend the same), decreasing the weighted average life thereof, accelerating the maturity date thereof or increasing the cash pay interest thereof and that are otherwise on terms and conditions no less favorable as a whole to such Credit Party, the Administrative Agent or any other Secured Party, as determined by the Administrative Agent than the terms of the Indebtedness being refinanced, amended or modified;

(c) Indebtedness in respect of Swap Contracts entered into not for speculative purposes;

(d) Indebtedness consisting of intercompany loans and advances permitted by Section 7.01(c);

(e) Guarantees by any Credit Party of Indebtedness of any other Credit Party permitted by this Section 7.02;

(f) Indebtedness consisting of (i) contingent liabilities under surety bonds and similar instruments incurred in the ordinary course of business or (ii) letters of credit that are consistent with past practice in an aggregate amount not exceeding \$1,600,000 at any time outstanding;

(g) Indebtedness in the ordinary course of business in respect of (i) services provided from time to time to any Credit Party or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including netting services, automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, foreign currency conversion, information reporting, lockbox, stop payment, overdraft and/or wire transfer services and all other treasury and cash management services, (ii) commercial credit card, purchase card and merchant card services and (iii) other similar banking products or services as may be requested by any Credit Party or Subsidiary from time to time;

(h) to the extent constituting Indebtedness, obligations in respect of agreements for the deferred payment of premiums or to finance the deferred payment of premiums owing by any Credit Party under any insurance policies entered into in the ordinary course of business that are either (i) unsecured or (ii) secured by a Lien permitted under Section 7.03(a)(x);

(i) Indebtedness of the Credit Parties and their Subsidiaries consisting of Capitalized Leases or Indebtedness incurred to provide all or a portion of the purchase price or cost of construction of an asset; provided that (i) such Indebtedness when incurred shall not exceed the purchase price or cost of construction of such asset; (ii) no such Indebtedness shall be renewed, refinanced or extended for a principal amount in excess of the principal balance outstanding thereon at the time of such renewal, refinancing or extension (other than by an amount equal to all accrued and unpaid interest thereon, any premium required to be paid in connection therein and all reasonable expenses incurred in connection therewith); and (iii) the total amount of all such Indebtedness shall not exceed \$1,500,000 at any time outstanding; and

(j) other unsecured Indebtedness in an aggregate principal amount not to exceed \$500,000 at any time outstanding during the term of this Agreement.

7.03 Restrictions on Liens.

(a) **Permitted Liens.** None of the Credit Parties nor any of its Subsidiaries will create or incur or suffer to be created or incurred or to exist any Lien upon any of their respective property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom other than:

(i) Liens of landlords, carriers, warehousemen, repairmen, mechanics and materialmen and other like Liens created in the ordinary course of business, for amounts overdue by not more than thirty (30) days or which are being contested in good faith by appropriate proceedings and as to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP (it being understood that the Administrative Agent may impose Reserves in its Permitted Discretion with respect to such Liens);

(ii) Liens, pledges or deposits made or incurred in connection with worker's compensation, employee benefit plans, unemployment or other insurance, old age pensions, or other Social Security benefits, in connection with statutory obligations or leases to which it is a party or to secure, or in lieu of, surety, penalty or appeal bonds, performance bonds, letters of credit and other similar obligations or arising as a result of progress payments under government contracts or contracts with public utilities, in each case, in the ordinary course of business;

(iii) minor defects, irregularities, encumbrances, easements, zoning restrictions, rights of way, and clouds on title as normally exist with respect to similar properties which do not materially interfere with the present or proposed use or value of the applicable Credit Party's real property;

(iv) Liens in favor of the Administrative Agent and the other Secured Parties securing the Obligations, including, to the extent constituting a Lien, Liens on the Administrative Agent's interest in Reserved Cash;

(v) Liens in existence on the Closing Date and listed on Schedule 7.03; provided that (i) the Lien does not extend to any additional property and (ii) to the extent such amount secured constitutes Indebtedness, such Indebtedness is permitted by Section 7.02(b), and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(vi) Liens securing judgments for the payment of money not constituting an Event of Default so long as the enforcement of such Lien has been effectively stayed and so long as such Lien is junior to the Lien in favor of the Administrative Agent granted under the Security Documents;

(vii) Liens in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry to secure usual and customary fees, returned items and other like exposure with respect to such account relating to deposit or securities accounts maintained by any Credit Party with such banking institution;

(viii) Liens for Taxes not yet due and payable or which are being contested in accordance with Section 6.08;

(ix) Liens on unearned insurance premiums securing the payment of financed insurance premiums; provided that such Liens extend only to such insurance premiums or loss payment or similar payment from any insurance provider in an amount not in excess of any unpaid financed premiums;

(x) to the extent constituting a Lien, non-exclusive licenses of Intellectual Property (other than to the extent such licenses would restrict the ability of any Credit Party or the Administrative Agent to sell or license the subject Intellectual Property or impair the security interests granted to the Administrative Agent) in the ordinary course of business not interfering with the business of any Credit Party;

(xi) Liens securing purchase money Indebtedness or Capitalized Lease obligations (and refinancings thereof) to the extent permitted under Section 7.01(i); provided that (i) such Lien attaches to such property concurrently with or within ninety (90) days after the acquisition thereof and (ii) such Lien attaches solely to the property so acquired in such transaction;

(xii) Liens arising from precautionary uniform commercial code financing statements (or equivalent filings or registrations in foreign jurisdictions) filed under any real property or equipment lease permitted by this Agreement;

(xiii) Liens consisting of cash collateral securing Indebtedness permitted under Section 7.02(f)(ii); and

(xiv) other Liens so long as the amount of Indebtedness secured by such Liens does not exceed \$250,000 in the aggregate at any time outstanding.

(b) **Restrictions on Negative Pledges and Upstream Limitations.** No Credit Party shall nor shall it permit any Subsidiary to (i) enter into or permit to exist any arrangement or agreement (excluding this Agreement and the other Loan Documents) which directly or indirectly effectively prohibits any Credit Party or any Subsidiary from creating, assuming or incurring any Lien upon its properties, revenues or assets whether now owned or hereafter acquired, as security for the Obligations, or from making Guarantees of the Obligations or (ii) enter into any agreement, contract or arrangement (excluding this Agreement and the other Loan Documents) restricting the ability of any Subsidiary of any Credit Party to pay or make dividends or distributions in cash or kind to any Credit Party, to make loans, advances or other payments of whatsoever nature to any Credit Party, or to make transfers or distributions of all or any part of its assets to any Credit Party in each case other than customary anti-assignment provisions contained in leases, licensing agreement and other agreements restricting the assignment thereof entered into by any Credit Party or any Subsidiary in the ordinary course of its business.

7.04 Restricted Payments; Payments on Other Debt .

(a) **Restricted Payments.** No Credit Party nor any Subsidiary shall make any Restricted Payment, other than:

(i) Restricted Payments to the Parent or any other Credit Party from any direct or indirect Subsidiary of the Parent or such other Credit Party, or, in the case of any Subsidiary that is not a wholly-owned Subsidiary of the Borrower, such Subsidiary may make dividends and distributions ratably to any other holders of such Subsidiary's Capital Stock with respect to their Capital Stock;

(ii) Restricted Payments payable solely in common Capital Stock of such Person;

(iii) the repurchase or redemption of Capital Stock of the Parent from the holders of restricted stock units of the Parent granted through stock incentive plans approved by the Parent's board of directors, in amounts necessary to satisfy the tax obligations of such holders pursuant to the vesting of such restricted stock units; and

(iv) to the extent constituting a Restricted Payment, any transaction that is otherwise permitted pursuant to Section 7.01.

Notwithstanding anything to the contrary set forth herein, no Intellectual Property or any asset included in the determination of any Borrowing Base (other than cash and Cash Equivalents) shall be the subject of any Restricted Payment to any non-Credit Party without the prior written consent of the Administrative Agent.

(b) **Prepayments.** No Credit Party nor any Subsidiary shall pay, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, other than (i) the Obligations to the extent permitted hereunder, (ii) regularly scheduled payments of principal and interest due on the Junior Promissory Note pursuant to the terms thereof (but not any voluntary prepayments of the Junior Promissory Note) and (iii) Indebtedness permitted pursuant to Sections 7.02(c), (d) (solely with respect to Indebtedness due to a Credit Party or due to a non-Credit Party by a non-Credit Party, in each case subject to the terms of any Intercompany Note) or (j).

7.05 Merger, Consolidation and Disposition of Assets .

(a) **Mergers and Acquisitions.** None of the Credit Parties nor any Subsidiary will become a party to any merger, dissolution, liquidation or consolidation, except for the merger and/or consolidation of (i) one or more of the Credit Parties (other than the Borrower) with and into a Credit Party and (ii) one or more non-Credit Parties with and into (x) a Credit Party, so long as such Credit Party is the surviving entity, or (y) any other non-Credit Party.

(b) **Disposition of Assets.** No Credit Party nor any Subsidiary shall dissolve, liquidate or sell, transfer, convey, license, lease, assign, factor or otherwise dispose of any of its properties or other assets, any Capital Stock of any of its Subsidiaries (whether in a public or a private offering or otherwise), any of its Accounts or any of its other Investments, or cease to own and control legally and beneficially Capital Stock of the Subsidiaries owned on the Closing Date representing 100% of the combined voting power of all of Capital Stock entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such Capital Stock that such Person has the right to acquire pursuant to any option right), other than:

- (i) the sale of Inventory in the ordinary course of business;
- (ii) dispositions of obsolete or worn out equipment or fixtures no longer useful in the business, whether now owned or hereafter acquired, in the ordinary course of business;
- (iii) so long as no Event of Default has occurred which is continuing or would result therefrom, sales of equipment now owned or hereafter acquired by any Credit Party in an aggregate amount not in excess of \$250,000 during the term of this Agreement;
- (iv) (A) non-exclusive licenses of Intellectual Property in the ordinary course of business (other than to the extent such licenses would materially impair the security interests granted to the Administrative Agent, taken as a whole), or (B) the abandonment, cancellation, allowance to lapse or be dedicated to the public domain, any Intellectual Property (1) which are no longer material to the business of any Credit Party as determined in the good faith reasonable business judgment of the Credit Parties, or (2) as otherwise determined in such Credit Party's good faith reasonable business judgment;
- (v) the AdParlor Sale;
- (vi) the True North Loyalty Sale;
- (vii) dispositions or transfers constituting (x) a Restricted Payment permitted by Section 7.04(a) and (y) an Investment permitted by Section 7.01;
- (viii) Notwithstanding anything to the contrary contained in this Section 7.05, the sale, lease, transfer or other disposition of property or assets not to exceed \$250,000 in the aggregate in any Fiscal Year of Parent; provided that (A) such sale, lease, transfer or other disposition shall be for fair market value (as determined by the management of the Borrower), (B) at least 75% of the consideration received therefor by the Credit Parties or any such Subsidiary shall be in the form of cash or Cash Equivalents and (C) no Event of Default shall exist or shall result therefrom; and
- (ix) other such dispositions (i) from a Credit Party or any Subsidiary to a Credit Party (so long as any such disposition from a non-Credit Party to a Credit Party is for no greater than fair market value), (ii) among non-Credit Parties or (iii) from a Credit Party to a non-Credit Party so long as the aggregate value thereof does not exceed \$100,000 in the aggregate in any Fiscal Year of Parent.

Notwithstanding anything to the contrary set forth herein, (A) except between Credit Parties, no Intellectual Property shall be the subject of any dissolutions, liquidations, sales, transfers, conveyances, licenses, leases, assignments or other dispositions permitted pursuant to this Section 7.05 (other than as set forth in clause (iv) above) and (B) no other asset included in the determination of the Borrowing Base shall be the subject of any dissolutions, liquidations, sales, transfers, conveyances, licenses, leases, assignments or other dispositions to any non-Credit Party as provided in this Section 7.05.

7.06 Sale and Leaseback. No Credit Party nor any Subsidiary shall engage in any sale-leaseback or similar transaction or incur any Synthetic Lease obligations involving any of its assets.

7.07 Accounting Changes; Change of Fiscal Year . No Credit Party nor any Subsidiary will make any change in (a) accounting policies or reporting practices, except as permitted by GAAP or (b) their Fiscal Year.

7.08 Transactions with Affiliates. No Credit Party nor any Subsidiary will engage in any transaction with any Affiliate, whether or not in the ordinary course of business, including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such Affiliate, on terms less favorable to such Credit Party or Subsidiary or Affiliate than would have been obtainable on an arm's-length basis with a non-Affiliate; provided that the foregoing restriction shall not apply to (i) transactions solely among the Credit Parties otherwise permitted hereunder, (ii) any Restricted Payment permitted under Section 7.04, (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.08 or any amendment thereto that is not materially adverse to any Lender and (iv) payment of the fees of members of any board of directors, board of managers or advisory board of the Credit Parties or any Subsidiary in an amount not to exceed \$750,000 in the aggregate in any Fiscal Year of Parent, and reimbursement of actual out-of-pocket expenses incurred in connection with attending meetings of the board of directors, board of managers or advisory board.

7.09 Change in Terms of Governing Documents. No Credit Party nor any Subsidiary shall change or amend, modify, supplement or waive the terms of any of its Governing Documents, except amendments, modifications, supplements or waivers that do not adversely affect the rights or interests of the Administrative Agent or the Lenders.

7.10 Change in Nature of Business. No Credit Party nor any Subsidiary shall engage in any line of business substantially different from those lines of business conducted by such Credit Party on the Closing Date.

7.11 Margin Regulations. No Credit Party shall use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.12 Financial Covenants.

(a) Minimum Excess Availability. The Credit Parties and their Subsidiaries shall maintain Excess Availability at all times equal or greater than the greater of (i) \$3,000,000 and (ii) 7.5% of the Line Cap.

(b) Minimum Modified Consolidated EBITDA/Consolidated Fixed Charge Coverage Ratio.

(i) The Credit Parties and their Subsidiaries shall maintain Modified Consolidated EBITDA calculated as of the last day of each Fiscal Quarter set forth below for the Measurement Period ending on such date of not less than the amount set forth opposite such Fiscal Quarter under the column "Minimum Modified Consolidated EBITDA" (provided that, for the avoidance of doubt, compliance with this clause (b)(i) shall not be required commencing with the Fiscal Quarter ending June 30, 2025):

Fiscal Quarter ending	Minimum Modified Consolidated EBITDA
March 31, 2024	\$ (1,500,000)
June 30, 2024	\$ (5,000,000)
September 30, 2024	\$ 200,000
December 31, 2024	\$ 6,900,000
March 31, 2025	\$ 9,900,000

(ii) Commencing with the Fiscal Quarter ending June 30, 2025, calculated as of the last day of such Fiscal Quarter and each Fiscal Quarter thereafter, the Credit Parties and their Subsidiaries shall maintain a Consolidated Fixed Charge Coverage Ratio for the Measurement Period ending on such date of no less than 1.10:1.00.

7.13 Sanctions. The Credit Parties shall not permit any Loan or the proceeds of any Loan, directly or indirectly, to be lent, contributed or otherwise made available to any Subsidiary, joint venture partner, or other individual or entity, to fund any activities of or business with any individual or entity in any Designated Jurisdiction that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as a Lender, Arranger, or the Administrative Agent) of any Sanctions.

7.14 Holding Company. The Parent will not engage to any extent in any business whatsoever other than the business of owning and managing, directly, beneficially and of record, 100% of the issued and outstanding Capital Stock of the Borrower and activities directly related thereto and, in furtherance and without limitation thereof, will not create or acquire any Subsidiary (other than the Borrower or any Subsidiary of the Borrower).

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any one or more of the following events shall constitute an event of default (each, an “Event of Default”) under this Agreement:

(a) Non-Payment. Any Credit Party shall fail to (i) pay any principal of the Loans when the same shall become due and payable, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment (including, without limitation, Section 2.03(b)) or (ii) pay any interest on the Loans, the fees or other sums due hereunder or under any of the other Loan Documents, when the same shall become due and payable, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment, and, in the case of this clause (ii), such failure to pay any interest on the Loans shall continue unremedied for two (2) Business Days or such failure to pay any other amounts under this clause (ii) shall continue unremedied for three (3) Business Days; or

(b) Specific Covenants. Any Credit Party shall fail to comply with any of its covenants contained in Section 2.03(b), Sections 6.04(a), (b) or (c), 6.05(a) or 6.06 (solely with respect to maintenance of existence), 6.15, 6.16, 6.17 or Article 7; or

(c) Other Defaults. Any Credit Party shall fail (or, to the extent applicable, fail to cause its Subsidiaries) to perform any term, covenant or agreement contained herein or in any of the other Loan Documents (other than those specified elsewhere in this Section 8.01) and such failure continues for thirty (30) days; or

(d) Representations and Warranties.

(i) Generally. Any representation or warranty of any Credit Party in this Agreement or any of the other Loan Documents or in any other document or instrument delivered pursuant to or in connection with this Agreement shall prove to have been false in any material respect (but without any duplication of any materiality qualifications) upon the date when made or deemed to have been made or repeated; or

(ii) Borrowing Base Certificates. Without duplication of the foregoing contained in clause (i) above, any information contained in any Borrowing Base Certificate is untrue, incorrect or misleading (other than (i) inadvertent errors not exceeding \$50,000 in the aggregate so long as the Administrative Agent receives a corrected Borrowing Base Certificate no later than one (1) Business Day after (x) the receipt of such Borrowing Base Certificates containing such errors if such error(s) would have caused an Event of Default under Section 7.12 or (y) actual knowledge of the Senior Management of any Credit Party to the extent such error would not have caused an Event of Default under Section 7.12 or (ii) errors understating the Borrowing Base); or

(e) Inability to Pay Debt; Insolvency Proceedings; Etc. Any Credit Party or any of its Subsidiaries shall make an assignment for the benefit of creditors, or shall petition or apply for the appointment of a trustee or other custodian, liquidator or receiver of such Credit Party or such Subsidiary or of any substantial part of the assets of any Credit Party or such Subsidiary or shall commence any case or other proceeding relating to any Credit Party or such Subsidiary under any Debtor Relief Law, now or hereafter in effect, or shall take any action to authorize or in furtherance of the foregoing, or if any such petition or application (including a bankruptcy application) shall be filed or any such case or other proceeding shall be commenced against any Credit Party or such Subsidiary and such Credit Party or such Subsidiary shall indicate its approval thereof, consent thereto or acquiescence therein or such petition or application shall not have been dismissed or stayed within sixty (60) days following the filing thereof; a decree or order (including a bankruptcy order) is entered appointing any such trustee, custodian, liquidator or receiver or adjudicating any Credit Party or any Subsidiary bankrupt or insolvent, or approving a petition or a bankruptcy application in any such case or other proceeding, or a decree or order (including a bankruptcy order) for relief is entered in respect of any Credit Party or any Subsidiary in an involuntary case under any Debtor Relief Laws; or

(f) Judgments. There shall remain in force for more than thirty (30) days any final, non-appealable judgment against any Credit Party (considered collectively) that exceeds in the aggregate the Threshold Amount which is not covered by insurance policies as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage, unless such judgment has been discharged, satisfied, bonded or stayed pending appeal; or

(g) ERISA Event. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Credit Parties under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC, (ii) a Credit Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan or (iii) with respect to any Foreign Plan a termination, wind-up, withdrawal or non-compliance with applicable Law or plan terms, or a Credit Party amends any Foreign Plan, or incurs or assumes any liabilities under any Foreign Plan, which, in each case of clauses (i) through (iii) above, could either individually or in the aggregate reasonably be expected to result in a Material Adverse Effect; or

(h) Indebtedness. Any Credit Party shall fail to pay at maturity, or within any applicable period of grace, any obligation for Indebtedness in excess of the Threshold Amount, or fail to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound evidencing or securing Indebtedness in excess of the Threshold Amount for such period of time as would permit (assuming the lapse of time and/or giving of appropriate notice if required and assuming such breach has not been cured within the applicable grace period thereunder) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof; or

(i) Invalidity of Loan Documents; Etc. If any of the Loan Documents shall be cancelled, terminated, revoked, rescinded or otherwise ceases to be in full force and effect other than in accordance with their terms; or the Administrative Agent's security interests, mortgages or Liens in the Collateral shall cease to be valid and perfected, or shall cease to have the priority contemplated by the Security Documents, other than in accordance with the terms thereof or with a consent or approval obtained in accordance with Section 10.01; or any action at law, suit or in equity or other legal proceeding to cancel, revoke, rescind or declare void any of the Loan Documents shall be commenced by or on behalf of any Credit Party, any Subsidiary or any of their respective equity holders; or any court or any other Governmental Authority shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof; or

(j) Change of Control. A Change of Control shall occur; or

(k) Labor Matters; Force Majeure; Etc. There shall occur any strike, lockout, labor dispute, embargo, condemnation, expropriation, act of God or public enemy, or other casualty, which in any such case causes the cessation or substantial curtailment of revenue producing activities at any facility of any Credit Party for more than ten (10) consecutive days if such event or circumstance is not covered by business interruption insurance and would have a Material Adverse Effect; or

(l) Conduct of Business. Except as otherwise expressly permitted hereunder, any Credit Party shall (i) take any action, or shall make a determination, whether or not yet formally approved by any Credit Party's management or board of directors (or equivalent governing body), to (i) suspend the operation of all or a material portion of the business of the Credit Parties taken as a whole or (ii) be enjoined, restrained or in any way prevented by the order of any Governmental Authority from conducting any part of their business, unless such order would not have a Material Adverse Effect; or

(m) Criminal Actions. Any Credit Party, any of its Subsidiaries shall be indicted or convicted for a state or federal crime or any other criminal action having the force of law for a felony that would reasonably be expected to materially impair any rights or remedies of the Administrative Agent or any Lender under any Loan Document.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, or at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, including, without limitation, the Revolving Credit Commitments, whereupon such commitments and obligation shall be terminated and any applicable Early Termination Premium shall be immediately due and payable;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable (including, without limitation, any applicable Early Termination Premium), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Credit Parties; and

(c) exercise on behalf of itself and the other Secured Parties all rights and remedies available to it and the other Secured Parties under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default under Section 8.01(e), the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Administrative Agent or any Lender. No termination of the commitments hereunder shall relieve any Credit Party of any of the Obligations.

8.03 Event of Default Application of Funds

. In the event that, following the occurrence and during the continuance of any Event of Default, the Administrative Agent or any Lender, as the case may be, receives any monies in connection with the enforcement of any of the Loan Documents, or otherwise with respect to the realization upon any of the Collateral (including, without limitation, Reserved Cash), the Administrative Agent may apply (and shall apply at (a) the request of the Required Lenders or (b) following the exercise of remedies pursuant to Section 8.02, including without limitation, pursuant to the proviso thereof) such monies as follows (and each Lender shall comply with the instructions of the Administrative Agent in the case of any such monies received by any Lender):

(i) First, to payment of outstanding Protective Advances funded by the Administrative Agent;

(ii) Second, to payment of Obligations owing to the Administrative Agent constituting (A) indemnities and expenses due and payable under this Agreement and the other Loan Documents (including fees, charges and disbursements of counsel to the Administrative Agent) and (B) the fees due and payable under Section 2.07(b);

(iii) Third, to payment of Obligations constituting indemnities and expenses (including fees, charges and disbursements of counsel to Lenders and amounts payable under Article III) due and payable to the Lenders under this Agreement and the other Loan Documents, ratably among such Persons in proportion to the respective amounts described in this clause Third payable to them;

(iv) Fourth, to payment of that portion of the Obligations constituting accrued and unpaid interest and fees (including, without limitation, any applicable Early Termination Premium) due and payable to the Lenders under this Agreement and the other Loan Documents ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

(v) Fifth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans ratably among them in proportion to the respective amounts described in this clause Fifth;

(vi) Sixth, to the payment of all other Obligations ratably among the holders thereof in proportion to the respective amounts described in this clause Sixth; and

(vii) Seventh, the balance, if any, after all of the Obligations have been indefeasible paid in full, to the Borrower or as otherwise required by Law.

All payments applied to the Loans pursuant to this Section 8.03 shall be applied to the Loans owing to the Lenders in accordance with their respective Applicable Percentages.

Any prepayment of the principal balance of the Term Loan as a result of the application of Reserved Cash shall be subject to any applicable Early Termination Premium and shall be applied to the principal balance of the Term Loans based on the Applicable Percentage of each Lender. Any reduction of the Revolving Credit Commitments as a result of the application of Reserved Cash to repay Revolving Credit Loans shall be subject to any applicable Early Termination Premium and shall be applied to the principal balance of the Revolving Credit Loans based on the Applicable Percentage of each Lender.

ARTICLE IX ADMINISTRATIVE AGENT

9.01 Appointment and Authority .

(a) Each of the Lenders hereby irrevocably appoints SLR to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Sections 9.06 and 9.10) are solely for the benefit of the Administrative Agent and the Lenders and neither the Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the collateral agent and security trustee (as applicable) of such Lender for purposes of acquiring, holding directly or on trust (as applicable) and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Credit Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties (whether implied by contract or by law), regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable Law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Laws; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Credit Parties or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable order. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by a Credit Party or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower, to appoint a successor, which shall be an Affiliate of any Lender or other bank or financial institution with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders appoint a successor meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor as provided for above in this Section. Upon the acceptance of a successor's appointment hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent its sub agents and its respective Related Parties in respect of any actions taken or omitted to be taken by any of them prior to such resignation.

9.07 Non-Reliance. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, neither the Arranger hereof shall have no powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 Collateral and Guarantee Matters. Each of the Lenders irrevocably authorize the Administrative Agent to and upon the request of the Borrower (and at its sole cost and expense) with reasonable advance notice, the Administrative Agent hereby agrees,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full in cash of all Obligations (other than contingent indemnification obligations for which no claim has then been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder (other than sales among Credit Parties), or (iii) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders; and

(b) to release any Guarantor from its obligations under the Security Documents and release any related Collateral if such Person ceases to be a Subsidiary as a result of a transaction permitted by Section 7.05 or is or becomes an Excluded Subsidiary.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guarantees pursuant to this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

ARTICLE X MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Credit Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Credit Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest (other than default interest), fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided that for the avoidance of doubt, mandatory prepayments pursuant to Section 2.03 may be postponed, delayed, reduced, waived or modified with the consent of the Required Lenders;
- (c) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (v) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document relating to the Loans, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" (so long as such amendment does not result in the Default Rate being lower than the interest then applicable) or to waive any obligation of the Borrower to pay interest at the Default Rate;
- (d) (i) change Section 2.11 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby or the order of the application of payments thereunder, in each case, without the written consent of each Lender directly affected thereby or (ii) change the order of application of any reduction in the Commitments or any prepayment of Loans set forth in the applicable provisions of Section 2.03, in any manner that materially and adversely affects a Lender without the written consent of the Required Lenders;
- (e) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) below) without the written consent of each Lender;

(f) (i) release all or substantially all of the Collateral in any transaction or series of related transactions, (ii) release all or substantially all of the Guarantors party to the Guarantees or release the Borrower, (iii) subordinate the Obligations hereunder to any other Indebtedness or (iv) except as provided by operation of applicable Law, subordinate the Liens on all or substantially all of the Collateral granted in favor of the Administrative Agent for itself and the other Secured Parties under the Security Documents to any other Lien, in each case, without the written consent of each Lender;

(g) (i) increase the advance rates set forth in or otherwise amend the definition of "Borrowing Base" (including component definitions therein) without the written consent of each Lender, (ii) amend the definition of "Reserves" (including component definition thereof) without the written consent of each Lender, (iii) make less restrictive the eligibility criteria contained in the definitions of "Eligible Domestic Accounts", "Eligible Domestic Investment Grade Accounts", "Eligible Domestic Non-Investment Grade Accounts", "Eligible Unbilled Domestic Accounts", "Eligible Unbilled Foreign Accounts", "Eligible Foreign Accounts" or "Protective Advance" without the written consent of each Lender, or (iv) amend Section 2.15 without the consent of each Lender in each case, in a manner which would result in a greater amount of credit being made available to the Borrower (it being understood and agreed that nothing in this clause (g) shall limit, restrict or impair the rights of the Administrative Agent to impose or establish any and all Reserves, and thereafter to reduce or eliminate such Reserves or to determine the eligibility of Collateral for inclusion in the calculation of the Borrowing Base); or

(h) without the prior written consent of each Lender, impose any materially greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder;

provided further, however, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (ii) Section 10.06(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; (iii) Section 2.07(b) may be amended, or rights or privileges thereunder waived, in a writing executed only by the Borrower and the Administrative Agent; (iv) typographical or scrivener's errors may be corrected solely with the consent of the Borrower or any other applicable Credit Party and the Administrative Agent, and (v) no amendment, waiver or consent which has the effect of enabling the Borrower to satisfy any condition to a Borrowing contained in Section 4.02 hereof which, but for such amendment, waiver or consent would not be satisfied, shall be effective to require the Lenders to make any additional Revolving Credit Loans, unless and until the Required Lenders (or, if applicable, all Lenders) shall have approved such amendment, waiver or consent.

10.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, any other Credit Party, or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications sent delivered through electronic communications to the extent provided in subsection (b), below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including through any Electronic Medium) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by return e-mail or other written acknowledgement, but expressly excluding use of "return receipt requested" functions or features), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Request Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.11), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver .

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arranger, and their respective Affiliates (limited, in the case of legal expenses, to the legal reasonable fees, charges and disbursements of one primary counsel to all such Persons and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions)), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Arranger, and the Lenders (limited, in the case of legal expenses, to one primary counsel to the Administrative Agent, Arrangers and Lenders to be retained by the Administrative Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions) and, in the case of an actual or perceived conflict of interest where any such Person affected by such conflict informs the Borrower of such conflict, of a single additional firm of counsel in each relevant jurisdiction for all similarly situated affected Persons) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Credit Parties. The Credit Parties shall indemnify the Administrative Agent (and any sub-agent thereof), the Arranger, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (limited, in the case of legal expenses, to one primary counsel to the Administrative Agent, Arrangers and Lenders and their Related Parties to be retained by the Administrative Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions) and, in the case of an actual or perceived conflict of interest where any Indemnatee affected by such conflict informs the Borrower of such conflict, of a single additional firm of counsel in each relevant jurisdiction for all similarly situated affected Indemnitees), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Borrower or any other Credit Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any other Credit Party, or any Environmental Liability related in any way to the Borrower or any other Credit Party, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Credit Party, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of any Indemnatee or any of its Related Parties or by reason of any material breach of the obligations of such Indemnatee under this Agreement or the other Loan Documents, (y) result from a claim brought by the Borrower or any other Credit Parties against an Indemnatee for breach in bad faith of such Indemnatee's or any of its Related Parties obligations hereunder or under any other Loan Document, if the Borrower or such other Credit Parties has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) that is brought by an Indemnatee against another Indemnatee (other than claims against the Administrative Agent solely in its capacity as such or in its fulfilling such role). Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that any Credit Party for any reason fails to pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (and any sub-agent thereof) or any Related Party of the Administrative Agent, each Lender severally agrees to pay to the Administrative Agent (and any sub-agent thereof) or such Related Party, as the case may be, such Lender's pro rata share of the Aggregate Commitments (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (and any sub-agent thereof) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (and any sub-agent thereof) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.10(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no party hereto (and no Indemnatee or any Subsidiary or Affiliate of Parent) shall assert, and each party hereto hereby waives, any claim against any other party hereto (and any Indemnatee and any Subsidiary or Affiliate of Parent) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of any Credit Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and each other Loan Document shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Credit Party (except to the extent permitted by Section 7.05(a) to the extent a transaction permitted thereby would constitute an assignment) may assign or otherwise transfer any of its rights or obligations hereunder or thereunder, as applicable, without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except, subject to subsection (h): (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (g) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignee all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amount. Except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$2,000,000 in the case of any assignment, unless the Administrative Agent otherwise consents; provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Partial Assignment. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitments assigned.

(iii) Required Consents.

(A) Unless an Event of Default has occurred that is continuing, the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required (1) for assignments in respect of any Commitment if such assignment is to a Person that is not an existing Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender and (2) to the extent required by subsection (b)(i) of this Section; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof.

(B) The consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required (1) for assignments in respect of any Commitment if such assignment is to a Person that is not an existing Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender and (2) to the extent required by subsection (b)(i) of this Section.

(iv) Assignment Fee. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500 payable to the Administrative Agent; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignments to Affiliates, Defaulting Lenders, or Natural Persons. No such assignment shall be made (A) to any Credit Party or any Affiliate or Subsidiary of any Credit Party, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the benefit of a natural person).

(vi) Maintenance of Pro Rata Shares. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits and obligations of Sections 3.01, 3.05, 3.06, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or any Credit Party or any Affiliate or Subsidiary of any Credit Party) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.05 and 3.06 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.05 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.05, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.05 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower (solely for tax purposes), maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as such) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(g) Special Purpose Funding Vehicles. Notwithstanding any provision to the contrary, any Lender (a " Granting Lender") may assign to one or more special purpose funding vehicles (each, an "SPC") all or any portion of its funded Loans (without, in the case of Revolving Credit Loans, the corresponding Revolving Credit Commitment), without the consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Granting Lender and such SPC, and may grant any such SPC the option, in such SPC's sole discretion, to provide the Borrower all or any part of any Loans that such Lender would otherwise be obligated to make pursuant to this Agreement. Such SPCs shall have all the rights which a Lender making or holding such Loans would have under this Agreement, but no obligations. The Granting Lender making such assignment shall remain liable for all its original obligations under this Agreement, including its Commitment (although the unused portion thereof shall be reduced by the principal amount of any Loans held by an SPC). Notwithstanding such assignment, the Administrative Agent and Borrower may deliver notices to the Granting Lender making such assignment (as agent for the SPC) and not separately to the SPC unless the Administrative Agent and Borrower are requested in writing by the SPC (or its agent) to deliver such notices separately to it. The Borrower shall, at the request of any such Granting Lender, execute and deliver to such Person as such Lender may designate, a Note in the amount of such Granting Lender's original Note to evidence the Loans of such Granting Lender and related SPC.

(h) Assignment by SLR Entities. Notwithstanding anything in this Agreement or the other Loan Documents, (x) no SLR Entity shall be required to comply with Section 10.06(b) in connection with any transaction involving any other SLR Entity or any of its or their lenders or funding or financing sources, none of the foregoing shall be considered an assignee hereunder and no SLR Entity shall have any obligation to disclose any such transaction to any Person, and (y) there shall be no limitation or restriction on (i) the ability of any SLR Entity to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, or any Obligation to any other SLR Entity or any lender or financing or funding source of a SLR Entity or (ii) any such lender's or funding or financing source's ability to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, or any Obligation; provided, however, that with respect to any assignment by SLR pursuant to clauses (x) and (y) hereof, SLR shall continue to be liable as a "Lender" under this Agreement and the other Loan Documents unless such other Person complies with the provisions of this Agreement to become a "Lender."

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (g) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "Information" means all information received from the Borrower or any Credit Party relating to the Borrower or any Credit Party or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Credit Party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Credit Party, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

Notwithstanding anything to the contrary contained in this Section 10.07, each Credit Party consents to the publication by the Administrative Agent of any press releases, tombstones, advertising or other promotional materials (including, without limitation, via any Electronic Medium) relating to the financing transactions contemplated by this Agreement using such Credit Party's name, product photographs, logo or trademark. No party hereto shall or shall permit any of its Affiliates to, issue any press release or other public disclosure relating to the closing of the credit facilities provided for herein using the name, logo or otherwise referring to SLR or of any of its Affiliates or the Loan Documents to which SLR or any of its affiliates are a party to without the prior written consent (including via e-mail) of such Person (not to be unreasonably withheld, delayed or conditioned) except to the extent required to do so under applicable Law and then, only after consulting with such Persons unless prohibited from doing so under applicable Law.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, or any such Affiliate to or for the credit or the account of any Credit Party against any and all of the obligations of any Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness, provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.10 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent, promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.05, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then (x) the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent and (y) the Administrative Agent may upon notice to such Lender, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.03) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid (or caused to be paid) to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees (other than any Early Termination Premium) and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the Administrative Agent shall have consented to such assignment and the applicable assignee shall have consented to the applicable amendment, waiver or consent.

provided that the failure by any Lender to execute and deliver an Assignment and Assumption in connection with any of the foregoing assignments shall not impair the validity of the removal of such Lender and the mandatory assignment of such Lender's Commitments and outstanding Loans pursuant to this Section 10.13 shall nevertheless be effective without the execution by such Lender of an Assignment and Assumption.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling = to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCLUDING THE LAWS APPLICABLE TO CONFLICTS OR CHOICE OF LAW (OTHER THAN THE NEW YORK GENERAL OBLIGATIONS LAW §5-1401)).

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER, THE OTHER CREDIT PARTIES SIGNATORY HERETO OR THEIR RESPECTIVE PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 USA PATRIOT Act Notice . Each Lender that is subject to the Act (as hereinafter defined), the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Credit Parties and their Subsidiaries, which information includes the name and address of the Credit Parties and their Subsidiaries and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties and their Subsidiaries in accordance with the Act. The Credit Parties shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Act.

10.16 ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES. IN THE EVENT OF ANY EXPRESS CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THIS AGREEMENT AND THE TERMS OF ANY OTHER LOAN DOCUMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN. IT BEING UNDERSTOOD THAT PROVISIONS OF OTHER LOAN DOCUMENTS THAT SUPPLEMENT THE TERMS OF THIS AGREEMENT SHALL NOT BE DEEMED TO BE INCONSISTENT BECAUSE OF THEIR NATURE AS SUPPLEMENTARY PROVISIONS.

10.17 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Credit Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger and the Lenders are arm's-length commercial transactions between the Credit Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders, on the other hand, (B) each Credit Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Credit Party or any of its Affiliates, or any other Person and (B) none of the Administrative Agent, any Arranger or any Lender has any obligation to any Credit Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arranger, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Credit Parties and their Affiliates, and none of the Administrative Agent, the Arranger nor any Lender have any obligation to disclose any of such interests to the Credit Parties or any of their Affiliates. To the fullest extent permitted by law, the Credit Parties hereby waive and release any claims that they may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.18 Joint and Several Liability of the Credit Parties. The obligations of the Credit Parties hereunder and under the other Loan Documents are joint and several. The obligations of the Credit Parties under the Loan Documents may be enforced by the Administrative Agent and the other Secured Parties against any Credit Party or all Credit Parties in any manner or order selected by the Administrative Agent in its sole discretion. Each Credit Party hereby irrevocably waives (i) any rights of subrogation and (ii) any rights of contribution, indemnity or reimbursement, in each case, that it may acquire or that may arise against any other Credit Party due to any payment or performance made under this Agreement, in each case until all Obligations (other than unasserted contingent obligations) shall have been fully satisfied. Without limiting the foregoing provisions of this Section 10.18, each Credit Party acknowledges and agrees that:

- (a) its obligations under this Agreement shall remain enforceable against it even though such obligations may be unenforceable or not allowable against any other Credit Party due to the existence of any proceeding under any Debtor Relief Laws involving any other Credit Party;
- (b) its obligations under this Agreement are independent of the obligations of any other Credit Party, and a separate action or actions may be brought and prosecuted against it in respect of such obligations irrespective of whether any action is brought against any other Credit Party or any other Credit Party is joined in any such action or actions;
- (c) it hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:
- (d) any lack of validity or enforceability of this Agreement or any agreement or instrument relating thereto in respect of any other Credit Party;

(e) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of any other Credit Party under or in respect of this Agreement, or any other amendment or waiver of or any consent to departure from this Agreement, in respect of any other Credit Party;

(f) any change, restructuring or termination of the structure or existence of any other Credit Party;

(g) the failure of any other Person to execute or deliver any other agreement or the release or reduction of liability of any other Person with respect to any obligations of the Credit Parties under this Agreement; or

(h) any other circumstance (including any statute of limitations but other than the Obligations having been fully satisfied) or any existence of or reliance on any representation by any other Person that might otherwise constitute a defense available to, or a discharge of, any other Credit Party;

(i) its obligations under this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any such obligations is rescinded or must otherwise be returned by any Person upon the institution of any proceeding under any Debtor Relief Laws of any other Credit Party, all as though such payment had not been made; and

(j) it hereby unconditionally and irrevocably waives any right to revoke its joint and several liability under the Loan Documents and acknowledges that such liability is continuing in nature and applies to all obligations of the Credit Party under the Loan Documents, whether existing now or in the future.

10.19 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender or Secured Party, or any person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be held in trust for the benefit of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error. If a Payment Recipient receives any payment, prepayment or repayment of principal, interest, fees, distribution or otherwise and does not receive a corresponding payment notice or payment advice, such payment, prepayment or repayment shall be presumed to be in error absent written confirmation from the Administrative Agent to the contrary.

(b) Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(c) For so long as an Erroneous Payment (or portion thereof) has not been returned by any Payment Recipient who received such Erroneous Payment (or portion thereof) (such unrecovered amount, an "Erroneous Payment Return Deficiency") to the Administrative Agent after demand therefor in accordance with immediately preceding clause (a), (i) the Administrative Agent may elect, in its sole discretion on written notice to such Lender or Secured Party, that all rights and claims of such Lender or Secured Party with respect to the Loans or other Obligations owed to such person up to the amount of the corresponding Erroneous Payment Return Deficiency in respect of such Erroneous Payment (the "Corresponding Loan Amount") shall immediately vest in the Administrative Agent upon such election; after such election, the Administrative Agent (x) may reflect its ownership interest in Loans in a principal amount equal to the Corresponding Loan Amount in the Register, and (y) upon five business days' written notice to such Lender or Secured Party, may sell such Loan (or portion thereof) in respect of the Corresponding Loan Amount in accordance with Section 10.06 of this Agreement, and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by such Lender or Secured Party shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender or Secured Party (and/or against any Payment Recipient that receives funds on its behalf), and (ii) each party hereto agrees that, except to the extent that the Administrative Agent has sold such Loan, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of such Lender or Secured Party with respect to the Erroneous Payment Return Deficiency. For the avoidance of doubt, no vesting or sale pursuant to the foregoing clause (i) will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(d) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Credit Party.

(e) No Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(f) Each party's obligations, agreements and waivers under this Section 10.19 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

[Remainder of this Page Left Intentionally Blank; Signature Pages Follow.]

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

BORROWER:

FLUENT, LLC, a Delaware limited liability company

By: _____
Name:
Title:

GUARANTORS:

FLUENT, INC., a Delaware corporation

By: _____
Name:
Title:

ADPARLOR, LLC, a Delaware limited liability company

By: _____
Name:
Title:

AMERICAN PRIZE CENTER LLC, a Delaware limited liability company

By: _____
Name:
Title:

BIG PUSH MEDIA LLC, a Delaware limited liability company

By: _____
Name:
Title:

DELIVER TECHNOLOGY LLC, a Delaware limited liability company

By: _____
Name:
Title:

EARN BIG REWARDS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

EARNVIRTUAL, LLC, a Delaware limited liability company

By: _____
Name:
Title:

EASE WINS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

FIND DREAM JOBS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

[Signature Page to Credit Agreement]

FLUENT MEDIA LABS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

HVGUS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

HUNT FOR JOBS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

INBOX PAL, LLC, a Delaware limited liability company

By: _____
Name:
Title:

INFLUENTZ, LLC, a Delaware limited liability company

By: _____
Name:
Title:

[Signature Page to Credit Agreement]

MAIN SOURCE MEDIA, LLC, a Delaware limited liability company

By: _____
Name:
Title:

NETCREATIONS LLC, a Nevada limited liability company

By: _____
Name:
Title:

PURPOSE APP, LLC, a Delaware limited liability company

By: _____
Name:
Title:

PURPOSE INSURANCE AGENCY, LLC, a Delaware limited liability company

By: _____
Name:
Title:

RETROPOINT, LLC, a Delaware limited liability company

By: _____
Name:
Title:

REWARD ZONE USA LLC, a Delaware limited liability company

By: _____
Name:
Title:

REWARDSFLOW LLC, a Delaware limited liability company

By: _____
Name:
Title:

SAMPLES & SAVINGS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

SEA OF SAVINGS LLC, a Delaware limited liability company

By: _____
Name:
Title:

SEARCH WORKS MEDIA LLC, a Delaware limited liability company

By: _____
Name:
Title:

[Signature Page to Credit Agreement]

THE SMART WALLET, LLC, a Delaware limited liability company

By: _____
Name:
Title:

VESEY STUDIOS, LLC, a Delaware limited liability company

By: _____
Name:
Title:

WINOPOLY LLC, a New York limited liability company

By: _____
Name:
Title:

[Signature Page to Credit Agreement]

ADMINISTRATIVE AGENT:

CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS, as
Administrative Agent and Lender

By: _____

Name: Rebecca Tarby

Title: Senior Managing Director

[Signature Page to Credit Agreement]

LENDER:

CRYSTAL FINANCIAL SPV LLC, as a Lender

By: _____

Name: Rebecca Tarby

Title: Senior Managing Director

[Signature Page to Credit Agreement]

SUBSIDIARIES OF FLUENT, INC.

The following is a list of the significant subsidiaries of Fluent, Inc. showing the place of incorporation or organization and the names under which each subsidiary does business. The names of certain subsidiaries are omitted as such subsidiaries, considered as a single subsidiary, would not constitute a significant subsidiary.

Name	Jurisdiction of Organization
Fluent, LLC	Delaware
Winopoly, LLC	New York
AdParlor, LLC	Delaware

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated April 2, 2024, with respect to the consolidated financial statements included in the Annual Report of Fluent, Inc. on Form 10-K for the year ended December 31, 2023. We consent to the incorporation by reference of said report in the Registration Statements of Fluent, Inc. on Forms S-3 (File No. 333-205614, File No. 333-206402, File No. 333-212109, File No. 333-215125, and File No. 333-233250) and on Forms S-8 (File No. 333-177025, File No. 333-188739, File No. 333-194952, File No. 333-206403, File No. 333-211842, File No. 333-224187, File No. 333-226170 and File No. 333-266743).

/s/ GRANT THORNTON LLP

New York, New York
April 2, 2024

CERTIFICATIONS

I, Donald Patrick, certify that:

- (1) I have reviewed this Annual Report on Form 10-K of Fluent, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; 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(s) 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.

April 2, 2024

By: /s/ Donald Patrick
Donald Patrick
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Ryan Perfit, certify that:

- (1) I have reviewed this Annual Report on Form 10-K of Fluent, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; 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(s) 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.

April 2, 2024

By: /s/ Ryan Perfit
Ryan Perfit
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT
TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Annual Report on Form 10-K of Fluent, Inc. for the fiscal year ended December 31, 2023 (the "Report"), the undersigned hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge and belief, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fluent, Inc.

April 2, 2024

By: /s/ Donald Patrick
Donald Patrick
Chief Executive Officer
(Principal Executive Officer)

The certification set forth above is being furnished as an Exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Report or as a separate disclosure document of Fluent, Inc. or the certifying officers.

**CERTIFICATION PURSUANT
TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Annual Report on Form 10-K of Fluent, Inc. for the fiscal year ended December 31, 2023 (the "Report"), the undersigned hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge and belief, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fluent, Inc.

April 2, 2024

By: /s/ Ryan Perfit
Ryan Perfit
Interim Chief Financial Officer
(Principal Financial and Accounting
Officer)

The certification set forth above is being furnished as an Exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Report or as a separate disclosure document of Fluent, Inc. or the certifying officers.

FLUENT, INC.

CLAWBACK POLICY

I. Purpose and Scope

The Board of Directors (the "**Board**") of Fluent, Inc. (the "**Company**") believes that it is in the best interests of the Company and its shareholders to create and maintain a culture that emphasizes integrity and accountability and that reinforces the Company's pay-for-performance compensation philosophy. The Board has therefore adopted this Clawback Policy (this "**Policy**"), which provides for the recovery of erroneously awarded Compensation in the event of a Triggering Event (as defined below).

II. Administration

This Policy is designed to comply with, and shall be interpreted to be consistent with, Section 10D of the Exchange Act, Rule 10D-1 of the Exchange Act, Nasdaq Listing Rule 5608 and other regulations, rules and guidance of the Securities and Exchange Commission (the "**SEC**") thereunder, and related securities regulations and regulations of the stock exchange or association on which Company's common shares are listed (the "**Listing Standards**"). This Policy shall be administered by the Compensation Committee of the Board (the "**Committee**").

Any determinations made by the Committee shall be final and binding. In addition, the Company shall file all disclosures with respect to this Policy in accordance with the Listing Standards. The Committee hereby has the power and authority to enforce the terms and conditions of this Policy and to use any and all of the Company's resources it deems appropriate to recoup any excess Compensation subject to this Policy.

III. Covered Executives

This Policy applies to the Company's current and former Covered Executives, as determined by the Committee in accordance with the Listing Standards.

IV. Events That Trigger Recoupment Under This Policy

The Board or Committee shall be required to recoup any excess Compensation received by any Covered Executive during the three (3) completed fiscal years (together with any interim stub fiscal year period(s) of less than nine (9) months resulting from the Company's transition to different fiscal year measurement dates) immediately preceding the date the Company is required to prepare a Covered Accounting Restatement (the "**Three-Year Recovery Period**") irrespective of any fault, misconduct or responsibility of such Covered Executive for the Covered Accounting Restatement. For purposes of the immediately preceding sentence, the date the Company shall be required to prepare a Covered Accounting Restatement is the earlier of (A) the date upon which the Board or a committee thereof, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare a Covered Accounting Restatement; or (B) the date a court, regulator, or other legally authorized body directs the Company to prepare a Covered Accounting Restatement (the "**Triggering Event**").

V. Excess Compensation: Amount Subject to Recovery

The amount of Compensation to be recovered shall be the excess of the Compensation received by the Covered Executive over the amount Compensation which would have been received by the Covered Executive had the amount of such Compensation been calculated based on the restated amounts, as determined by the Committee.

For purposes of this Policy, Compensation shall be deemed "received", either wholly or in part, in the fiscal year during which any applicable Financial Reporting Measure is attained, even if the payment, vesting or grant of such Compensation occurs after the end of such fiscal year. Amounts required to be recouped under this Policy shall be calculated on a pre-tax basis. The date of receipt of the compensation depends upon the terms of the award. For example:

- a. If the *grant* of an award of Compensation is based, either wholly or in part, on the satisfaction of a Financial Reporting Measure performance goal, then the award shall be deemed received in the fiscal period when that measure was *satisfied*;
- b. If the *vesting* of an equity award of Compensation occurs *only* upon the satisfaction of a Financial Reporting Measure performance condition, then the award shall be deemed received in the fiscal period when it vests;
- c. If the *earning* of a non-equity incentive plan award of Compensation is based on the satisfaction of the relevant Financial Reporting Measure performance goal, then the non-equity incentive plan award shall be deemed received in the fiscal year in which that performance goal is *satisfied*; and
- d. If the *earning* of a cash award of Compensation is based on the satisfaction of a Financial Reporting Measure performance goal, then the cash award shall be deemed received in the fiscal period when that measure is *satisfied*.

It is specifically understood that, to the extent that the impact of the Covered Accounting Restatement on the amount of Compensation received cannot be calculated directly from the information in the Covered Accounting Restatement (e.g., if such restatement's impact on the Company's share price is not clear), then such excess amount of Compensation shall be determined based on the Committee's reasonable estimate of the effect of the Covered Accounting Restatement on the share price or total shareholder return upon which the Compensation was received. The Company shall maintain documentation for the determination of such excess amount and provide such documentation to the Nasdaq Stock Market ("**Nasdaq**").

VI. Method of Recovery

The Committee shall determine, in its sole discretion, the methods for recovering excess Compensation hereunder, which methods may include, without limitation:

- a. requiring reimbursement of cash Compensation previously paid;
- b. seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards;
- c. offsetting the recouped amount from any compensation otherwise owed by the Company to the Covered Executive;
- d. cancelling outstanding vested or unvested equity awards; and/or
- e. taking any other remedial and recovery action permitted by law, as determined by the Committee.

Notwithstanding anything in this Section VI, and subject to applicable law, the Committee may cause recoupment under this Policy from any amount of Compensation approved, awarded, granted, paid, or payable to any Covered Executive prior to, on, or following the Effective Date (as defined below).

VII. Impracticability

The Committee shall recover any excess Compensation in accordance with this Policy unless such recovery would be impracticable, as determined by the Committee in accordance with the Listing Standards. It is specifically understood that recovery shall only be deemed impractical if (A) the direct expense paid to a third party to assist in enforcing the Policy would exceed the amount to be recovered (before concluding that it would be impracticable to recover any amount of erroneously awarded Compensation based on expense of enforcement, the Committee shall make a reasonable attempt to recover such erroneously awarded Compensation, document such reasonable attempt(s) to recover, and provide that documentation to Nasdaq); (B) recovery would violate home country law where that law was adopted prior to the November 28, 2022 (before concluding that it would be impracticable to recover any amount of erroneously awarded Compensation based on violation of home country law, the Committee shall obtain an opinion of home country counsel, acceptable to the applicable national securities exchange or association on which Company's common shares are trading, that recovery would result in such a violation, and must provide such opinion to the exchange or association); or (C) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a), and the regulations promulgated thereunder.

VIII. Other Recoupment Rights: Acknowledgement

The Committee may require that any employment agreement, equity award agreement, or similar agreement entered into on or after the Effective Date shall, as a condition to the grant of any benefit thereunder, require a Covered Executive to agree to abide by the terms of this Policy. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company. The Company shall provide notice and seek written acknowledgement of this Policy from each Covered Executive (such written acknowledgement evidenced in the form attached in Appendix I hereto); *provided*, that the failure to provide such notice or obtain such acknowledgement shall have no impact on the applicability or enforceability of this Policy to, or against, any Covered Executive.

IX. No Indemnification of Covered Executives

Notwithstanding any right to indemnification under any plan, policy or agreement of the Company or any of its affiliates, the Company shall not indemnify any Covered Executives against the loss of any excess Compensation. In addition, the Company shall be prohibited from paying or reimbursing a Covered Executive for premiums of any third-party insurance purchased to fund any potential recovery obligations.

X. Indemnification

To the extent allowable pursuant to applicable law, each member of the Board or the Committee and any officer or other employee to whom authority to administer any component of this Policy is designated shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to this Policy and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; *provided, however*, that he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such individuals may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

XI. Effective Date

This Policy shall be effective as of the effective date of the Listing Standards, October 2, 2023 (the " **Effective Date**"). This Policy shall apply to any Compensation that is received by Covered Executives on or after the Effective Date, even if such Compensation was approved, awarded, granted, or paid to Covered Executives prior to the Effective Date.

XII. Amendment and Termination; Interpretation

The Board may amend this Policy from time to time in its sole discretion and shall amend this Policy as it deems necessary to reflect and comply with further regulations, rules and guidance of the SEC and Nasdaq. The Board may terminate this Policy at any time.

The Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. This Policy is designed and intended to be interpreted in a manner that is consistent with the requirements of the Listing Standards. To the extent there is any inconsistency between this Policy and such regulations, rules and guidance, such regulations, rules and guidance shall control, and this Policy shall be deemed amended to incorporate such regulations, rules and guidance until or unless the Board or the Committee expressly determines otherwise.

This Policy shall be applicable, binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives to the fullest extent of the law. For the avoidance of doubt, this Policy shall be in addition to (and not in substitution of) any other clawback policy of the Company in effect from time to time or applicable to any Covered Executive.

XIII. Definitions

For purposes of this Policy, the following terms shall have the following meanings:

1. **"Board"** means the Board of Directors of the Company.
 2. **"Company"** means Fluent, Inc., a Delaware corporation, and its subsidiaries and their successors.
 3. **"Compensation"** means any compensation that was approved, awarded or granted to, or earned by a Covered Executive (A) while the Company had a class of securities listed on a national securities exchange or a national securities association (B) following on or after the Effective Date (including any award under any short- or long-term incentive compensation plan of the Company, including any other short- or long-term cash or equity incentive award or any other payment) that, in each case, is granted, earned, or vested based wholly or in part upon the attainment of any Financial Reporting Measure (i.e., any measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measure that is derived wholly or in part from such measures, including share price and total shareholder return). Compensation may include (but is not limited to) any of the following:
 - a. Annual bonuses and other short- and long-term cash incentives;
 - b. Stock options;
 - c. Stock appreciation rights;
 - d. Restricted shares;
 - e. Restricted share units;
 - f. Performance shares; and
 - g. Performance units.
 4. **"Covered Accounting Restatement"** means any accounting restatement of the Company's financial statements due to the Company's material noncompliance with any financial reporting requirement under U.S. securities laws. A Covered Accounting Restatement includes any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements (commonly referred to as "Big R" restatements) or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (commonly referred to as "little r" restatements). A Covered Accounting Restatement does not include (A) an out-of-period adjustment when the error is immaterial to the previously issued financial statements, and the correction of the error is also immaterial to the current period; (B) a retrospective application of a change in accounting principle; (C) a retrospective revision to reportable segment information due to a change in the structure of an issuer's internal organization; (D) retrospective reclassification due to a discontinued operation; (E) a retrospective application of a change in reporting entity, such as from a reorganization of entities under common control; or (F) a retrospective revision for stock splits, reverse stock splits, stock dividends or other changes in capital structure.
 5. **"Covered Executive"** means any person who (A) received Compensation during the Three-Year Recovery Period after becoming an Executive Officer and (B) served as an Executive Officer at any time during the performance period for such Compensation.
 6. **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.
 7. **"Executive Officer(s)"** means an "executive officer" as defined in Exchange Act Rule 10D-1(d) and the Listing Standards and includes any person who is the Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company (with any executive officers of the Company's parent(s) or subsidiaries being deemed Covered Executives of the Company if they perform such policy making functions for the Company), and such other senior executives or employees who may from time to time be deemed subject to the Policy by the Board in its sole discretion. All executive officers of the Company identified by the Board pursuant to 17 CFR 229.401(b) shall be deemed "Executive Officers."
 8. **"Financial Reporting Measure(s)"** means any measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measure that is derived wholly or in part from such measures, including share price and total shareholder return, including, but not limited to, financial reporting measures including "non-GAAP financial measures" for purposes of Exchange Act Regulation G and 17 CFR 229.10, as well other measures, metrics and ratios that are not non-GAAP measures, like same store sales. Financial Reporting Measures may or may not be included in a filing with the SEC and may be presented outside the Company's financial statements, such as in Management's Discussion and Analysis of Financial Conditions and Results of Operations or the performance graph. Financial Reporting Measures include, without limitation, any of the following:
 - a. Company share price;
 - b. Total shareholder return;
 - c. Revenues;
 - d. Net income;
 - e. Earnings before interest, taxes, depreciation, and amortization (EBITDA);
 - f. Funds from operations;
 - g. Liquidity measures such as working capital or operating cash flow;
 - h. Return measures such as return on invested capital or return on assets; and
 - i. Earnings measures such as earnings per share.
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APPENDIX I

Acknowledgment of Clawback Policy

I, the undersigned, agree and acknowledge that I am fully bound by, and subject to, all of the terms and conditions of the Clawback Policy (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Policy**") of Fluent, Inc. (the "Company") if I am a "Covered Executive" or become a "Covered Executive."

In the event of any inconsistency between the Policy and the terms of any agreement to which I am a party, or the terms of any compensation plan, program or agreement under which any compensation has been, or will be, granted, awarded, earned or paid, the terms of the Policy shall govern. In the event it is determined by the Compensation Committee of the Board of Directors of the Company that any amounts granted, awarded, earned or paid to me must be forfeited or reimbursed to the Company, I will promptly take any action necessary to effectuate such forfeiture and/or reimbursement. Any capitalized terms used in this Acknowledgment without definition shall have the meaning set forth in the Policy.

By: _____

Date: _____

Name:

Title: