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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2024

or

TRANSITION REPORT 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)

300 Vesey Street, 9th Floor
New York, New York
(Address of principal executive offices)

77-0688094

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

10282
(Zip Code)

(646) 669-7272

(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

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

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

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

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

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

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

As of August 16, 2024, the registrant had 16,871,826 shares of common stock, \$0.0005 par value per share, outstanding.

FLUENT, INC.

TABLE OF CONTENTS FOR FORM 10-Q

	Page
PART I - FINANCIAL INFORMATION	
Item 1. Financial Statements (unaudited)	
Consolidated Balance Sheets as of June 30, 2024 and December 31, 2023	2
Consolidated Statements of Operations for the three and six months ended June 30, 2024 and 2023	3
Consolidated Statements of Changes in Shareholders' Equity for the three and six months ended June 30, 2024 and 2023	4
Consolidated Statements of Cash Flows for the six months ended June 30, 2024 and 2023	5
Notes to Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	24
Item 3. Quantitative and Qualitative Disclosures About Market Risk	35
Item 4. Controls and Procedures	35
PART II - OTHER INFORMATION	
Item 1. Legal Proceedings	36
Item 1A. Risk Factors	36
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	38
Item 3. Defaults Upon Senior Securities	38
Item 5. Other Information	38
Item 6. Exhibits	39
Signatures	40

PART I - FINANCIAL INFORMATION

Unless otherwise indicated or required by the context, all references in this Quarterly Report on Form 10-Q to "we," "us," "our," "Fluent," or the "Company," refer to Fluent, Inc. and its consolidated subsidiaries.

ITEM 1. FINANCIAL STATEMENTS.

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

	<u>June 30, 2024</u>	<u>December 31, 2023</u>
ASSETS:		
Cash and cash equivalents	\$ 4,973	\$ 15,804
Accounts receivable, net of allowance for credit losses of \$157 and \$231, respectively	55,063	56,531
Prepaid expenses and other current assets	7,109	6,071
Total current assets	<u>67,145</u>	<u>78,406</u>
Restricted cash	1,464	—
Property and equipment, net	431	591
Operating lease right-of-use assets	2,502	3,395
Intangible assets, net	23,770	26,809
Goodwill	—	1,261
Other non-current assets	3,183	1,405
Total assets	<u>\$ 98,495</u>	<u>\$ 111,867</u>
LIABILITIES AND SHAREHOLDERS' EQUITY:		
Accounts payable	\$ 7,814	\$ 10,954
Accrued expenses and other current liabilities	26,214	30,534
Deferred revenue	717	430
Current portion of long-term debt	32,538	5,000
Current portion of operating lease liability	2,261	2,296
Total current liabilities	<u>69,544</u>	<u>49,214</u>
Long-term debt, net	750	25,488
Operating lease liability, net	673	1,699
Other non-current liabilities	75	1,062
Total liabilities	<u>71,042</u>	<u>77,463</u>
Contingencies (Note 10)		
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 — 14,680,246 and 14,384,936, respectively; and Shares outstanding — 13,911,651 and 13,616,316, respectively (Note 7)	44	43
Treasury stock, at cost — 768,595 and 768,595 Shares, respectively (Note 7)	(11,407)	(11,407)
Additional paid-in capital	438,237	427,286
Accumulated deficit	(399,421)	(381,518)
Total shareholders' equity	<u>27,453</u>	<u>34,404</u>
Total liabilities and shareholders' equity	<u>\$ 98,495</u>	<u>\$ 111,867</u>

See notes to consolidated financial statements

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

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2024</u>	<u>2023</u>	<u>2024</u>	<u>2023</u>
Revenue	\$ 58,717	\$ 82,145	\$ 124,700	\$ 159,399
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization)	46,109	59,540	93,457	117,812
Sales and marketing	4,605	4,215	9,417	9,028
Product development	4,717	4,615	9,557	9,553
General and administrative	8,856	3,941	19,221	16,266
Depreciation and amortization	2,567	3,095	5,138	5,454
Goodwill and intangible assets impairment	2,241	—	2,241	25,700
Total costs and expenses	<u>69,095</u>	<u>75,406</u>	<u>139,031</u>	<u>183,813</u>
Income (loss) from operations	(10,378)	6,739	(14,331)	(24,414)
Interest expense, net	(1,015)	(795)	(2,430)	(1,484)
Loss on early extinguishment of debt	(1,009)	—	(1,009)	—
Income (loss) before income taxes	(12,402)	5,944	(17,770)	(25,898)
Income tax (expense) benefit	775	(1,693)	(133)	(1,794)
Net income (loss)	<u>(11,627)</u>	<u>4,251</u>	<u>(17,903)</u>	<u>(27,692)</u>
Basic and diluted income (loss) per share:				
Basic	\$ (0.75)	\$ 0.31	\$ (1.11)	\$ (2.02)
Diluted	\$ (0.75)	\$ 0.31	\$ (1.11)	\$ (2.02)
Weighted average number of shares outstanding:				
Basic	15,534,989	13,787,995	16,115,293	13,720,643
Diluted	15,534,989	13,792,108	16,115,293	13,720,643

See notes to consolidated financial statements

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

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
Balance at March 31, 2024	14,429,193	\$ 43	768,595	\$ (11,407)	\$ 427,904	\$ (387,794)	\$ 28,746
Vesting of restricted stock units and issuance of stock under incentive plans	251,053	1	—	—	(1)	—	—
Share-based compensation	—	—	—	—	434	—	434
Issuance of pre-funded warrants	—	—	—	—	9,900	—	9,900
Net loss	—	—	—	—	—	(11,627)	(11,627)
Balance at June 30, 2024	<u>14,680,246</u>	<u>\$ 44</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 438,237</u>	<u>\$ (399,421)</u>	<u>\$ 27,453</u>
Balance at December 31, 2023	14,384,936	\$ 43	768,595	\$ (11,407)	\$ 427,286	\$ (381,518)	\$ 34,404
Vesting of restricted stock units and issuance of stock under incentive plans	295,310	1	—	—	(1)	—	—
Share-based compensation	—	—	—	—	1,052	—	1,052
Issuance of pre-funded warrants	—	—	—	—	9,900	—	9,900
Net loss	—	—	—	—	—	(17,903)	(17,903)
Balance at June 30, 2024	<u>14,680,246</u>	<u>\$ 44</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 438,237</u>	<u>\$ (399,421)</u>	<u>\$ 27,453</u>

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
Balance at March 31, 2023	14,322,853	\$ 43	768,595	\$ (11,407)	\$ 424,531	\$ (350,243)	\$ 62,924
Vesting of restricted stock units and issuance of stock under incentive plans	34,305	—	—	—	—	—	—
Share-based compensation	—	—	—	—	960	—	960
Net income	—	—	—	—	—	4,251	4,251
Balance at June 30, 2023	<u>14,357,158</u>	<u>\$ 43</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 425,491</u>	<u>\$ (345,992)</u>	<u>\$ 68,135</u>
Balance at December 31, 2022	14,129,530	\$ 42	716,692	\$ (11,171)	\$ 423,384	\$ (318,300)	\$ 93,955
Vesting of restricted stock units and issuance of restricted stock	227,628	1	—	—	(1)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	51,903	(236)	—	—	(236)
Share-based compensation	—	—	—	—	2,108	—	2,108
Net loss	—	—	—	—	—	(27,692)	(27,692)
Balance at June 30, 2023	<u>14,357,158</u>	<u>\$ 43</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 425,491</u>	<u>\$ (345,992)</u>	<u>\$ 68,135</u>

See notes to consolidated financial statements

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

	Six Months Ended June 30,	
	2024	2023
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (17,903)	\$ (27,692)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	5,138	5,454
Non-cash loan amortization expense	837	133
Non-cash gain on contingent consideration	(250)	—
Non-cash loss on early extinguishment of debt	1,009	—
Share-based compensation expense	1,030	1,997
Goodwill impairment	1,261	25,700
Impairment of intangible assets	980	—
Allowance for credit losses	71	(92)
Changes in assets and liabilities, net of business acquisitions:		
Accounts receivable	1,280	5,136
Prepaid expenses and other current assets	(1,579)	(6,435)
Other non-current assets	191	244
Operating lease assets and liabilities, net	(168)	(165)
Accounts payable	(3,140)	7,113
Accrued expenses and other current liabilities	(1,443)	(9,147)
Deferred revenue	474	(119)
Other	(987)	(76)
Net cash (used in) provided by operating activities	(13,199)	2,051
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capitalized costs included in intangible assets	(3,542)	(2,370)
Business acquisitions, net of cash acquired	—	(1,250)
Acquisition of property and equipment	—	(22)
Net cash used in investing activities	(3,542)	(3,642)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of long-term debt, net of debt financing costs	42,917	—
Repayments of long-term debt	(44,475)	(2,500)
Debt financing costs	(968)	(237)
Proceeds from issuance of warrants	9,900	—
Taxes paid related to net share settlement of vesting of restricted stock units	—	(236)
Net cash (used in) provided by financing activities	7,374	(2,973)
Net decrease in cash, cash equivalents, and restricted cash	(9,367)	(4,564)
Cash, cash equivalents, and restricted cash at beginning of period	15,804	25,547
Cash, cash equivalents, and restricted cash at end of period	\$ 6,437	\$ 20,983
SUPPLEMENTAL DISCLOSURE INFORMATION		
Cash paid for interest	\$ 1,690	1,434
Cash paid for income taxes	\$ 44	78
Share-based compensation capitalized in intangible assets	\$ 29	51
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES		
Contingent payments in connection with TAPP consolidation	\$ —	\$ 2,915
Long-term debt issuance	\$ 2,000	\$ —
Consideration for True North	\$ 500	\$ —

See notes to consolidated financial statements

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

1. Summary of significant accounting policies

(a) Basis of preparation

The accompanying unaudited consolidated financial statements have been prepared by Fluent, Inc., a Delaware corporation (the "Company" or "Fluent"), in accordance with accounting principles generally accepted in the United States ("GAAP" or "U.S. GAAP") and applicable rules and regulations of the Securities and Exchange Commission (the "SEC") regarding interim financial reporting. Certain information and note disclosures normally included in annual financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to those rules and regulations.

The accompanying unaudited consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations, and cash flows for the interim periods ended June 30, 2024 and 2023, respectively, but are not necessarily indicative of the results of operations to be anticipated for any future interim periods or for the full year ending December 31, 2024.

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.

The information included in this Quarterly Report on Form 10-Q should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023 ("2023 Form 10-K") filed with the SEC on April 2, 2024. The consolidated balance sheet as of December 31, 2023 included herein was derived from the audited financial statements as of that date and included in the 2023 Form 10-K.

Going concern

In accordance with Accounting Standards Codification ("ASC") 205-40, Presentation of Financial Statements – Going Concern, management must evaluate whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date these accompanying unaudited consolidated financial statements are issued (the "issuance date"). As part of this evaluation, management may consider the potential mitigating impact of its plans that have not been fully implemented as of the issuance date if (a) it is probable that management's plans will be effectively implemented on a timely basis, and (b) it is probable that the plans, when implemented, will alleviate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern within one year after the issuance date.

The Company has experienced a continued decline in its operating results, driven primarily by the continued impact of the imposed regulatory requirements on its owned and operated digital media properties (see Note 10, *Contingencies*). On April 2, 2024, Fluent, LLC, a wholly-owned subsidiary of the Company, as Borrower, entered into a credit agreement (as amended, the "SLR Credit Agreement") with the Company 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 each other lender from time to time party thereto.

The SLR Credit Agreement requires the Company to maintain and comply with certain financial covenants. Moreover, the borrowings under the SLR Revolver (as defined in Note 5) under the SLR Credit Agreement are limited to a borrowing base, that fluctuates as regularly as weekly based on the Company's eligible accounts receivable, as further described in Note 5. As a result of the continued decline in financial performance of the Company's owned and operated digital media properties throughout the second quarter of 2024, the Company's accounts receivable were insufficient to support the borrowing base needed to fund operations through the end of the second quarter of 2024. The Company therefore raised equity capital in the Private Placement (as defined in Note 7, *Equity*), further updated its projections to reflect the continued decline in its operating results, and entered into the First Amendment (as defined and discussed in Note 5) with SLR on May 15, 2024.

As of June 30, 2024, the Company was not in compliance with its financial covenants under the SLR Credit Agreement, which the Company had to report by July 31, 2024, and which would have resulted in an event of default. The Company and SLR then entered into two letter agreements pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended June 30, 2024, and the related notice of event of default, to August 21, 2024.

On August 19, 2024, the Company and SLR entered into the Second Amendment (as defined and discussed in Note 5) to the SLR Credit Agreement, which, among other things, required that the Company raise \$2,000 in additional capital. To raise the capital, the Company entered into convertible subordinated notes, as described in Note 12, *Subsequent Events*, below, raising an aggregate \$2,050. In addition, among other things, the Second Amendment waived non-compliance with the financial covenant as of June 30, 2024, modified the financial covenant through December 31, 2025, ended the requirement to engage a financial advisor, and increased the interest rate margin from 5.25% to 5.75%.

Additionally, given the continued challenges the Company has faced achieving profitability, the Company made a reduction in workforce during the second quarter of 2024 and continues to consider further cost reduction measures and focus resources on opportunities that will enable the Company to meet its projected budget and cash flow requirements. Initial measures included divesting a non-core business unit (see Note 11, *Variable Interest Entity*), transferring another business unit (see Note 3, *Intangible assets, net*), and reviewing additional other business units to determine the impact of potential divestments.

While based on current projections, the Company expects to be in compliance with the new financial covenants for each of the quarters in the twelve months following the issuance date of this Quarterly Report on Form 10-Q, if during any fiscal quarter, the Company does not comply with any of its financial covenants, such non-compliance would result in an event of default that would give SLR the right to accelerate maturities. In such case, the Company likely would not have sufficient funds to repay the SLR Term Loan and the SLR Revolver. In addition, while we believe the proceeds from the

sale of the Convertible Notes (as defined and discussed in Note 12, *Subsequent Events*) will provide sufficient liquidity for any anticipated cash needs, there is no assurance that the Company's available cash plus borrowing base will be sufficient to fund operations over the next twelve months. Further, if needed, the Company will consider implementing other cost saving measures, but there is no guarantee that the plans will be successfully executed or have the expected benefits. As a result, management concluded that there is substantial doubt about the Company's ability to continue as a going concern for one year after the date of this Quarterly Report on Form 10-Q.

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

The accompanying unaudited consolidated financial statements do not include any adjustments relating to the possible future effects on the recoverability and classification of recorded assets and classification of liabilities that might result should the Company be unable to continue as a going concern.

Principles of consolidation

The consolidated financial statements include the financial statements of the Company and its subsidiaries. All significant transactions among the Company and its subsidiaries have been eliminated upon consolidation.

(b) Out of period correction

During the three months ended June 30, 2024, the Company determined that unauthorized changes made to submitted policies by third parties related to the sale of certain health insurance policies led to higher attrition of sold policies than expected. This determination was the result of the lower-than-expected monthly commission receipts based on the Company's total policies written, after known constraints. We have corrected this error related to the three months ended March 31, 2024 and prior periods with a write-off of for the total maximum impact to the accounts receivable and an associated offset to revenue of \$1,958, or \$0.13 and \$0.12 per share (basic and diluted), respectively. The Company assessed the impact of this out-of-period adjustment and concluded that it was not material to the financial statements previously issued for the interim period, and the cumulative adjustment during the quarter ended June 30, 2024 is not expected to be material to the annual financial statements for 2024. The out-of-period adjustment is included in the Fluent operating segment.

(c) Reverse stock split

On April 11, 2024, the Company effected a 1-for-6 reverse split of the issued shares (the "Reverse Stock Split") of the Company's common stock. All historical share amounts disclosed in this Quarterly Report on Form 10-Q have been retroactively restated to reflect the Reverse Stock Split. No fractional shares were issued as a result of the Reverse Stock Split, as fractional shares of Common Stock were rounded up to the nearest whole share. See Note 7, *Equity*, for additional information.

(d) 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 October 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("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 its consolidated financial statements and disclosures.

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

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 will 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 is currently evaluating the impact of adopting this ASU on its consolidated financial statements and disclosures.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 470): Improvements to Income Tax Disclosures*, which is 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 will be applied on a prospective basis, but retrospective application is permitted. The Company is currently evaluating the impact of adopting this ASU on its consolidated financial statements and disclosures.

(e) Revenue recognition

Data and performance-based marketing

Revenue is generated when control of goods or services is transferred to customers, in the 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, and has inventory risk and discretion in establishing pricing, Fluent is considered to have acted as the principal. For performance obligations in which Fluent 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 in which Fluent 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 June 30, 2024, December 31, 2023, and December 31, 2022 the balance of deferred revenue was \$717, \$430, and \$1,014, respectively. The majority of the deferred revenue balance as of December 31, 2023 was recognized as revenue during the first quarter of 2024.

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

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 June 30, 2024, December 31, 2023, and December 31, 2022 unbilled revenue included in accounts receivable was \$20,482, \$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.

Commission revenue

The Company, acting as the agent, recognizes commission revenue that it expects to receive from the insurance provider from the sale of certain of its health insurance policies, which includes the assumed automatic renewals of such policies once its performance obligation is satisfied. The Company considers its performance obligation related to commissions for both the initial policy sale and future renewals of the policy to be satisfied upon submission by the Company of the initial policy application.

The Company applies the practical expedient to estimate the commission revenue for each insurance policy by applying the use of the portfolio approach to policies grouped together by product type and period submitted for effectuation.

The commission revenue is variable based on a policy's estimated lifetime value ("LTV"), which is based on the amount of time the Company expects the policy will remain effective based on past trends, industry data, expectations as to future retention rates, and commission rates. Further, the Company considers the application of constraints to the LTV and only recognizes the amount of variable consideration believed probable to be received that will not be subject to a significant revenue reversal in the future. Based on this, the commission revenue is recorded upon satisfaction of the performance obligation, which is typically paid monthly by the insurance provider as the consumer renews and pays the insurance provider for the policy over the duration the consumer remains on the policy.

The Company reassesses the estimated LTV for the health insurance policies on a quarterly or as-needed basis. Adjustments to the LTV may result in an increase or decrease in revenue and the corresponding asset in the period the change is made. As described in (b) above, due to the higher attrition of policies sold the Company reassessed its estimated LTV for the health insurance policies by increasing the constraints applied for the amount of consideration deemed probable and led to a change of estimate

(f) Use of estimates

The preparation of consolidated financial statements in accordance with U.S. 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 credit losses, 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, the variable commission revenue based on the estimated LTV, purchase accounting, 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.

(g) Fair value

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.

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

The fair value of the Company's cash, cash equivalents, restricted cash, accounts receivable, accounts payable, and accrued liabilities approximate their carrying values because of the short-term nature of these instruments. Restricted cash includes a separately maintained cash account, as required under the terms of a lease agreement the Company entered into on October 10, 2018 for office space in New York City.

As of June 30, 2024, the Company regards the fair value of its long-term debt to approximate its carrying value. The fair value assessment represents a Level 2 measurement. See Note 5, *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 June 30, 2024, certain non-financial assets have been measured at fair value subsequent to their initial recognition. The Company determined the estimated fair value to be a Level 3 measurement, as certain inputs used to determine fair value are unobservable. See Note 4, *Goodwill*.

2. Income (loss) per share

Basic income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the period, in addition to restricted stock units ("RSUs") that are vested but not delivered. Diluted income (loss) per share reflects the potential dilution that could occur if securities or other contracts to issue common stock are exercised or converted into common stock and is calculated using the treasury stock method for stock options, RSUs, restricted stock, warrants (including the Pre-Funded Warrants, as defined in Note 7 below) and deferred common stock. Stock equivalent shares are excluded from the calculation in loss periods, as their effects would be anti-dilutive.

For the three and six months ended June 30, 2024 and 2023, basic and diluted income (loss) per share were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Numerator:				
Net income (loss)	\$ (11,627)	\$ 4,251	\$ (17,903)	\$ (27,692)
Denominator:				
Weighted average shares outstanding	15,289,622	13,502,166	15,827,411	13,435,643
Weighted average restricted shares vested not delivered	245,367	285,829	287,882	285,000
Total basic weighted average shares outstanding	15,534,989	13,787,995	16,115,293	13,720,643
Dilutive effect of assumed conversion of restricted stock units	—	4,113	—	—
Total diluted weighted average shares outstanding	15,534,989	13,792,108	16,115,293	13,720,643
Basic and diluted income (loss) per share:				
Basic	\$ (0.75)	\$ 0.31	\$ (1.11)	\$ (2.02)
Diluted	\$ (0.75)	\$ 0.31	\$ (1.11)	\$ (2.02)

Based on exercise prices compared to the average stock prices for the three and six months ended June 30, 2024 and 2023, certain stock equivalents, including RSUs and stock options, have been excluded from the diluted weighted average share calculations due to their anti-dilutive nature.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Restricted stock units	993,975	928,057	993,975	932,085
Stock options	298,331	356,500	298,331	356,500
Total anti-dilutive securities	1,292,306	1,284,557	1,292,306	1,288,585

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

3. Intangible assets, net

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

	Amortization period (in years)	June 30, 2024	December 31, 2023
Gross amount:			
Software developed for internal use	3	\$ 22,802	20,175
Acquired proprietary technology	3-5	15,792	16,972
Customer relationships	5-10	36,686	39,168
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
Total gross amount		125,192	126,227
Accumulated amortization:			
Software developed for internal use		(14,293)	(12,142)
Acquired proprietary technology		(14,848)	(15,132)
Customer relationships		(35,647)	(37,249)
Trade names		(7,302)	(6,893)
Domain names		(82)	(77)
Databases		(27,482)	(26,157)
Non-competition agreements		(1,768)	(1,768)
Total accumulated amortization		(101,422)	(99,418)
Net intangible assets:			
Software developed for internal use		8,509	8,033
Acquired proprietary technology		944	1,840
Customer relationships		1,039	1,919
Trade names		9,355	9,764
Domain names		113	118
Databases		3,810	5,135
Total intangible assets, net		\$ 23,770	\$ 26,809

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 acquisition of Q Interactive, LLC, effective June 8, 2016; 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 a 50% interest in Winopoly, LLC, effective April 1, 2020; the acquisition of a 100% interest in True North Loyalty, LLC, (the "True North Acquisition"), effective January 1, 2022 (see Note 11, Variable Interest Entity); and the consolidation of TAPP Influencers Corp. ("TAPP") effective January 9, 2023 (see Note 11, *Variable Interest Entity*).

During the second quarter of 2024, the Company determined that the effects of the expected decline in operations due to the impact of certain client relationships constituted a triggering event for the All Other reporting unit. The Company conducted an interim test of recoverability of its long-lived assets, which compared the projected undiscounted cash flows to the carrying value of the asset group. The results of this approach indicated that this long-lived asset was not recoverable and an impairment loss related to its customer relationships was to be calculated. The Company determined that based on the facts and circumstances, the remaining balance was impaired and recorded a non-cash impairment charge of its customer relationship intangible of \$383 as of June 30, 2024.

As of June 30, 2024, the Company had recorded a \$597 impairment charge on its software developed for internal use which related to an immaterial business unit under the Fluent reporting unit that had met the held for sale criteria as of June 30, 2024.

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

Amortization expenses of \$2,495 and \$2,995 for the three months ended June 30, 2024 and 2023, respectively, and \$4,978 and \$5,251 for the six months ended June 30, 2024 and 2023, respectively, are included in depreciation and amortization expenses in the consolidated statements of operations. As of June 30, 2024, intangible assets with a carrying amount of \$653, included in the gross amount of software developed for internal use, have not commenced amortization, as they are not ready for their intended use.

As of June 30, 2024, estimated amortization expenses related to the Company's intangible assets for the remainder of 2024 and through 2029 and thereafter are as follows:

Year	June 30, 2024
Remainder of 2024	\$ 3,650
2025	6,858
2026	4,255
2027	2,435
2028	828
2029 and thereafter	5,744
Total	\$ 23,770

4. 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 June 30, 2024, the total balance of goodwill was \$0, which represented a decrease of \$1,261 from the balance as of December 31, 2023, as a result of a non-cash impairment charge.

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is assessed 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. The measurement date of the Company's annual goodwill impairment test is set to October 1.

During the second quarter of 2024, the Company determined that the effects of the expected decline in operations due to the impact of certain client relationships constituted a triggering event for the All Other reporting unit. The Company conducted an interim test of the fair value of the All Other reporting unit's goodwill for potential impairment related to the triggering event. The Company applied solely the income approach to determine the fair value of the All Other reporting unit. The results of this approach indicated that the carrying value exceeded its fair value by 58%. The Company therefore concluded that the goodwill was impaired as of June 30, 2024 and recorded a non-cash impairment charge for its remaining balance of \$1,261.

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

5. Long-term debt, net

Long-term debt, net of unamortized discount and financing costs, related to the Credit Facility, the New Credit Facility, and Note Payable (as set forth herein) consisted of the following:

	June 30, 2024	December 31, 2023
Citizens Credit Facility due 2025 (less unamortized discount and financing costs of \$0 and \$762, respectively)	\$ —	\$ 30,488
New Credit Facility due 2029 (less unamortized discount and financing costs of \$987 and \$0, respectively)	31,288	—
Note Payable due 2026	2,000	—
Long-term debt, net	33,288	30,488
Less: Current portion of long-term debt	(32,538)	(5,000)
Long-term debt, net (non-current)	<u>\$ 750</u>	<u>\$ 25,488</u>

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

Citizens Credit Facility

On April 2, 2024, the Company repaid the \$30,000 aggregate principal amount of the term loan ("Term Loan") due on September 30, 2025, resulting in a loss due to the early extinguishment of debt of \$1,009, which was recognized in the second quarter of 2024.

New Credit Facility

On April 2, 2024, Fluent, LLC, as Borrower, entered into the SLR Credit Agreement with the Company and SLR as administrative agent, lead arranger and bookrunner, and each other lender from time to time party thereto.

The SLR Credit Agreement provides for a \$20,000 term loan (the "SLR Term Loan") and a revolving credit facility of up to \$30,000 (the "SLR Revolver" and together with the SLR Term Loan, the "SLR Credit Facility"). As of June 30, 2024, the SLR Credit Facility had an outstanding principal balance of \$32,274 (of which \$12,274 relates to the SLR Revolver) and matures on April 2, 2029.

The Company used a portion of the net proceeds of the SLR Credit Facility to repay the outstanding Term Loan under the credit agreement dated March 31, 2021 (the "Citizens Credit Agreement"), by and among Fluent, LLC, as Borrower, certain subsidiaries of the Borrower as guarantors, the lenders thereto, and Citizens Bank, N.A. ("Citizens Bank").

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

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 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 SLR Credit Facility are due and payable on the five-year anniversary of the closing date (the "Maturity Date"), or earlier following a change in control or an 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 the Company's fixed charge coverage ratio is greater than 1.10 to 1. The opening interest rate of the SLR Credit Facility was 10.81% (SOFR + CSA + 5.25%), which increased to 10.86% (SOFR + CSA+5.25%) as of June 30, 2024.

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 its ability to make certain investments or other restricted payments. The SLR Credit Agreement is guaranteed by the Company and certain of its direct and indirect subsidiaries and is secured by substantially all of the Company's assets and those of its direct and indirect subsidiaries, including Fluent, LLC.

The Borrower's ability to draw on the SLR Revolver depends on its weekly borrowing base, which is calculated by applying specified percentages established by SLR to the Borrower's eligible accounts receivable and cash, less reserves, subject to certain limitations.

Debt issuance costs and debt discount costs, net of accumulated amortization, related to the issuance of the SLR Revolver was \$1,050 and \$430, respectively, as of June 30, 2024. The amounts are included in other non-current assets in the Company's consolidated balance sheets. The Company amortizes these costs over the life of the related debt.

On May 15, 2024, the Borrower and SLR entered into a First Amendment to Credit Agreement (the "First Amendment"), pursuant to which SLR, among other things, (1) waived any required prepayments on the SLR Revolver from the proceeds from the Company's Private Placement; (2) required that the Credit Parties (as defined in the SLR Credit Agreement) retain a financial advisor to assist in preparing the Company's projections; (3) increased the minimum excess availability covenant following the Private Placement; (4) amended the definition of borrowing base (as defined in the SLR Credit Agreement) and (5) amended certain post-closing obligations.

As of June 30, 2024, the Company was not in compliance with its financial covenants under the SLR Credit Agreement, which the Company had to report by July 31, 2024, and which would have resulted in an event of default, however, on July 31, 2024, the Company and SLR entered into a letter agreement pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended June 30, 2024, and the related notice of event of default, to August 16, 2024. On August 14, 2024, the parties entered into a second letter agreement pursuant to which SLR extended the deadline for delivery of the same compliance certificate and related notice of event of default to August 21, 2024.

On August 19, 2024, the Borrower, SLR, and the other parties thereto entered into the Second Amendment to Credit Agreement (the "Second Amendment"), which, among other things, required that the Company raise \$2,000 in additional capital. To raise the capital, the Company entered into convertible subordinated notes, as described in Note 12, *Subsequent Events*, below, raising an aggregate \$2,050. In addition, among other things, the Second Amendment waived non-compliance with the financial covenant as of June 30, 2024, modified the financial covenant through December 31, 2025, ended a requirement to engage a financial advisor, and increased the interest rate margin from 5.25% to 5.75%.

While based on current projections, the Company expects to be in compliance with the new financial covenants during the next twelve months, if during any fiscal quarter, the Company does not comply with any of its financial covenants, such non-compliance would result in an event of default that would give SLR the right to accelerate maturities. Accordingly, all borrowings under the Credit Agreement have been classified as current as of June 30, 2024.

Note Payable

On March 17, 2024, Fluent, LLC entered into a junior secured promissory note (the "Note Payable") with Freedom Debt Relief, LLC in the principal amount of \$2,000 in connection with the Berman Settlement Agreement (see Note 10, *Contingencies*). The Note Payable bears interest at a rate per annum equal to one-month CME Term SOFR (defined as the rate published by the CME Group Benchmark Administration Limited) plus 11.0%. The opening interest rate of the Note Payable was 16.32% (SOFR +11%), which increased to 16.33% (SOFR + 11%) as of June 30, 2024.

A maximum of \$1,000 of the borrowings under the Note Payable are secured by substantially all of the assets of Fluent, LLC. This security interest is subordinate to the security interest under the SLR Credit Agreement.

The Note Payable matures on March 31, 2026 and interest is payable quarterly. Scheduled principal amortization of the Note Payable is \$250 per quarter, which commenced with the fiscal quarter ended June 30, 2024, but was subsequently paid upon receipt of the invoice and applied as of July 17, 2024.

Maturities

As of June 30, 2024, scheduled future maturities of the Citizens Credit Agreement and Note Payable are as follows, not reflective of the debt being accelerated as noted in Note 1:

Year	June 30, 2024
Remainder of 2024	\$ 2,846
2025	1,000
2026	250
2027	—
2028	—
2029	30,179

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

6. Income taxes

The Company is subject to federal and state income taxes in the United States. The tax provision for interim periods is determined using an estimate of the Company's annual effective tax rate ("AETR"). The Company updates its estimated AETR on a quarterly basis and, if the estimate changes, a cumulative adjustment is made.

As of June 30, 2024 and December 31, 2023, the Company recorded a full valuation allowance against net deferred tax assets and 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 a 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.

For the six months ended June 30, 2024, the Company's effective income tax expense rate of 0.8% differed from the statutory federal income tax rate of 21% primarily due to state and local tax expense and losses for which no tax benefit is recognized as such amounts are fully offset with a valuation allowance. For the six months ended June 30, 2023, the Company's effective income tax expense rate of 6.9% primarily represents the projected federal and state cash tax expense expected to result in taxable income for full-year 2023 after 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 on expected federal cash tax expense.

The Company assesses its income tax positions and records tax benefits for all years subject to examination based upon its evaluation of the facts, circumstances, and information available as of the reporting dates. For those tax positions where it is more-likely-than-not that a tax benefit will be sustained, the Company has recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more-likely-than-not that a tax benefit will be sustained, no tax benefit has been recognized in the Company's financial statements.

As of June 30, 2024 and December 31, 2023, the balance of unrecognized tax benefits was \$1,480. 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. As of June 30, 2024, the Company has not accrued any interest or penalties with respect to its uncertain tax positions.

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.

7. Equity

Common stock

Effective at 6:00 p.m. Eastern Time on April 11, 2024, the Company effected a 1-for-6 (the "Reverse Stock Split Ratio") reverse split of the issued shares of the Company's common stock (the "Reverse Stock Split") pursuant to a certificate of amendment to the Company's Certificate of Incorporation, as amended, filed with the Secretary of State of the State of Delaware on April 11, 2024. As a result of the Reverse Stock Split, every six shares of common stock issued and outstanding or held by the Company in treasury stock were combined and reclassified into one share of common stock. No fractional shares were issued as a result of the Reverse Stock Split. Stockholders who were otherwise entitled to receive a fractional share received an additional fraction of a share of common stock to round up to the next whole share. The Reverse Stock Split affected all stockholders uniformly and did not alter any stockholder's percentage ownership interest or any stockholder's proportionate voting power, except for immaterial adjustments that resulted from the treatment of fractional shares. The Reverse Stock Split did not change the number of authorized shares of common stock or the par value per share of the common stock.

The Reverse Stock Split reduced the number of issued and outstanding shares of common stock from 81,571,864 shares to 13,660,598 shares and reduced the issued shares of common stock held by the Company in treasury stock from 4,611,569 shares to 768,595 shares.

The common stock began trading on a reverse split-adjusted basis at the opening of trading on The Nasdaq Capital Market on April 12, 2024, under the same symbol (FLNT) with a new CUSIP number (34380C 201).

As of the effective time of the Reverse Stock Split, the number of shares available for issuance under the Company's equity incentive plans and the number of shares issuable pursuant to each outstanding equity award immediately prior to the Reverse Stock Split were reduced proportionately at the Reverse Stock Split Ratio, and the exercise price for each outstanding stock option was increased in inverse proportion to the Reverse Stock Split Ratio.

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

As of June 30, 2024 and December 31, 2023, the number of issued shares of common stock was 14,680,246 and 14,384,936, respectively, which included shares of treasury stock of 768,595 and 768,595, respectively.

For the six months ended June 30, 2024, the change in the number of issued shares of common stock was the result of 295,310 shares of common stock issued upon vesting of RSUs, in which no shares of common stock were withheld to cover statutory taxes upon such vesting.

Treasury stock

As of June 30, 2024 and December 31, 2023, the Company held shares of treasury stock of 768,595 and 768,595, respectively, with a cost of \$11,407 and \$11,407, respectively.

The Company's share-based incentive plans allow employees the option to either make a 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 six months ended June 30, 2024, no shares of common stock were withheld to cover statutory taxes owed by certain employees for this purpose. See Note 8, *Share-based compensation*.

Warrants

On May 13, 2024, the Company entered into Securities Purchase Agreements (the "Purchase Agreements") with certain accredited investors (the "Purchasers"), pursuant to which the Company sold pre-funded warrants (the "Pre-Funded Warrants") to purchase up to 2,955,084 shares of the Company's common stock, at a purchase price of \$3.384 per Pre-Funded Warrant (the "Private Placement"). The Purchasers included three individuals who are officers and/or directors of the Company and a principal stockholder of the Company. No underwriting discounts or commissions were paid with respect to the Private Placement.

The aggregate gross proceeds for the Private Placement totaled \$10,000, before deducting offering expenses payable by the Company of \$100. The Pre-Funded Warrants, which terminated when exercised in full, had an exercise price of \$0.0005 per share of common stock and became immediately exercisable upon stockholder approval of the Private Placement. In connection with the Private Placement, the Company entered into Support Agreements with three of the Purchasers, the Company's largest stockholders, who agreed to vote all of their beneficially owned shares of the Company's common stock in favor of the corporate actions required for stockholder approval. Stockholder approval of the Private Placement was obtained on July 2, 2024, at a special meeting of the Company's stockholders.

As of June 30, 2024, none of the Pre-Funded Warrants had been exercised. All of the Pre-Funded Warrants have been exercised as of the date of this report. The issuance of the shares upon exercise of the Pre-Funded Warrants was made in reliance upon the exemption from registration under Section 4(a)(2) of the Securities Act of 1933.

The Pre-Funded Warrants were reflected in the Company's stockholder's equity within additional paid-in-capital as of June 30, 2024 in accordance with ASC 815-40, Derivatives and Hedging. A contract should be classified as an equity agreement if it is both indexed to its own stock and classified in stockholder's equity in its financial position. The Pre-Funded Warrants met the requirements of being classified as equity because (i) they had a fixed share limit and the Company has sufficient authorized and unissued shares (ii) they required physical or net share settlement, and (iii) no cash payments or settlement top-off was required by the Company.

8. 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 2,570,421 shares of the Company's common stock. As of June 30, 2024, the Company had 591,953 shares of common stock available for grants pursuant to the 2022 Plan, which includes 240,461 shares of common stock previously available for issuance under the 2018 Stock Incentive Plan.

The primary purpose of the 2022 Plan and prior plans 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, RSUs (time-based vesting), long-term incentive grants (performance and time-based vesting RSUs), or performance share units ("PSUs") (achievement of performance targets settled in cash) under the 2022 Plan.

Stock options

In January 2019, the Compensation Committee of the Company's Board of Directors approved the grant of stock options to certain Company executives, which were issued on February 1, 2019, December 20, 2019, March 1, 2020, and March 1, 2021. Subject to continuing service, 50% of the shares subject to these stock options will vest if the Company's stock price remains above 125.00%, 133.33%, 133.33% and 133.33%, respectively, of the exercise price for 20 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 price for 20 consecutive trading days; provided, that no shares will vest prior to the first anniversary of the grant date.

As of June 30, 2024, 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	\$	16.86	\$	9.48	\$	8.76	\$	26.04
Fair value higher range	\$	17.16	\$	9.66	\$	8.94	\$	26.58
Exercise price	\$	28.32	\$	15.36	\$	13.98	\$	37.98
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%

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

For the six months ended June 30, 2024, details of stock option activity were as follows:

	Number of options	Weighted average exercise price per share	Weighted average remaining contractual term (in years)	Aggregate intrinsic value
Outstanding as of December 31, 2023	302,333	\$ 25.68	5.4	\$ —
Granted ⁽¹⁾	16,667	3.36	9.9	—
Exercised	(20,666)	—	—	—
Forfeited	—	—	—	—
Outstanding as of June 30, 2024	<u>298,334</u>	\$ 25.15	5.2	\$ —
Options exercisable as of June 30, 2024	<u>263,668</u>	\$ 25.65	4.8	\$ —

(1) On June 3, 2024, one employee of the Company was granted stock options that vest equally over four annual installments and are exercisable for ten years after the grant date.

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 six months ended June 30, 2024, the unvested balance of stock options was as follows:

	Number of stock options	Weighted average exercise price per share	Weighted average remaining contractual term (in years)
Unvested as of December 31, 2023	123,833	\$ 29.72	5.4
Granted ⁽¹⁾	16,667	3.36	9.9
Forfeited	—	—	—
Vested	(105,834)	—	—
Unvested as of June 30, 2024	<u>34,666</u>	\$ 21.34	8.2

(1) On June 3, 2024, one employee of the Company was granted stock options that vest equally over four annual installments and are exercisable for ten years after the grant date.

Compensation expense recognized for stock options was \$1 and \$0 for both the three months ended June 30, 2024 and 2023, respectively, and \$1 and \$0 for both the six months ended June 30, 2024 and 2023, respectively. As of June 30, 2024, there was \$59 of unrecognized share-based compensation with respect to outstanding stock options.

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

Restricted stock units and restricted stock

For the six months ended June 30, 2024, details of unvested RSU activity were as follows:

	Number of units	Weighted average grant-date fair value
Unvested as of December 31, 2023	731,538	\$ 25.95
Granted	654,411	3.67
Vested and delivered	(295,310)	10.19
Withheld as treasury stock (1)	—	—
Vested not delivered (2)	(1,487)	10.50
Forfeited	(95,177)	14.22
Unvested as of June 30, 2024	<u>993,975</u>	<u>17.55</u>

- (1) As discussed in Note 7, *Equity*, the treasury stock was related to shares withheld to cover statutory withholding taxes upon the delivery of shares following the vesting of RSUs. As of June 30, 2024, there were 768,595 outstanding shares of treasury stock.
- (2) Vested not delivered represents vested RSUs with delivery deferred to a future time. For the six months ended June 30, 2024, there was a net increase in the vested not delivered balance because 4,752 shares were deferred due to timing of delivery of certain shares, slightly offset by 3,265 deferred shares that were delivered. As of June 30, 2024, 291,419 outstanding RSUs were vested not delivered.

Compensation expense recognized for RSUs of \$433 and \$960 for the three months ended June 30, 2024 and 2023, respectively, and \$1,051 and \$2,108 for the six months ended June 30, 2024 and 2023, respectively, was recorded in sales and marketing, product development and general and administrative in the consolidated statements of operations, and intangible assets, net in the consolidated balance sheets. 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 June 30, 2024, unrecognized share-based compensation expense associated with the granted RSUs and stock options amounted to \$3,046, which is expected to be recognized over a weighted average period of 1.6 years.

For the three and six months ended June 30, 2024 and 2023, share-based compensation for the Company's stock options, RSUs, and common stock awards were allocated to the following accounts in the consolidated financial statements:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Sales and marketing	\$ 57	\$ 129	\$ 141	\$ 296
Product development	55	136	100	327
General and administrative	311	671	782	1,434
Share-based compensation expense	423	936	1,023	2,057
Capitalized in intangible assets	11	24	29	51
Total share-based compensation	<u>\$ 434</u>	<u>\$ 960</u>	<u>\$ 1,052</u>	<u>\$ 2,108</u>

As of June 30, 2024 and December 31, 2023, the Company recorded a liability of \$29 and \$22, respectively, related to PSUs that are to be settled in cash.

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

9. 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 CODM, in making decisions regarding resource allocation and performance assessment. The profitability measure employed by CODM is earnings before interest, taxes, depreciation, and amortization ("EBITDA"). As of June 30, 2024, the Company had two operating segments and two corresponding reporting units, "Fluent" and "All Other," and one reportable segment. "Fluent," for the purposes of segment reporting, represents the consolidated operating results of the Company excluding "All Other." "All Other" represents the operating results of AdParlor, LLC and is included for purposes of reconciliation of the respective balances below to the consolidated financial statements.

Summarized financial information concerning the Company's segments for the three and six months ended June 30, 2024 and 2023 are shown in the following tables below:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Fluent segment revenue(1):				
United States	\$ 34,654	\$ 40,200	\$ 74,970	\$ 83,108
International	20,911	39,809	43,773	72,139
Fluent segment revenue	<u>\$ 55,565</u>	<u>\$ 80,009</u>	<u>\$ 118,743</u>	<u>\$ 155,247</u>
All Other segment revenue(1):				
United States	\$ 3,152	\$ 2,136	\$ 5,957	\$ 4,152
International	—	—	—	—
All Other segment revenue	<u>\$ 3,152</u>	<u>\$ 2,136</u>	<u>\$ 5,957</u>	<u>\$ 4,152</u>
Segment EBITDA				
Fluent segment EBITDA	\$ (7,041)	\$ 9,685	\$ (8,890)	\$ (18,894)
All Other segment EBITDA	(770)	149	(303)	(66)
Total EBITDA	<u>(7,811)</u>	<u>9,834</u>	<u>(9,193)</u>	<u>(18,960)</u>
Depreciation and amortization	2,567	3,095	5,138	5,454
Total loss from operations	<u>\$ (10,378)</u>	<u>\$ 6,739</u>	<u>\$ (14,331)</u>	<u>\$ (24,414)</u>

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

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

	<u>June 30,</u> <u>2024</u>	<u>December 31,</u> <u>2023</u>
Total assets:		
Fluent	\$ 83,680	\$ 97,629
All Other	14,815	14,238
Total assets	<u>\$ 98,495</u>	<u>\$ 111,867</u>

As of June 30, 2024, long-lived assets are all located in the United States.

For the six months ended June 30, 2024, 22% of the Company's consolidated revenue was earned from customers located in Israel.

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

10. 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. The Company does not accrue liabilities when the likelihood that the liability has been incurred is probable but the amount cannot be reasonably estimated.

On January 28, 2020, Fluent received a Civil Investigative Demand from the Federal Trade Commission ("FTC") regarding compliance with the FTC Act and the 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. On August 12, 2024, Fluent filed its required compliance report.

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 had been involved in a Telephone Consumer Protection Act class action, *Daniel Berman v. Freedom Financial Network*, which was originally filed in 2018. On May 31, 2023, the parties entered into an Amended Class Action Settlement Agreement (the "Berman Settlement Agreement"), which included injunctive provisions and payment to plaintiffs of \$9,750 for legal fees and a consumer redress fund, of which the Company was responsible for \$3,100 due upon final approval of the settlement. That amount had been accrued as of December 31, 2022. On July 28, 2023, the Court preliminarily approved the Berman Settlement Agreement. The final approval of the Berman Settlement Agreement was filed on February 23, 2024. The Company made a cash payment of \$1,100 on March 15, 2024 and entered into a \$2,000 interest-bearing note provided by co-defendant, Freedom Financial Network, as discussed in Note 5, *Long-term debt, net*, to satisfy its obligations under the Berman Settlement Agreement.

11. 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 it is the primary beneficiary of a VIE at the inception of the arrangement and as of the reporting date.

True North

On May 1, 2024, the Company and Caspian Ventures, LLC ("Caspian") entered into a membership interest purchase agreement pursuant to which the Company conveyed 100% of the membership interests of True North Loyalty, LLC and its direct and indirect subsidiaries (collectively, "True North") to Caspian (the "True North Conveyance"). True North is a subscription-based business that utilizes call center operations and other media channels to market third-party recurring revenue services to consumers. The deemed fair value of the consideration received was \$989, which consisted of (i) the forgiveness of a \$500 deferred payment owed by the Company in connection with the True North Acquisition on January 1, 2022, (ii) a share of the True North contribution margin after the closing until the Company has received an amount equal to the closing net working capital of approximately \$168, and (iii) a continued share of the True North contribution margin of an additional amount at fair value of \$321. The True North founder who entered into an employment agreement in connection with the True North Acquisition has remained an employee of the Company after the closing of the True North Conveyance.

In accordance with ASC 810, *Consolidation* ("ASC 810"), the Company determined that based upon the receivable for the consideration to be received, True North was deemed a VIE. Further, as the majority membership owner of Caspian remained a full-time employee of the Company, under the de facto agent guidance, it was determined that the Company was the primary beneficiary of Caspian and therefore should consolidate Caspian's operations going forward. As a result, no gain or loss was to be recognized on the True North Conveyance. As the Company does not have any equity interest in Caspian, 100% of the net assets and results of the operations of Caspian are attributable to the non-controlling interest.

It was also determined that True North did not meet the discontinued operations criterion under ASC 205-20, *Discontinued Operations*.

TAPP

On January 9, 2023, the Company entered into employment agreements with certain key employees of TAPP, an influencer-based business that uses an application to utilize its relationships 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. As a result of significant influence over TAPP's key employees and financial performance, the Company determined that

TAPP qualified as a VIE in which the Company has a variable interest and that the Company is the primary beneficiary. Therefore, the Company consolidates the TAPP operations. As the Company does not have an equity interest in TAPP, 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 contingent upon the 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.

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

12. Subsequent Events

Sale of Convertible Notes

On August 19, 2024, the Company entered into Securities Purchase Agreements (the "Securities Purchase Agreements") with certain accredited and/or sophisticated investors (the "Purchasers") to sell convertible subordinated promissory notes (the "Convertible Notes") in aggregate principal amount of \$2,050. The Convertible Promissory Notes mature on April 2, 2029, bear interest at 13% per annum payable quarterly in cash (subject to payment conditions in the Subordination Agreement described below) or in kind. Subject to the payment conditions in the Subordination Agreement described below, the Company may prepay the Convertible Notes in whole or in part at any time upon ten days' written notice; provided that, no prepayment will be permitted prior to the stockholder approval described below without the consent of the applicable holder.

Each holder of a Convertible Note is entitled to convert the Conversion Amount (as defined below) into shares of the Company's common stock at a conversion price equal to the lesser of (i) \$3.01, and (ii) the greater of (A) the consolidated closing bid price of the Company's Common Stock as reported on Nasdaq on the applicable conversion date and (B) \$1.00, in each case subject to adjustments for stock splits, recapitalizations and the like. However, the applicable conversion price will in no event be lower than the price established by clause (ii) above unless and until the Company's stockholders have approved matters related to the issuance of common stock upon conversion of the Convertible Notes, which vote is expected to take place at the Company's 2024 annual meeting of stockholders. The Convertible Notes are subject to additional limits on conversion until stockholder approval is obtained, including an aggregate limit on the number of shares that may be issued upon conversion to 19.99% of the Company's outstanding shares of common stock and provisions to prevent a change of control as defined in the rules of the Nasdaq Stock Market. The Company has agreed to use its reasonable efforts to secure stockholder approval at such meeting, including providing a recommendation FOR approval by the Company's board of directors. Holders of the Convertible Notes will be permitted to vote on such stockholder approval, but may not vote any shares obtained from conversion of the Convertible Notes prior to such vote. No underwriting discounts or commissions were paid with respect to the Convertible Notes.

The purchasers of the Convertible Notes include our Chairman of the Board and Chief Strategy Officer Ryan Schulke, our Chief Executive Officer Donald Patrick, our interim Chief Financial Officer Ryan Perfit, our Chief Customer Officer and member of the board of directors Matthew Conlin, and Dr. Phillip Frost, a beneficial owner of approximately 22% of common stock prior to the Convertible Note transaction. In certain cases the Convertible Notes were purchased by affiliates of such persons.

In connection with the Second Amendment and the Purchase Agreements, the Company, SLR and the purchasers of the Convertible Notes entered into a Second Amendment Subordination Agreement dated August 19, 2024 (the "Subordination Agreement"). The Subordination Agreement confirms the subordinated nature of the Convertible Notes and restricts payments to and remedies of the holders of the Convertible Notes for so long as the SLR Credit Agreement has indebtedness outstanding. The Subordination Agreement provides that the Company may not make any payment of principal or interest on the Convertible Notes unless the conditions set forth in either in clause (i) or clause (ii) below are satisfied:

(i) (a) no event of default under the SLR Credit Agreement exists before or immediately after giving effect to such payment, (b) the Borrower has demonstrated to the satisfaction of SLR compliance with certain financial covenants on a pro forma basis after giving effect to the payment, and (c) SLR's receipt of the Company's audited financial statements for the fiscal year ending December 31, 2024.

(ii) (a) no event of default under the SLR Credit Agreement exists before or immediately after giving effect to such payment, (b) the Company has raised equity capital excluding the proceeds from the sale of the Convertible Notes prior to June 30, 2025 and the payments made in respect of the Convertible Notes do not exceed an amount that equals the positive difference of the amount of such equity raise and \$7,000,000, and (c) the Borrower has demonstrated to the satisfaction of SLR compliance with certain financial covenants on a pro forma basis after giving effect to the payment.

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

This Quarterly Report on Form 10-Q contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), about our expectations, beliefs, or intentions regarding our business, financial condition, results of operations, strategies, the outcome of litigation, or prospects. Forward-looking statements are those that do not relate strictly to historical or current matters, but instead relate to anticipated or expected events, activities, trends, or results as of the date they are made. These forward-looking statements can be identified by the use of terminology such as "anticipate," "believe," "estimate," "expect," "intend," "project," "will," or the negative thereof or other variations thereon or comparable terminology. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements, including, without limitation, those discussed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2023 filed with the Securities and Exchange Commission (the "SEC") on April 2, 2024 (the "2023 Form 10-K"), those contained in this Quarterly Report on Form 10-Q, and such other factors contained in our other filings we make with the SEC. We do not undertake any obligation to update forward-looking statements, except as required by law and intend that all forward-looking statements be subject to the safe harbor provisions of the PSLRA.

These forward-looking statements are only predictions and reflect our views as of the date they are made with respect to future events and financial performance. The following discussion should be read in conjunction with the 2023 Form 10-K and the consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q.

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-supported performance marketplace that provides live call-based performance campaigns to help clients increase engagement and in some cases sell products and services directly on behalf of our clients. The call solutions marketplace serves clients across an array of industries but has had a heavy focus on the health insurance sector. However, due to the increased unauthorized activity by third parties impacting our commission revenue related to the sale of certain health insurance policies, we have paused our participation in this sector as we re-evaluate its profitability for our business, even as we expect regulatory changes made by the government subsequent to the quarter close to mitigate further attrition.

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.

Reverse stock split

Effective at 6:00 p.m. Eastern Time on April 11, 2024, the Company effected a 1-for-6 (the "Reverse Stock Split Ratio") reverse split of the issued shares of the Company's common stock (the "Reverse Stock Split") pursuant to a certificate of amendment to the Company's Certificate of Incorporation, as amended, filed with the Secretary of State of the State of Delaware on April 11, 2024. As a result of the Reverse Stock Split, every six shares of common stock issued and outstanding or held by the Company in treasury stock were combined and reclassified into one share of common stock. No fractional shares were issued as a result of the Reverse Stock Split. Stockholders who were otherwise entitled to receive a fractional share received an additional fraction of a share of common stock to round up to the next whole share. The Reverse Stock Split affected all stockholders uniformly and did not alter any stockholder's percentage ownership interest or any stockholder's proportionate voting power, except for immaterial adjustments that resulted from the treatment of fractional shares. The Reverse Stock Split did not change the number of authorized shares of common stock or the par value per share of the common stock.

The Reverse Stock Split reduced the number of issued and outstanding shares of common stock from approximately 81.6 million shares to approximately 13.6 million shares and reduced the issued shares of common stock held by the Company in treasury stock from approximately 4.6 million shares to approximately 0.8 million shares.

The common stock began trading on a reverse split-adjusted basis at the opening of trading on The Nasdaq Capital Market on April 12, 2024 under the same symbol (FLNT) with a new CUSIP number (34380C 201).

As of the effective time of the Reverse Stock Split, the number of shares available for issuance under the Company's equity incentive plans and the number of shares issuable pursuant to each outstanding equity award immediately prior to the Reverse Stock Split were reduced proportionately at the Reverse Stock Split Ratio, and the exercise price for each outstanding stock option was increased in inverse proportion to the Reverse Stock Split Ratio.

Second Quarter Financial Summary

Three months ended June 30, 2024, compared to three months ended June 30, 2023:

- Revenue decreased 29% to \$58.7 million, compared to \$82.1 million
- Net loss was \$11.6 million, or \$0.75 per share, compared to net income of \$4.3 million or \$0.31 per share
- Gross profit (exclusive of depreciation and amortization) decreased 44% to \$12.6 million, representing 21% of revenue for the three months ended June 30, 2024, from \$22.6 million, representing 28% of revenue for the three months ended June 30, 2023
- Media margin decreased 40% to \$15.7 million, representing 26.7% of revenue for the three months ended June 30, 2024, from \$25.9 million, representing 31.5% of revenue for the three months ended June 30, 2023
- Adjusted EBITDA was negative \$4.5 million, compared to \$5.6 million
- Adjusted net loss was \$7.3 million, or \$0.47 per share, compared to adjusted net income of \$0.0 million, or \$0.00 per share

Six months ended June 30, 2024, compared to six months ended June 30, 2023:

- Revenue decreased 22% to \$124.7 million, compared to \$159.4 million
- Net loss was \$17.9 million, or \$1.11 per share, compared to \$27.7 million or \$2.02 per share
- Gross profit (exclusive of depreciation and amortization) decreased 25% to \$31.2 million, representing 25% of revenue for the six months ended June 30, 2024, from \$41.6 million, representing 26% of revenue for the six months ended June 30, 2023
- Media margin decreased 21% to \$37.8 million, representing 30.3% of revenue for the six months ended June 30, 2024, from \$47.9 million, representing 30.0% of revenue for the six months ended June 30, 2023
- Adjusted EBITDA was negative \$3.8 million, based on net loss of \$17.9 million, compared to \$6.0 million
- Adjusted net loss was \$11.5 million, or \$0.72 per share, compared to adjusted net loss of \$2.7 million, or \$0.20 per share

Media margin, adjusted EBITDA, and adjusted net income (loss) are non-GAAP financial measures. See "Definitions, Reconciliations and Uses 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 high quality media sources 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 established new syndicated performance marketplaces in 2023 to access more higher value consumers. 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 by attracting users to our owned media properties via email and SMS messages. In addition, we have 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 and value of consumers sourced to our media properties and syndicated performance marketplaces. Increased user participation rates lead to higher conversion rates, resulting in increased monetization, and ultimately increased 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 traffic volume to our owned and operated properties, primarily due to the FTC investigation and subsequent FTC Consent Order that tightened our standards for media sourcing and put us at a competitive disadvantage versus the market. Other factors that affected our traffic volume have included the volatility of affiliate supply sources, changes in search engine algorithms, and email and text message blocking algorithms. In response to these challenges, we have invested in strategic and internal efforts to secure additional traffic from the growing influencer sector and to expand our ad network beyond our owned and operated marketplaces 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. In 2023, we experienced slowdowns 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 we 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. Both data and performance-based spend continued to be challenged in 2024 by general economic uncertainty. In the first half of 2024 revenue declined due to media supply challenges in our owned and operated marketplaces and regulatory pressure on the insurance sector in our call solutions marketplace. The regulatory challenges in the insurance sector have continued into the third quarter of 2024, but we expect that they will be outweighed by the recovery of our owned and operated marketplaces and growth of our syndicated performance marketplaces.

To offset individual advertiser pull-back, we continue to work with select 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 represents a large component of our revenue mix.

Additionally, our performance is subject to fluctuations as a result of seasonality and cyclicalities in our clients' businesses and fluctuations in media sources. Specifically, Adflow and our performance marketplaces that benefit from Medicare and Affordable Care Act open enrollment periods 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 second half of 2024 will continue to be characterized by tepid economic conditions and potential media supply uncertainty in the owned and operated marketplaces. To confront these headwinds, we will continue to source additional media for our syndicated performance marketplaces and diversify our client base. We also continue to develop our "ROAS program" across additional segments of advertisers in an effort to gain additional budget allocations and further improve our user monetization.

Business Practices & Compliance

We have continued to be affected by slowed economic conditions and the impacts of the FTC Consent Order (the "FTC Consent Order") (as described in Note 10, *Contingencies*, in the Notes to the consolidated financial statements) on our owned and operated marketplaces and programmatic advertising business. The industry-leading compliance measures we implemented on our owned and operated marketplaces continue to negatively impact our revenues and media margin. Although we have not yet experienced it, we continue to believe that the increased regulatory scrutiny on the broader industry will eventually eliminate the advantage that less compliance-focused competitors currently benefit from, enabling us to recapture market share.

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 continue to prioritize strategic investments that have near-term benefits to revenue while also streamlining our organization through targeted workforce reductions.

Please see *Item 1A. Risk Factors in the 2023 Form 10-K*—"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 the possible impact of unfavorable conditions on our business.

Definitions, Reconciliations and Uses of Non-GAAP Financial Measures

We report the following non-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) impairment of intangible assets, (9) loss (gain) 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) impairment 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) for the three and six months ended June 30, 2024 and 2023, which we believe is the most directly comparable GAAP measure:

(In thousands, except percentages)	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenue	\$ 58,717	\$ 82,145	\$ 124,700	\$ 159,399
Less: Cost of revenue (exclusive of depreciation and amortization)	46,109	59,540	93,457	117,812
Gross profit (exclusive of depreciation and amortization)	\$ 12,608	\$ 22,605	\$ 31,243	\$ 41,587
Gross profit (exclusive of depreciation and amortization) % of revenue	21%	28%	25%	26%
Non-media cost of revenue ⁽¹⁾	3,057	3,300	6,561	6,281
Media margin	\$ 15,665	\$ 25,905	\$ 37,804	\$ 47,868
Media margin % of revenue	26.7%	31.5%	30.3%	30.0%

(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 loss for the three and six months ended June 30, 2024 and 2023, which we believe is the most directly comparable GAAP measure:

(In thousands)	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net income (loss)	\$ (11,627)	\$ 4,251	\$ (17,903)	\$ (27,692)
Income tax expense (benefit)	(775)	1,693	133	1,794
Interest expense, net	1,015	795	2,430	1,484
Depreciation and amortization	2,567	3,095	5,138	5,454
Share-based compensation expense	430	936	1,030	1,997
Loss on early extinguishment of debt	1,009	—	1,009	—
Goodwill impairment	1,261	—	1,261	25,700
Impairment of intangible assets	980	—	980	—
Acquisition-related costs ⁽¹⁾	25	562	807	1,185
Restructuring and other severance costs	611	—	1,276	480
Certain litigation and other related costs	—	(5,736)	—	(4,358)
Adjusted EBITDA	\$ (4,504)	\$ 5,596	\$ (3,839)	\$ 6,044

(1) Balance includes compensation expense related to non-competition agreements and earn-out expense incurred as a result of business combinations (see Note 11, *Variable Interest Entity*, in the Notes to the consolidated financial statements). The earn-out expense was (\$14) and \$24 for the three months ended June 30, 2024 and 2023, respectively, and \$137 and \$110 for the six months ended June 30, 2024 and 2023, respectively.

Below is a reconciliation of adjusted net loss and adjusted net loss per share from net loss for the three and six months ended June 30, 2024 and 2023, which we believe is the most directly comparable GAAP measure.

(In thousands, except share and per share data)	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net income (loss)	\$ (11,627)	\$ 4,251	\$ (17,903)	\$ (27,692)
Share-based compensation expense	430	936	1,030	1,997
Loss on early extinguishment of debt	1,009	—	1,009	—
Goodwill impairment	1,261	—	1,261	25,700
Impairment of intangible assets	980	—	980	—
Acquisition-related costs ⁽¹⁾	25	562	807	1,185
Restructuring and other severance costs	611	—	1,276	480
Certain litigation and other related costs	—	(5,736)	—	(4,358)
Adjusted net income (loss)	\$ (7,311)	\$ 13	\$ (11,540)	\$ (2,688)
Adjusted net income (loss) per share:				
Basic	\$ (0.47)	\$ 0.00	\$ (0.72)	\$ (0.20)
Diluted	\$ (0.47)	\$ 0.00	\$ (0.72)	\$ (0.20)
Weighted average number of shares outstanding:				
Basic	15,534,989	13,787,995	16,115,293	13,720,643
Diluted	15,534,989	13,792,108	16,115,293	13,720,643

(1) Balance includes compensation expense related to non-competition agreements and earn-out expense incurred as a result of business combinations (see Note 11, *Variable Interest Entity*, in the Notes to the consolidated financial statements). The earn-out expense was (\$14) and \$24 for the three months ended June 30, 2024 and 2023, respectively, and \$137 and \$110 for the six months ended June 30, 2024 and 2023, respectively.

We present media margin, media margin as a percentage of revenue, adjusted EBITDA, adjusted net income (loss), and adjusted net income (loss) 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 U.S. 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 certain litigation and other related costs associated with legal matters outside the ordinary course of business, including costs and accruals related to matters as described below (see Note 10, *Contingencies*, in the Notes to the consolidated financial statements). 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 in this Quarterly Report on Form 10-Q.

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 U.S. 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 U.S. 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 U.S. GAAP, as they do not include the impact of certain expenses that are reflected in our 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.

Comparison of Our Results of Operations for the Three and Six Months Ended June 30, 2024 and 2023

Revenue

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Revenue	\$ 58,717	\$ 82,145	(29%)	\$ 124,700	\$ 159,399	(22%)

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

The decrease in revenue was primarily attributable to the contraction of our owned and operated marketplaces. A challenging macro-economic environment and a decrease in media supply resulting from changes in our business practices to comply with the FTC Consent Order, which in effect drove a reduction in spend from key clients in the Media & Entertainment, Financial Products & Services, and Staffing & Recruitment sectors, including our largest client in the gaming sector which pulled back pricing and spend as it refocused on ROAS starting in the third quarter of 2023. Further, there was minimal revenue related to the sale of certain health insurance policies that began in the fourth quarter of 2023 due to a write-off of accounts receivable and associated adjustment to revenue of \$3.1 million for the three months ended June 30, 2024 due to unauthorized changes made to submitted policies by unrelated third parties. The challenges were partially offset by the revenue growth from our new syndicated performance marketplaces. We have seen recovery in the owned and operated media supply and further growth of the syndicated performance marketplaces after June 30, 2024.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

The decrease in revenue was primarily attributable to the contraction of our owned and operated marketplaces and changes related to our commission revenue as described above.

Cost of revenue (exclusive of depreciation and amortization)

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Cost of revenue (exclusive of depreciation and amortization)	\$ 46,109	\$ 59,540	(23%)	\$ 93,457	\$ 117,812	(21%)

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

The decrease in cost of revenue (exclusive of depreciation and amortization) was largely attributable to the same factors causing the decline in owned and operated revenue for the period offset by growth of our syndicated performance marketplaces. 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 three months ended June 30, 2024 the total cost of revenue (exclusive of depreciation and amortization) as a percentage of revenue increased to 79% compared to 72% for the three months ended June 30, 2023.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

The decrease in cost of revenue (exclusive of depreciation and amortization) was largely attributable to the same factors causing the decline in owned and operated revenue for the period offset by growth of our syndicated performance marketplaces.

For the six months ended June 30, 2024, the total cost of revenue (exclusive of depreciation and amortization) as a percentage of revenue decreased to 75% compared to 74% for the six months ended June 30, 2023.

In the normal course of executing paid media campaigns to source consumer traffic, we regularly evaluate new channels, strategies, and partners. For the six months ended June 30, 2024, digital media spend continued to be a mix of affiliate traffic, paid media from major digital platforms, influencer activations, and inventory from strategic media partners. Traffic acquisition costs incurred with the major digital media platforms have historically been higher than affiliate traffic sources and the mix and profitability of our media channels, strategies, and partners reflect evolving market dynamics, 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. We believe improved traffic quality is the foundation to support sustainable long-term growth and position us as an industry leader. For the three and six months ended June 30, 2024, decreased spend for our owned and operated websites from social media platforms was the largest driver of the decline in revenue compared to the comparable 2023 periods. Past levels of cost of revenue (exclusive of depreciation and amortization) are not indicative of future costs, which may increase or decrease as a percentage of revenue these uncertainties in our business play out.

Sales and marketing

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Sales and marketing	\$ 4,605	\$ 4,215	9%	\$ 9,417	\$ 9,028	4%

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

For the three months ended June 30, 2024 and 2023, sales and marketing expenses consisted mainly of employee salaries and benefits of \$3.8 million and \$3.6 million, advertising costs of \$0.2 and \$0.3 million, restructuring and severance costs of \$0.2 and \$0.0 million, professional fees of \$0.1 and \$0.1 million, and travel and entertainment of \$0.1 and \$0.1 million, respectively. The increase in salaries and benefits was primarily due to annual salary increases, and the increase in restructuring costs was due to the current year period reduction in workforce described below offset by the decline of third party referral fees.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

For the six months ended June 30, 2024 and 2023, sales and marketing expenses consisted mainly of employee salaries and benefits of \$8.0 million and \$7.4 million, restructuring and severance costs of \$0.4 and \$0.1 million, professional fees of \$0.3 and \$0.1 million, travel and entertainment of \$0.3 and \$0.2 million, and advertising costs of \$0.2 and \$0.6 million, respectively. The increase in salaries and benefits was primarily due to annual salary increases, and the increase in restructuring costs was due to the current year period reduction in workforce described below offset by the decline of third party referral fees.

Product development

Three Months Ended June 30,

Six Months Ended June 30,

(In thousands)	2024	2023	% Change	2024	2023	% Change
Product development	\$ 4,717	\$ 4,615	2%	\$ 9,557	\$ 9,553	0%

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

For the three months ended June 30, 2024 and 2023, product development expenses consisted mainly of salaries and benefits of \$3.5 million and \$3.4 million, professional fees of \$0.5 million and \$0.4 million, software license and maintenance costs of \$0.4 million and \$0.5 million, and restructuring and severance costs of \$0.2 and \$0.0 million, respectively. The restructuring and severance costs in the current year period were due to the reduction in workforce described below.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

For the six months ended June 30, 2024 and 2023, product development expenses consisted mainly of salaries and benefits of \$6.7 million and \$6.9 million, professional fees of \$1.0 million and \$1.0 million, software license and maintenance costs of \$0.9 million and \$0.9 million, and restructuring and severance costs of \$0.5 and \$0.1 million, respectively. The immaterial increase in product development expense was primarily due to an increase in restructuring costs due to the current year period reduction in workforce described below mainly offset by lower salaries and other employee related costs due in part to lower headcount and decline in share-based compensation.

General and administrative

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
General and administrative	\$ 8,856	\$ 3,941	125%	\$ 19,221	\$ 16,266	18%

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

For the three ended June 30, 2024 and 2023, general and administrative expenses consisted mainly of employee salaries and benefits of \$4.2 million and \$4.6 million, professional fees of \$1.7 million and \$1.3 million, office overhead of \$1.0 million and \$1.0 million, software license and maintenance costs of \$0.7 million and \$0.7 million, non-cash share-based compensation expense of \$0.3 million and \$0.7 million, acquisition-related costs of \$0.0 million and \$0.6 million, and certain litigation and related costs of \$0.0 million and a credit related to insurance reimbursements and lower than expected regulatory settlement for previously incurred legal fees received in the prior period of (\$5.7) million, respectively. The increase in general and administrative expenses was primarily related to the absence of the credit for certain litigation and related costs, which was partially offset by a reduction in salaries and benefits due to lower headcount, a decline in share based compensation expense and a decrease in acquisition related costs mainly due to the divestiture of True North Loyalty, LLC and its direct and indirect subsidiaries ("True North").

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

For the six months ended June 30, 2024 and 2023, general and administrative expenses consisted mainly of employee salaries and benefits of \$8.9 million and \$9.5 million, professional fees of \$3.4 million and \$2.9 million, office overhead of \$2.0 million and \$2.2 million, software license and maintenance costs of \$1.5 million and \$1.2 million, acquisition-related costs of \$0.8 million and \$1.2 million, non-cash share-based compensation expense of \$0.8 million and \$1.4 million, and certain litigation and related costs of \$0.0 million and a credit of (\$4.4) million, respectively. The increase in general and administrative expenses was primarily related to the absence of the credit for certain litigation and related costs, which was partially offset by a reduction in salaries and benefits due to lower headcount, a decline in share-based compensation expense, a decrease in acquisition related costs mainly due to the divestiture of True North.

During the first quarter of 2023 and 2024 and the second quarter of 2024, the Company implemented reductions in the workforce that resulted in the termination of 20, 20, and 19 employees, respectively. These reductions in workforce were implemented following management's determination to decrease the Company's overhead to more effectively align resources to the Company's strategic initiatives. In connection with the reductions in workforce during the first quarter of 2023, the Company incurred \$0.5 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, fully settled in cash by March 31, 2024. In connection with the reductions in workforce during the first quarter of 2024, the Company incurred \$0.7 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, to be fully settled in cash by September 30, 2024. In connection with the second quarter 2024 reductions in workforce, the Company incurred \$0.6 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, to be fully settled in cash by December 31, 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. Subsequent to the second quarter of 2024, the Company implemented an additional reduction in workforce that resulted in the termination of another 9 employees.

Depreciation and amortization

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Depreciation and amortization	\$ 2,567	\$ 3,095	(17%)	\$ 5,138	\$ 5,454	(6%)

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

The decrease in depreciation and amortization costs was mainly due to certain intangible assets that fully amortized as compared to the three months ended June 30, 2023.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

The decrease in depreciation and amortization costs was driven by the same factors discussed above as compared to the six months ended June 30, 2023.

Goodwill impairment and write-off of intangible assets

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Goodwill impairment and impairment of intangible assets	\$ 2,241	\$ —	100%	\$ 2,241	\$ 25,700	(91%)

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

The Company recognized a \$1.3 million goodwill impairment in the current year period related to the All Other reporting unit and a \$1.0 million impairment on its software developed for internal use related to the Fluent reporting unit and customer relationships related to the All Other reporting unit as of June 30, 2024, compared to no goodwill impairment loss or write-off of intangible assets for the prior period.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

The Company recognized a \$1.3 million goodwill impairment in the current year period and a \$1.0 million impairment as described above, compared to the goodwill impairment of \$25.7 million for the Fluent reporting unit for the six months ended June 30, 2023.

Interest expense, net

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Interest expense, net	\$ (1,015)	\$ (795)	28%	\$ (2,430)	\$ (1,484)	64%

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

The increase in interest expense was driven by a higher average interest rate on the SLR (as defined herein) term loan in the current year period as compared to the prior period's Citizens Bank, N.A. term loan described below under "Liquidity and Capital Resources" below along with increased loan amortization.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

The increase in interest expense was driven by the same factors discussed above.

Income (loss) before income taxes

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Income (loss) before income taxes	\$ (12,402)	\$ 5,944	(309%)	\$ (17,770)	\$ (25,898)	(31%)

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

The decrease in income (loss) before income taxes of \$18.3 million was primarily driven by the decline in revenue of \$23.4 million and an increase in operating expenses of \$5.4 million driven in part by the prior year period legal fee reimbursement related to previously incurred legal fees and lower than expected regulatory settlement of a legal case and legal fees, partly offset by a decline in cost of revenue of \$13.4 million.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

The decrease in loss before income taxes of \$8.1 million was primarily due to the decline in revenue of \$34.7 million and an increase in operating expenses of \$3.3 million driven mainly by the prior year period legal fee reimbursement and settlement of the FTC case for lower than expected, partly offset by a decrease in goodwill impairment of \$23.5 and a decline in cost of revenue of \$24.4 million.

Income tax (expense) benefit

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Income tax (expense) benefit	\$ 775	\$ (1,693)	(146%)	\$ (133)	\$ (1,794)	(93%)

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

For the three months ended June 30, 2024, the effective tax rate of 6.5% differed from the statutory federal income tax rate of 21% primarily due to state and local tax expense and losses for which no tax benefit is recognized as such amounts are fully offset with a valuation allowance. For the three months ended June 30, 2023, the Company's effective income tax expense rate of 29.2% primarily 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.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

For the six months ended June 30, 2024, the effective tax rate of 0.8% differed from the statutory federal income tax rate of 21% primarily due to state and local tax expense and losses for which no tax benefit is recognized as such amounts are fully offset with a valuation allowance. For the six months ended June 30, 2023, the Company's effective income tax expense rate of 6.9% primarily 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 June 30, 2024 and 2023, 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 income (loss)

(In thousands)	Three Months Ended June 30,			Six Months Ended June 30,		
	2024	2023	% Change	2024	2023	% Change
Net income (loss)	\$ (11,627)	\$ 4,251	(374%)	\$ (17,903)	\$ (27,692)	(35%)

Three months ended June 30, 2024 compared to the three months ended June 30, 2023

For the three months ended June 30, 2024 and 2023, net loss was \$11.6 million and net income was \$4.3 million, respectively, as a result of the foregoing.

Six months ended June 30, 2024 compared to the six months ended June 30, 2023

For the six months ended June 30, 2024 and 2023, net loss was \$17.9 million and \$27.7 million, respectively, as a result of the foregoing.

Liquidity and Capital Resources

Cash (used in) provided by operating activities. For the six months ended June 30, 2024, net cash used in operating activities was \$13.2 million, compared to net cash provided by operating activities of \$2.1 million for the six months ended June 30, 2023. Net loss in the current year period of \$17.9 million represents a decrease of \$9.8 million, as compared with net loss of \$27.7 million in the prior period. Adjustments to reconcile net loss to net cash used in operating activities of \$10.1 million in the current year period decreased by \$23.1 million, as compared with \$33.2 million in the prior period, primarily due to a goodwill impairment of \$1.3 million and intangible impairment of \$1.0 million in the current year period as compared to the goodwill impairment of \$25.7 million in the prior period, partly offset by the current year period loss on early extinguishment of debt of \$1.0 million. There were changes in assets and liabilities consuming cash of \$5.4 million in the current year period, as compared with \$3.4 million in the prior period, 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 used in investing activities. For the six months ended June 30, 2024 and 2023, net cash used in investing activities was \$3.5 million and \$3.6 million, respectively. The minor decrease was mainly due to the increase in investment in capitalized software, compared to the impact of the TAPP consolidation that occurred in 2023.

Cash (used in) provided by financing activities. For the six months ended June 30, 2024, net cash provided by financing activities was \$7.4 million, compared to net cash used in financing activities of \$3.0 million for the six months ended June 30, 2023. The increase was mainly due to the sale of warrants and the net proceeds received from the issuance of the new debt partly offset by repayment of the prior debt and repayments on the new debt revolver as well as debt financing costs.

As of June 30, 2024, we had noncancelable operating lease commitments of \$2.9 million and long-term debt with a \$34.3 million principal balance. For the six months ended June 30, 2024, we funded our operations using available cash.

As of June 30, 2024, we had cash, cash equivalents, and restricted cash of \$6.4 million, a decrease of \$9.4 million from \$15.8 million as of December 31, 2023.

As of June 30, 2024, we were not in compliance with our financial covenants under our credit facility. On April 2, 2024, Fluent, LLC, as Borrower, entered into a credit agreement (as amended, the "SLR Credit Agreement") with the Company 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 "SLR Term Loan") and a revolving credit facility of up to \$30.0 million (the "SLR Revolver" and, together with the SLR Term Loan, the "SLR Credit Facility"). We used a portion of the net proceeds of the SLR Credit Facility to repay our outstanding obligations under the Citizens Credit Agreement dated March 31, 2021, prior to its maturity. As of June 30, 2024, the SLR Credit Facility had an outstanding principal balance of \$32.3 million (of which \$12.3 million relates to the SLR Revolver) and matures on April 2, 2029 (the "Maturity Date").

The SLR Credit Facility 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, but not limited to, 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 SLR Credit Agreement also contains certain affirmative covenants and customary events of default provisions, including, subject to grace periods, among others, payment default, covenant default and judgment default.

On May 15, 2024, the Borrower and SLR entered into the first amendment to SLR Credit Agreement, pursuant to which SLR (1) waived any required prepayments on the SLR Revolver from the proceeds from the Private Placement; (2) required that the Credit Parties (as defined in the SLR Credit Agreement) retain a financial advisor to assist in preparing the Company's projections, (3) increased the minimum excess availability covenant following the Private Placement; (4) amended the definition of borrowing base (as defined in the SLR Credit Agreement); and (5) amended certain post-closing obligations.

As a result of economic downward trends as described above in "Advertiser Trends & Seasonality", we updated our projections in the third quarter to reflect the continued pressure on our operating results. We entered into two letter agreements with SLR, pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended June 30, 2024, and the related notice of event of default, to August 21, 2024. (See Note 5, *Long-term debt, net* in the Notes to the consolidated financial statements).

On August 19, 2024, the Borrower and SLR entered into the Second Amendment to the SLR Credit Agreement, which, among other things, required that we raise \$2.0 million in additional capital. To raise the capital, we entered into convertible subordinated notes (See Note 12, *Subsequent Events* in the Notes to the consolidated financial statements) raising an aggregate of \$2.1 million. In addition, among other things, the Second Amendment waived non-

compliance with the financial covenant as of June 30, 2024, modified the financial covenant through December 31, 2025, ended a requirement to engage a financial advisor, and increased the interest rate margin from 5.25% to 5.75%.

We may voluntarily prepay the SLR 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 SLR Revolver 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 SLR Credit Facility 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 opening interest rate of the SLR Credit Facility was 10.81% (SOFR + CSA + 5.25%), which increased to 10.86% (SOFR + CSA+5.25%) as of June 30, 2024.

Given the continued challenges we have faced achieving profitability, we made reductions in workforce during the first half of 2024 and continue to further consider cost reduction measures and focus resources on opportunities that will enable us to meet our projected budget and cash flow requirements. Initial measures included divesting a non-core business unit (see Note 11, *Variable Interest Entity*, in the Notes to the consolidated financial statements), transferring another business unit (see Note 3, *Intangible assets, net* in the Notes to the consolidated financial statements), and reviewing other business units to determine the impact of potential divestments.

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.

While based on current projections, we expect to be in compliance with the new financial covenants for each of the quarters in the twelve months following the issuance date of this Quarterly Report on Form 10-Q, if during any fiscal quarter, we do not comply with any of its financial covenants, such non-compliance would result in an event of default that would give SLR the right to accelerate maturities. In such case, the Company likely would not have sufficient funds to repay the SLR Term Loan and the SLR Revolver (as described above). In addition, while we believe the proceeds from the sale of the Convertible Notes (as defined in Note 12, *Subsequent Events*, in the Notes to the consolidated financial statements) will provide sufficient liquidity for any anticipated cash needs, there is no assurance that our available cash plus borrowing base will be sufficient to fund operations over the next twelve months. Further, if needed, we will consider implementing other cost saving measures, but there is no guarantee that the plans will be successfully executed or have the expected benefits. As a result, management concluded that there is substantial doubt about our ability to continue as a going concern for one year after the date of this Quarterly Report on Form 10-Q.

Critical Accounting Estimates

Management's discussion and analysis of financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our 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.

As disclosed in Note 3, *Intangible assets, net*, we conducted an interim test of recoverability of its long lived assets for the three months ended June 30, 2024. We compared the 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 other assets. Based on the results of this approach as of June 30, 2024, we concluded that the long-lived asset was not recoverable and an impairment loss was calculated. We assessed the fair value taking into account the market and the impact of the asset on the forecast and determined that the full remaining balance was impaired. As such, we recorded a non-cash impairment charge of \$383 in the second quarter of 2024.

As disclosed in Note 4, *Goodwill*, we conducted an interim test of the fair value of its goodwill for potential impairment for the three months ended June 30, 2024. We considered a combination of income and market approaches to determine the fair value of the All Other reporting unit and determined the income approach provided the best indication of fair value. The critical assumptions in the income approach include forecasted revenues and profitability, long-term growth rates, and discount rates. 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, 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, 2024, we concluded that its carrying value exceeded its estimated fair value by 58%. As such, we concluded that its goodwill of \$1,261 for the All Other reporting unit was impaired and recorded a non-cash impairment charge of its remaining balance in the second quarter of 2024.

Further details of the Company's accounting policies are available in Item 1, Financial Statements, Note 1, *Summary of significant accounting policies*, to the consolidated financial statements.

For additional information, please refer to our 2023 Form 10-K. There have been no additional material changes to Critical Accounting Estimates disclosed in the 2023 Form 10-K.

Recently issued accounting and adopted standards

See Note 1(d), "*Recently issued and adopted accounting standards*," in the Notes to consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

As a smaller reporting company, we are not required to provide the information required by this Item.

Item 4. 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 our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of June 30, 2024. We maintain disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our Company's Chief Executive Officer and Interim Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on the evaluation of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), the Company's Chief Executive Officer and Interim Chief Financial Officer carried out an evaluation of the effectiveness of the Company's disclosure controls and procedures as of June 30, 2024 and concluded they were effective as of that date.

Changes in Internal Control Over Financial Reporting

There were no changes to our internal control over financial reporting during the quarter ended June 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we may be subject to litigation and claims arising in the ordinary course of business. We are not currently a party to any material legal proceedings and we are not aware of any pending or threatened legal proceeding against us that we believe could have a material adverse effect on our business, operating results, cash flows, or financial condition.

Item 1A. Risk Factors.

Our business, financial condition, results of operations, and cash flows may be impacted by a number of factors, many of which are beyond our control, including those set forth in our 2023 Form 10-K, the occurrence of any one of which could have a material adverse effect on our actual results.

Except as set forth below, there have been no material changes to the risk factors previously disclosed in our 2023 Form 10-K and Quarterly Report on Form 10-Q for the quarter ended March 31, 2024. The risk factors below supplement or update the risk factors in our 2023 Form 10-K.

There is substantial doubt about our ability to continue as a going concern

We have experienced a continued decline in our operating results, driven primarily by the continued impact of the imposed regulatory requirements on our owned and operated digital media properties.

The SLR Credit Agreement requires us to maintain and comply with certain financial covenants. Moreover, the borrowings under the SLR Revolver under the SLR Credit Agreement are limited to a borrowing base that fluctuates as regularly as weekly based on our eligible accounts receivable. As a result of the continued decline in financial performance of our owned and operated digital media properties throughout the second quarter of 2024, our accounts receivable were insufficient to support the borrowing base needed to fund operations through the end of the second quarter of 2024. We therefore raised equity capital in May 2024, further updated our projections to reflect the continued decline in our operating results, and entered into the First Amendment with SLR on May 15, 2024.

As of June 30, 2024, we were not in compliance with our financial covenants under the SLR Credit Agreement, which we had to report by July 31, 2024, and which would have resulted in an event of default. However, we entered into two letter agreements pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended June 30, 2024, and the related notice of event of default, to August 21, 2024.

On August 19, 2024, we entered into the Second Amendment to the SLR Credit Agreement, which, among other things, required that we raise \$2.0 million in additional capital. To raise the capital, we entered into convertible subordinated notes raising an aggregate of \$2.1 million. In addition, among other things, the Second Amendment waived non-compliance with the financial covenant as of June 30, 2024, modified the financial covenant through December 31, 2025, ended the requirement to engage a financial advisor, and increased the interest rate margin from 5.25% to 5.75%.

While based on current projections, we expect to be in compliance with the new financial covenants for each of the quarters in the twelve months following the issuance date of this Quarterly Report on Form 10-Q, if during any fiscal quarter, we do not comply with any of our financial covenants, such non-compliance would result in an event of default that would give SLR the right to accelerate maturities. In such case, we likely would not have sufficient funds to repay the SLR Term Loan and the SLR Revolver. In addition, while we believe the proceeds from the sale of the Convertible Notes will provide sufficient liquidity for any anticipated cash needs, there is no assurance that our available cash plus borrowing base will be sufficient to fund operations over the next twelve months. Further, if needed, we will consider implementing other cost saving measures, but there is no guarantee that the plans will be successfully executed or have the expected benefits. As a result, management concluded that there is substantial doubt about our ability to continue as a going concern for one year after the date of this Quarterly Report on Form 10-Q.

If our current plans are not successful, we may need to consider other strategic alternatives, including restructuring or refinancing our debt, seeking additional equity or debt financing, reducing or delaying our business activities and strategic initiatives, selling assets, and other strategic transactions and/or other measures. We have relied upon financing provided by our officers, directors and largest stockholders, and such holders may be unwilling or unable to continue providing financing should additional financing be required. Other financing sources may be unwilling to provide such funding to us on commercially reasonable terms, or at all. If we seek additional financing to fund our operations and there remains substantial doubt about our ability to continue as a going concern, we may find it especially difficult to raise funds on commercially reasonable terms, or at all. Furthermore, the perception that we may not be able to continue as a going concern may cause publishers, vendors, advertisers and other clients (current and potential) to review their business relationships and terms with us. Uncertainty regarding our ability to continue as a going concern could also have a material and adverse impact on the price of our common stock, which could negatively impact our ability to obtain stock-based financing or enter into strategic transactions.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

On May 13, 2024, the Company entered into Securities Purchase Agreements (the "Purchase Agreements") with certain accredited investors (the "Purchasers") to sell pre-funded warrants (the "Pre-Funded Warrants") to purchase up to 2,955,084 shares of the Company's common stock, at a purchase price of \$3.384 per Pre-Funded Warrant. The Pre-Funded Warrants had an exercise price of \$0.005 per share of common stock, were immediately exercisable after stockholder approval of the Private Placement and terminated when exercised in full. The aggregate gross proceeds for the Private Placement were \$10 million, before deducting offering expenses payable by the Company. The exercise of the Pre-Funded Warrants was subject to stockholder approval, which occurred on July 2, 2024. The Purchasers included, among others, three individuals who are officers and/or directors of the Company and a principal stockholder of the Company. No underwriting discounts or commissions were paid with respect to the Private Placement. The issuance of the Pre-Funded Warrants was made in reliance upon the exemption from registration under Section 4(a)(2) of the Securities Act.

The foregoing descriptions of the Purchase Agreements and Pre-Funded Warrants do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Purchase Agreements and Pre-Funded Warrants, copies of which are incorporated by reference as Exhibits 10.1 and 10.2, respectively, to this Quarterly Report on Form 10-Q and are incorporated by reference herein.

Item 3. Defaults Upon Senior Securities.

None.

Item 5. Other Information.

Rule 10b5-1 Trading Plans

During the fiscal quarter ended June 30, 2024, none of the Company's directors or executive officers adopted or terminated any contract, instruction or written plan for the purchase or sale of Company securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any "non-Rule 10b5-1 trading arrangement."

Second Amendment to SLR Credit Agreement

On July 31, 2024, the Company and SLR entered into a letter agreement pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended June 30, 2024, and the related notice of event of default, to August 16, 2024. On August 14, 2024, the parties entered into a second letter agreement pursuant to which SLR extended the deadline for delivery of the same compliance certificate and related notice of event of default to August 21, 2024.

On August 19, 2024, the Borrower, SLR, and the other parties thereto entered into the Second Amendment to Credit Agreement (the "Second Amendment"), which, among other things, required that the Company raise \$2.0 million in additional capital. To raise the capital, the Company entered into convertible subordinated notes with four individuals who are officers and/or directors of the Company and one principal stockholder of the Company. In addition, among other things, the Second Amendment waived non-compliance with the financial covenant as of June 30, 2024, modified the financial covenant through December 31, 2025, ended a requirement to engage a financial advisor, and increased the interest rate margin from 5.25% to 5.75%.

The Second Amendment also included a Second Amendment Subordination Agreement described below.

Sale of Convertible Notes

On August 19, 2024, the Company entered into Securities Purchase Agreements (the "Securities Purchase Agreements") with certain accredited and/or sophisticated investors (the "Purchasers") to sell convertible subordinated promissory notes (the "Convertible Notes") in aggregate principal amount of \$2.1 million. The Convertible Promissory Notes mature on April 2, 2029, bear interest at 13% per annum payable quarterly in cash (subject to payment conditions in the Subordination Agreement described below) or in kind. Subject to the payment conditions in the Subordination Agreement described below, the Company may prepay the Convertible Notes in whole or in part at any time upon ten days' written notice; provided that, no prepayment will be permitted prior to the stockholder approval described below without the consent of the applicable holder.

Each holder of a Convertible Note is entitled to convert the Conversion Amount (as defined below) into shares of the Company's common stock at a conversion price equal to the lesser of (i) \$3.01, and (ii) the greater of (A) the consolidated closing bid price of the Company's Common Stock as reported on Nasdaq on the applicable conversion date and (B) \$1.00, in each case subject to adjustments for stock splits, recapitalizations and the like. However, the applicable conversion price will in no event be lower than the price established by clause (ii) above unless and until the Company's stockholders have approved matters related to the issuance of common stock upon conversion of the Convertible Notes, which vote is expected to take place at the Company's 2024 annual meeting of stockholders. The Convertible Notes are subject to additional limits on conversion until stockholder approval is obtained, including an aggregate limit on the number of shares that may be issued upon conversion to 19.99% of the Company's outstanding shares of common stock and provisions to prevent a change of control as defined in the rules of the Nasdaq Stock Market. The Company has agreed to use its reasonable efforts to secure stockholder approval at such meeting, including providing a recommendation FOR approval by the Company's board of directors. Holders of the Convertible Notes will be permitted to vote on such stockholder approval, but may not vote any shares obtained from conversion of the Convertible Notes prior to such vote. No underwriting discounts or commissions were paid with respect to the Convertible Notes.

The purchasers of the Convertible Notes include our Chairman of the Board and Chief Strategy Officer Ryan Schulke, our Chief Executive Officer Donald Patrick, our interim Chief Financial Officer Ryan Perfit, our Chief Customer Officer and member of the board of directors Matthew Conlin, and Dr. Phillip Frost, a beneficial owner of approximately 22% of common stock prior to the Convertible Note transaction. In certain cases the Convertible Notes were purchased by affiliates of such persons.

In connection with the Second Amendment and the Purchase Agreements, the Company, SLR and the purchasers of the Convertible Notes entered into a Second Amendment Subordination Agreement dated August 19, 2024 (the "Subordination Agreement"). The Subordination Agreement confirms the subordinated nature of the Convertible Notes and restricts payments to and remedies of the holders of the Convertible Notes for so long as the SLR Credit Agreement has indebtedness outstanding. The Subordination Agreement provides that the Company may not make any payment of principal or interest on the Convertible Notes unless the conditions set forth in either in clause (i) or clause (ii) below are satisfied:

(i) (a) no event of default under the SLR Credit Agreement exists before or immediately after giving effect to such payment, (b) the Borrower has demonstrated to the satisfaction of SLR compliance with certain financial covenants on a pro forma basis after giving effect to the payment, and (c) SLR's receipt of the Company's audited financial statements for the fiscal year ending December 31, 2024.

(ii) (a) no event of default under the SLR Credit Agreement exists before or immediately after giving effect to such payment, (b) the Company has raised equity capital excluding the proceeds from the sale of the Convertible Notes prior to June 30, 2025 and the payments made in respect of the Convertible Notes do not exceed an amount that equals the positive difference of the amount of such equity raise and \$7,000,000, and (c) the Borrower has demonstrated to the satisfaction of SLR compliance with certain financial covenants on a pro forma basis after giving effect to the payment.

Item 6. Exhibits.

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit No.	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	Certificate of Domestication.	8-K	001-37893	3.1	3/26/2015	
3.2	Certificate of Incorporation.	8-K	001-37893	3.2	3/26/2015	
3.3	Certificate of Amendment to the Certificate of Incorporation.	8-K	001-37893	3.1	9/26/2016	
3.4	Certificate of Amendment to the Certificate of Incorporation.	8-K	001-37893	3.1	4/16/2018	
3.5	Certificate of Amendment to the Certificate of Incorporation of Fluent, Inc. effective April 11, 2024.	8-K	001-37893	3.1	4/12/2024	
3.6	Amended and Restated Bylaws.	8-K	001-37893	3.2	2/19/2019	
10.1+	Form of Securities Purchase Agreement by and between Fluent, Inc. and the purchasers party thereto, dated as of May 13, 2024.	10-Q	001-37893	10.1	5/15/2024	
10.2	Form of Pre-Funded Warrant dated May 13, 2024.	10-Q	001-37893	10.2	5/15/2024	
10.3	Form of Support Agreement by and among Fluent, Inc. and the parties thereto dated as of May 13, 2024.	10-Q	001-37893	10.3	5/15/2024	
10.4	Credit Agreement dated as of April 2, 2024, 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.	10-K	001-37893	10.26	4/2/2024	
10.5	First Amendment to Credit Agreement, dated as of May 15, 2024, by and among the Company, the lenders party thereto, Crystal Financial LLC d/b/a SLR Credit Solutions, and Fluent, LLC.	10-Q	001-37893	10.8	5/15/2024	
10.6	Letter Agreement to Credit Agreement, dated as of July 31, 2024, by and among Crystal Financial LLC D/B/A SLR Credit Solutions, Crystal Financial SPV LLC and Fluent, LLC.					X
10.7	Second Letter Agreement to Credit Agreement, dated as of August 14, 2024, by and among Crystal Financial LLC D/B/A SLR Credit Solutions, Crystal Financial SPV LLC and Fluent, LLC.					X
10.9	Second Amendment to Letter Agreement for Consulting Services, effective as of August 1, 2024, by and between Fluent, LLC and CRIO, LLC.					X
10.10	Form of Securities Purchase Agreement, dated as of August 19, 2024, by and between Fluent, Inc. and the purchaser party thereto.					X
10.11	Form of Convertible Subordinated Promissory Note, dated as of August 19, 2024.					X
10.12	Form of Second Amendment Subordination Agreement, dated as of August 19, 2024, by and among the Company, Crystal Financial LLC D/B/A SLR Credit Solutions, and the Subordinated Creditor party thereto.					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 Interim 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 Interim 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
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)	X
*	Furnished herewith. 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.	
+	[Certain of the schedules to this exhibit have been omitted in accordance with Regulation S-K Item 601(b)(10). The Company hereby undertakes to furnish supplementally a copy of all omitted schedules to the SEC upon its request]	

SIGNATURES

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

Fluent, Inc.

August 19, 2024

By: /s/ Ryan Perfit
Ryan Perfit
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

July 31, 2024

VIA EMAIL

Fluent, LLC
300 Vesey Street, 9th Floor
New York, NY 10282

RE: SLR-Fluent Credit Agreement 2024 Q2 Deliverables

Dear Mr. Barsky:

Reference is made to that certain Credit Agreement dated as of April 2, 2024 (as amended, restated, amended and restated, extended, modified, supplemented or otherwise in effect from time to time, the "Credit Agreement"), by and among, among others: (i) Fluent, LLC, as the borrower (the "Borrower"); (ii) Fluent, Inc., as a guarantor, (iii) the other Credit Parties party thereto from time to time; (iv) Crystal Financial LLC d/b/a SLR Credit Solutions, as the administrative agent (in such capacity, together with its successors and assigns, the "Administrative Agent") for the Lenders; and (v) the Lenders party thereto from time to time. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The Borrower has requested that the Lenders and the Administrative Agent extend until August 16, 2024, the deadline for delivery of (i) the Compliance Certificate required by Section 6.04(b)(ii) for the Fiscal Month ended June 30, 2024, and (ii) the notice of Event of Default required by Section 6.05(a) for the Borrower's violation of Section 7.12(b)(i) for the Fiscal Quarter ended June 30, 2024. The Lenders and the Administrative Agent are willing to, and by delivery of this letter hereby agree to, extend such deadlines until August 16, 2024.

This letter together with the other Loan Documents embodies the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all prior agreements, understandings and inducements, whether express or implied, oral or written.

[Signature pages follow]

Sincerely,

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

By: _____
Name: Rebecca Tarby
Title: Senior Managing Director

CRYSTAL FINANCIAL SPV LLC, as a Lender

By: _____
Name: Rebecca Tarby
Title: Senior Managing Director

Acknowledged and agreed,

FLUENT, LLC, as Borrower and on behalf of the Guarantors

By: _____
Name: Daniel Barsky
Title: General Counsel

August 14, 2024

VIA EMAIL

Fluent, LLC
300 Vesey Street, 9th Floor
New York, NY 10282

RE: SLR-Fluent Credit Agreement 2024 Q2 Deliverables

Dear Mr. Barsky:

Reference is made to that certain Credit Agreement dated as of April 2, 2024 (as amended, restated, amended and restated, extended, modified, supplemented or otherwise in effect from time to time, the "Credit Agreement"), by and among, among others: (i) Fluent, LLC, as the borrower (the "Borrower"); (ii) Fluent, Inc., as a guarantor, (iii) the other Credit Parties party thereto from time to time; (iv) Crystal Financial LLC d/b/a SLR Credit Solutions, as the administrative agent (in such capacity, together with its successors and assigns, the "Administrative Agent") for the Lenders; and (v) the Lenders party thereto from time to time. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The Borrower has requested that the Lenders and the Administrative Agent extend until August 21, 2024, the deadline for delivery of (i) the Compliance Certificate required by Section 6.04(b)(ii) for the Fiscal Month ended June 30, 2024, and (ii) the notice of Event of Default required by Section 6.05(a) for the Borrower's violation of Section 7.12(b)(i) for the Fiscal Quarter ended June 30, 2024. The Lenders and the Administrative Agent are willing to, and by delivery of this letter hereby agree to, extend such deadlines until August 21, 2024.

This letter together with the other Loan Documents embodies the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all prior agreements, understandings and inducements, whether express or implied, oral or written.

[Signature pages follow]

Sincerely,

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

By: _____
Name: Rebecca Tarby
Title: Senior Managing Director

CRYSTAL FINANCIAL SPV LLC, as a Lender

By: _____
Name: Rebecca Tarby
Title: Senior Managing Director

[Signature Page to SLR-FLNT 2024 Q2 Second Letter]

Acknowledged and agreed,

FLUENT, LLC, as Borrower and on behalf of the Guarantors

By: _____

Name: Daniel Barsky

Title: General Counsel

[Signature Page to SLR-FLNT 2024 Q2 Second Letter]



300 Vesey Street
New York, NY 10282

info@fluentco.com
646.669.7272

July 30, 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”) as amended as of February 1, 2024.

The Original Agreement is hereby amended effective as of August 1, 2024 by modifying Section 2 to provide for a one month extension of the Initial Term, as extended, beyond July 31, 2024. 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, Interim CFO

Date: _____

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”) is dated as of August 19, 2024, between Fluent, Inc., a Delaware corporation (the “Company”), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “Purchaser” and collectively, the “Purchasers”).

RECITALS

A. The Company and each Purchaser is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”).

B. Each Purchaser, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, such securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings set forth in this Section 1.1:

“Action” means any action, suit, inquiry, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation pending or, to the Company’s Knowledge, threatened in writing against the Company, any Subsidiary or any of their respective properties or any officer, director or employee of the Company or any Subsidiary acting in his or her capacity as an officer, director or employee before or by any federal, state, county, local or foreign court, arbitrator, governmental or administrative agency, regulatory authority, stock market, stock exchange or trading facility.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is controlled by or is under common control with such Person, as such terms are used in and construed under Rule 405 under the Securities Act. For the avoidance of doubt, with respect to any Purchaser that is an investment fund or other investment vehicle, such Purchaser shall be deemed not to be an Affiliate of (i) any portfolio company of such Purchaser or its Affiliates or (ii) any limited partner of any such Purchaser or its Affiliates.

“Agreement” has the meaning set forth in the Preamble.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

“Closing” means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

“Closing Date” means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers’ obligations to pay the Purchase Price and (ii) the Company’s obligations to deliver the Securities, in each case, have been satisfied or waived, but in no event later than two Trading Days following the date hereof.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.0005 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or any Subsidiary which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock or other securities that entitle the holder to receive, directly or indirectly, Common Stock.

“Company” has the meaning set forth in the Preamble.

“Company Counsel” means Sheppard, Mullin, Richter & Hampton LLP with offices located at 12275 El Camino Real, Suite 100, San Diego, California 92130.

“Company Covered Person” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the Securities Act, any Person listed in the first paragraph of Rule 506(d)(1).

“Company Intellectual Property” has the meaning set forth in Section 3.1(p)(i).

“Company’s Knowledge” means with respect to any statement made to the Company’s Knowledge, that the statement is based upon the actual or constructive knowledge of any director and executive officer (as defined in Rule 405 under the Securities Act) of the Company, after due inquiry.

“Control” (including the terms “controls,” “controlling,” “controlled by” or “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Conversion Shares” means the shares of Common Stock into which the Notes may be converted as set forth in Section 4 (Conversion) of the Notes.

“Disclosure Materials” has the meaning set forth in Section 3.1(h).

“Disclosure Schedules” means the Disclosure Schedules of the Company delivered concurrently herewith.

“DTC” has the meaning set forth in Section 4.1(c).

“Environmental Laws” has the meaning set forth in Section 3.1(bb).

“Evaluation Date” shall have the meaning ascribed to such term in Section 3.1(s).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“GAAP” means U.S. generally accepted accounting principles, as applied by the Company.

“Liens” means any lien, charge, claim, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to the business, results of operations, condition (financial or otherwise) or assets of the Company; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement; (vi) any changes in applicable laws or accounting rules, including GAAP; (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; (viii) any natural or mad-made disaster or acts of God; or (ix) any failure by the Company to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded).

“Material Contract” means any contract of the Company that has been filed or was required to have been filed as an exhibit to the SEC Reports pursuant to Item 601(b)(4) or Item 601(b)(10) of Regulation S-K.

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(n).

“Net Short Sale” shall have the meaning ascribed to such term in Section 4.11.

“Note” and “Notes” shall have the respective meanings ascribed to such terms in Section 2.1.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, sole proprietorship, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Purchaser” or “Purchasers” has the meaning set forth in the Recitals.

“Purchase Price” means, as to each Purchaser, the amount to be paid for the Note purchased hereunder as specified below such Purchaser’s name on the signature page of this Agreement and next to the heading “Purchase Price,” in United States dollars and in immediately available funds.

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.7.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Sanctioned Country” means, at any time, a country, region or territory which is itself subject or target of any Sanctions (at the time of this Agreement, Russia, Cuba, Iran, North Korea, Syria, the so-called People’s Republic of Donetsk, the so-called People’s Republic of Luhansk, and the Crimea, Kherson and Zaporizhzhia regions of Ukraine).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject or target of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, His Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“SEC Reports” shall have the meaning ascribed to such term in Section 3.1(h).

“Securities” means the Notes and the Conversion Shares.

“Securities Act” has the meaning set forth in the Recitals.

“Senior Lender” means Crystal Financial LLC d/b/a SLR Credit Solutions, a Delaware limited liability company, as administrative agent for the lenders named in that certain Credit Agreement dated as of April 2, 2024, as amended, under which multiple Subsidiaries of the Company are borrowers and/or guarantors.

“Senior Lender Approval” means that certain Second Amendment to Credit Agreement, dated on or about August 19, 2024 (the “Credit Agreement Amendment”), by and among the lenders identified therein, Crystal Financial LLC d/b/a SLR Credit Solutions, a Delaware limited liability company, as administrative agent for such lenders, Fluent, LLC, a Delaware limited liability company, the Company, and each of the guarantors identified on the signature pages thereto..

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include locating and/or borrowing shares of Common Stock).

“Staff” means the staff of the Commission.

“Subsidiary” means any subsidiary of the Company as set forth in the SEC Reports, and shall, where applicable, include any subsidiary of the Company formed or acquired after the date hereof.

“Subordination Agreement” means that certain subordination agreement between Senior Lender and each of the Purchasers, the form of which is attached hereto as Exhibit D.

“Stockholder Approval” means such approval as may be required by the applicable rules and regulations of the Trading Market from the Company’s stockholders with respect to the transactions contemplated by the Transaction Documents including the conversion features of the Notes and issuance of the Conversion Shares.

“Trading Affiliate” has the meaning set forth in Section 3.2(g).

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTCQB or the OTCQX (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Notes, the Subordination Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” means Continental Stock Transfer & Trust Company, the current transfer agent of the Company, with a mailing address of 1 State Street, 30th Floor, New York, NY 10004, and a phone number of (212) 509-4000, or any successor transfer agent for the Company.

ARTICLE II.
PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to issue and sell, and the Purchasers, severally and not jointly, agree to purchase, convertible subordinated promissory notes in the form attached hereto as Exhibit A (each, a “Note” and, collectively, the “Notes”) with an aggregate principal amount of \$2,050,000. The Company shall deliver to each Purchaser its respective Note as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall take place remotely by electronic transfer of the Closing documentation.

2.2 Deliveries.

(a) On or prior to the Closing Date (except as indicated below), the Company shall deliver or cause to be delivered to each Purchaser the following:

- (i) this Agreement duly executed by the Company;
 - (ii) the Company shall have provided each Purchaser with the Company's wire instructions, on Company letterhead and executed by the Chief Executive Officer or Chief Financial Officer;
 - (iii) a Note issued to such Purchaser with a principal amount equal to the Purchase Price paid by such Purchaser as specified below such Purchaser's name on the Purchaser's signature page to this Agreement;
 - (iv) evidence that the Company has obtained Senior Lender Approval;
 - (v) the Subordination Agreement duly executed by Senior Lender; and
 - (vi) evidence that the Company has filed with The Nasdaq Capital Market the listing of additional shares application for the Securities.
- (b) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:
- (i) this Agreement duly executed by such Purchaser;
 - (ii) the Subordination Agreement duly executed by such Purchaser;
 - (iii) such Purchaser's Purchase Price, which shall be made available for "Delivery Versus Payment" settlement with the Company or its designee; and
 - (iv) a fully completed and duly executed Accredited Investor Questionnaire, satisfactory to the Company in the form attached hereto as Exhibit B.

2.3

Closing Conditions.

- (a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:
- (i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on the Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate in all material respects (or, to the extent representations or warranties are qualified by materiality, in all respects) as of such date);
 - (ii) Senior Lender Approval shall have been obtained;
 - (iii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing Date shall have been performed; and
 - (iv) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate in all respects or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) as of such date;

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed; and

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except (i) as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, or (ii) disclosed in the Company's SEC Reports the Company hereby represents and warrants as of the date hereof and the Closing Date (except for the representations and warranties that speak as of a specific date, which shall be made as of such date), to each Purchaser:

(a) Subsidiaries. Except as set forth in Schedule 3.1(a), the Company has no direct or indirect Subsidiaries. Except as set forth in the Company's SEC Reports, the Company owns, directly or indirectly, all of the capital stock or comparable equity interests of each Subsidiary free and clear of any and all Liens, and all the issued and outstanding shares of capital stock or comparable equity interest of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. The Company and each of its Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite corporate power and authority to own or lease and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation or default of any of the provisions of its respective certificate of incorporation, bylaws or other organizational or charter documents. The Company and each of its Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not have or reasonably be expected to result in a Material Adverse Effect, and no Proceeding has been instituted, is pending, or, to the Company's Knowledge, has been threatened in writing in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder. The Company's execution and delivery of each of the Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby (including, but not limited to, the sale, issuance and delivery of the Notes and the issuance of the Conversion Shares upon conversion of the Notes in accordance with the terms of the Notes) have been duly authorized by all necessary corporate action on the part of the Company, and no further corporate action is required by the Company, its Board of Directors or its stockholders in connection therewith other than in connection with the Required Approvals. Each of the Transaction Documents to which it is a party has been (or upon delivery will have been) duly executed by the Company and is, or when delivered in accordance with the terms hereof, will constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of the Transaction Documents to which it is a party and the consummation by the Company of the transactions contemplated hereby or thereby (including, without limitation, the issuance of the Securities) do not and will not (i) conflict with or violate any provisions of the Company's or any Subsidiary's certificate of incorporation, bylaws or otherwise result in a violation of the organizational documents of the Company, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would result in a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations and the rules and regulations, assuming the correctness of the representations and warranties made by the Purchasers herein, of any self-regulatory organization to which the Company or its securities are subject, including all applicable Trading Markets), or by which any property or asset of the Company or a Subsidiary is bound or affected, except in the case of clauses (ii) and (iii) such as would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. Neither the Company nor any of its Subsidiaries is required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.4 of this Agreement, (ii) filings required by applicable state securities laws, (iii) an application to the applicable Trading Market for the listing of the Conversion Shares for trading thereon in the time and manner required thereby, (v) Senior Lender Approval, and (vi) the filing with the Commission of a preliminary and definitive proxy statement in respect of the Stockholder Approval (collectively, the "Required Approvals").

(f) Issuance of the Conversion Shares. The Conversion Shares, when issued in accordance with the terms of the Notes, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable upon conversion of the Notes in accordance with the terms of the Notes. Assuming the accuracy of the representations and warranties of the Purchasers in this Agreement, the Conversion Shares will be issued in compliance with all applicable federal and state securities laws.

(g) Capitalization. The number of shares and type of all authorized, issued and outstanding capital stock, options and other securities of the Company (whether or not presently convertible into or exercisable or exchangeable for shares of capital stock of the Company) is set forth in the Company's SEC Reports. The Company has not issued any capital stock since the date of its most recently filed SEC Report other than to reflect stock option and warrant exercises that do not, individually or in the aggregate, have a material effect on the issued and outstanding capital stock, options and other securities. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents that have not been effectively waived as of the Closing Date. Except as set forth in the Company's SEC Reports or a result of the purchase and sale of the Notes, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Notes will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable, have been issued in compliance with all applicable federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. Subject to the Required Approvals, no further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. Except as set forth in the Company's SEC Reports, there are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the Company's Knowledge, between or among any of the Company's stockholders.

(h) SEC Reports; Disclosure Materials. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports", and the SEC Reports, together with the Disclosure Schedules, being collectively referred to as the "Disclosure Materials") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension, except where the failure to file on a timely basis would not have or reasonably be expected to result in a Material Adverse Effect. As of their respective filing dates, or to the extent corrected by a subsequent restatement, the Company's SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the Commission promulgated thereunder, and none of the Company's SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Except as set forth in the Company's SEC Reports, the Company has never been an issuer subject to Rule 144(i) under the Securities Act. Each of the Material Contracts to which the Company or any Subsidiary is a party or to which the property or assets of the Company or any of its Subsidiaries are subject has been filed as an exhibit to the Company's SEC Reports.

(i) Financial Statements. The financial statements of the Company included in the Company's SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent restatement). Such financial statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries taken as a whole as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial year-end audit adjustments.

(j) Material Changes. Since the date of the latest audited financial statements included within the Company's SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof, (i) there have been no events, occurrences or developments that have had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (ii) the Company has not incurred any material liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered materially its method of accounting or the manner in which it keeps its accounting books and records, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (other than in connection with repurchases of unvested stock issued to employees of the Company), and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except Common Stock issued in the ordinary course as dividends on outstanding preferred stock or issued pursuant to existing Company stock option or stock purchase plans or executive and director compensation arrangements disclosed in the Company's SEC Reports.

(k) Litigation. There is no Action which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) except as specifically disclosed in the Company's SEC Reports, would, if there were an unfavorable decision, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor to the Company's Knowledge any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the Company's Knowledge there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any of its Subsidiaries under the Exchange Act or the Securities Act.

(l) Employment Matters. No material labor dispute exists or, to the Company's Knowledge, is imminent with respect to any of the employees of the Company which would have or reasonably be expected to result in a Material Adverse Effect. None of the Company's or any Subsidiary's employees is a member of a union that relates to such employee's relationship with the Company, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and each Subsidiary believes that its relationship with its employees is good. No executive officer of the Company (as defined in Rule 501(f) under the Securities Act) has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. To the Company's Knowledge, no executive officer, to the Company's Knowledge, is, or is now expected to be, in violation of any term of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of a third party, and to the Company's Knowledge, the continued employment of each such executive officer does not subject the Company or any Subsidiary to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(m) Compliance. Neither the Company nor any of its Subsidiaries (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any of its Subsidiaries under), nor has the Company or any of its Subsidiaries received written notice of a claim that it is in default under or that it is in violation of, any Material Contract (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body having jurisdiction over the Company or its properties or assets, or (iii) is in violation of, or in receipt of written notice that it is in violation of, any statute, rule or regulation of any governmental authority applicable to the Company, except in each case as would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(n) Regulatory Permits. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct its respective business as currently conducted and as described in the Company's SEC Reports, except where the failure to possess such permits, individually or in the aggregate, has not and would not have or reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any of its Subsidiaries has received any notice of Proceedings relating to the revocation or modification of any such Material Permits.

(o) Title to Assets. The Company and its Subsidiaries have good and marketable title in fee simple to any real property owned by them. The Company and its Subsidiaries have good and marketable title to all tangible personal property owned by them that is material to the business of the Company and its Subsidiaries, taken as whole, in each case free and clear of all Liens except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries. Any real property and facilities held under lease by the Company and any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(p) Intellectual Property.

(i) To the Company's Knowledge, the Company and the Subsidiaries own, possess, license or have other rights to use, all patents, patent applications, trade and service marks, trade and service mark applications and registrations, trade names, trade secrets, inventions, copyrights, licenses, technology, know-how and other intellectual property rights and similar rights described in the Company's SEC Reports as necessary or material for use in connection with their respective businesses and which the failure to so have would have or reasonably be expected to result in a Material Adverse Effect (collectively, the "Company Intellectual Property"). Except as set forth in Schedule 3.1(p), neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of the Intellectual Property Rights used by the Company or any Subsidiary violates or infringes upon the rights of any Person. There is no pending or, to the Company's Knowledge, threatened action, suit, proceeding or claim by any Person that the Company's business as now conducted infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of another. To the Company's Knowledge, there is no existing infringement by another Person of any of the Intellectual Property Rights that would have or would reasonably be expected to have a Material Adverse Effect. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property Rights, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) To the Company's Knowledge, all Company Intellectual Property is valid and enforceable and all maintenance/annuities fees have been timely paid. The Company has complied with its duty of disclosure under 37 CFR 1.56(c). The validity and/or enforceability of the Company Intellectual Property has not been challenged in any jurisdiction, and the Company is not aware of any facts that would give rise to such a challenge.

(q) Transactions With Affiliates and Employees. Except as set forth in the Company's SEC Reports, none of the officers or directors of the Company and, to the Company's Knowledge, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), that would be required to be disclosed pursuant to Item 404 of Regulation S-K promulgated under the Securities Act.

(r) Internal Accounting Controls. Except as set forth in the Company's SEC Reports, the Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any differences.

(s) Sarbanes-Oxley; Disclosure Controls. The Company is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002, as amended, which are applicable to it as of the Closing Date. The Company has established disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) for the Company and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by the Company's most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the Company's internal control over financial reporting (as such term is defined in the Exchange Act) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(t) Certain Fees. No person or entity will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company or a Purchaser for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company with respect to the offer and sale of the Securities. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this paragraph (t) that may be due in connection with the transactions contemplated by the Transaction Documents. The Company shall indemnify, pay, and hold each Purchaser harmless against, any liability, loss or expense (including, without limitation, attorneys' fees and out-of-pocket expenses) arising in connection with any such right, interest or claim.

(u) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2 of this Agreement and the accuracy of the information disclosed in the Accredited Investor Questionnaires provided by the Purchasers, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers under the Transaction Documents. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(v) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Notes, will not be or be an Affiliate of, an “investment company” within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an “investment company” subject to registration under the Investment Company Act of 1940, as amended.

(w) Registration Rights. Other than as set forth in the Company’s SEC Reports, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company other than those securities which are currently registered on an effective registration statement on file with the Commission.

(x) Listing and Maintenance Requirements. The Company’s Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to terminate the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. Except as set forth in the Company’s SEC Reports, the Company has not, in the twelve (12) months preceding the date hereof, received written notice from any Trading Market on which the Common Stock is listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. Except as set forth in the Company’s SEC Reports, the Company is in compliance with all listing and maintenance requirements of the principal Trading Market on the date hereof.

(y) Disclosure. Except to the extent that a Purchaser or any of such Purchaser’s representatives or agents is an officer, director or employee of the Company and such information was provided to such Person in the course of performance of such Person’s duties and responsibilities to the Company, the Company confirms that it has not provided, and to the Company’s Knowledge, none of its officers or directors nor any other Person acting on its or their behalf has provided, any Purchaser or its respective agents or counsel with any information that it believes constitutes material, non-public information except insofar as the existence, provisions and terms of the Transaction Documents and the proposed transactions hereunder may constitute such information, all of which will be disclosed by the Company in a Current Report on Form 8-K or Quarterly Report on Form 10-Q as contemplated by Section 4.4 hereof. The Company understands and confirms that the Purchasers will rely on the foregoing representations in effecting transactions in securities of the Company.

(z) No Integrated Offering. Assuming the accuracy of the Purchasers’ representations and warranties set forth in Section 3.2, none of the Company, its Subsidiaries nor, to the Company’s Knowledge, any of its Affiliates or any Person acting on its behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security under circumstances that would cause the offering of the Securities pursuant to the Transaction Documents to be integrated with prior offerings by the Company for purposes of any applicable law, regulation or stockholder approval provisions, including, without limitation, under the rules and regulations of any Trading Market on which any of the securities of the Company are listed or designated.

(aa) Tax Matters. The Company and each of its Subsidiaries (i) has accurately and timely prepared and filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith, with respect to which adequate reserves have been set aside on the books of the Company and (iii) has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply, except, in the case of clauses (i) and (ii) above, where the failure to so pay or file any such tax, assessment, charge or return would not have or reasonably be expected to result in a Material Adverse Effect. There are no unpaid taxes in any material amount claimed to be due by the Company or any of its Subsidiaries by the taxing authority of any jurisdiction.

(bb) Environmental Matters. Except as set forth in the Company's SEC Reports, to the Company's Knowledge, neither the Company nor any of its Subsidiaries (i) is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), (ii) owns or operates any real property contaminated with any substance that is in violation of any Environmental Laws, (iii) is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or (iv) is subject to any claim relating to any Environmental Laws; which violation, contamination, liability or claim has had or would have, individually or in the aggregate, a Material Adverse Effect; and there is no pending investigation or, to the Company's Knowledge, investigation threatened in writing that might lead to such a claim.

(cc) No General Solicitation. Neither the Company nor, to the Company's Knowledge, any person acting on behalf of the Company has offered or sold any of the Notes by any form of general solicitation or general advertising.

(dd) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) taken any action that would reasonably be expected to subject the Company to any damage or penalty in any criminal or governmental litigation or proceeding under any provision of the Foreign Corrupt Practices Act of 1977, as amended.

(ee) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company (or any Subsidiary) and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in SEC Reports and is not so disclosed and would have or reasonably be expected to result in a Material Adverse Effect.

(ff) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(gg) Regulation M Compliance. The Company has not, and to the Company's Knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the securities of the Company or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(hh) Sanctions. Neither the Company nor any Subsidiary nor, to the Company's Knowledge, any director, officer, agent, employee, Affiliate or Person acting on behalf of the Company or any Subsidiary is currently subject to any U.S. Sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department; and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person or entity, for the purpose of financing or facilitating any activities, business or transaction with any Sanctioned Person or in any Sanctioned Country or in any manner that would result in the violation of any Sanctions applicable to any party hereto.

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. Such Purchaser is an entity validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate or partnership power and authority to enter into and to consummate the transactions contemplated by the applicable Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents by such Purchaser and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate or, if such Purchaser is not a corporation, such partnership, limited liability company or other applicable like action, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) No Conflicts. The execution, delivery and performance by such Purchaser of the Transaction Documents and the consummation by such Purchaser of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Purchaser, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Purchaser is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Purchaser, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Purchaser to perform its obligations hereunder and thereunder.

(c) Investment Intent. Such Purchaser understands that the Securities are “restricted securities” and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to, or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities laws, *provided, however*, that by making the representations herein, such Purchaser does not agree to hold any of the Securities for any minimum period of time and reserves the right, subject to the provisions of this Agreement, at all times to sell or otherwise dispose of all or any part of such Securities pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities laws. Such Purchaser does not presently have any agreement, plan or understanding, directly or indirectly, with any Person to distribute or effect any distribution of any of the Securities (or any securities which are derivatives thereof) to or through any person or entity; such Purchaser is not a registered broker-dealer under Section 15 of the Exchange Act or an entity engaged in a business that would require it to be so registered as a broker-dealer.

(d) Purchaser Status. At the time such Purchaser was offered the Notes (unless it has specifically identified in the Accredited Investor Questionnaire that it was not such) it was, and at the date hereof it is, an “accredited investor” as defined in Rule 501(a) under the Securities Act. Purchaser (i) has such substantial knowledge, sophistication and experience in financial and business matters in general, and in investments of a similar nature to the Notes in particular, that Purchaser is capable of reading and understanding information about the Company and evaluating the merits and risks of the purchase of the Notes and the suitability thereof for Purchaser, (ii) is aware that an investment in the Securities is a speculative investment that has limited liquidity and is subject to the risk of complete loss, and (iii) is able to bear the economic risk associated with the purchase of the Notes and could afford a complete loss of an investment in the Securities.

(e) General Solicitation. Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiaries and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the Disclosure Materials and the Company's representations and warranties contained in the Transaction Documents. Such Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed decision with respect to its acquisition of the Securities.

(g) Certain Trading Activities. Other than with respect to the transactions contemplated herein, since the time that such Purchaser was first contacted by the Company or any other Person regarding the transactions contemplated hereby, neither the Purchaser nor any Affiliate of such Purchaser which (x) had knowledge of the transactions contemplated hereby, (y) has or shares discretion relating to such Purchaser's investments or trading or information concerning such Purchaser's investments, including in respect of the Securities, and (z) is subject to such Purchaser's review or input concerning such Affiliate's investments or trading (collectively, “Trading Affiliates”) has directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser or Trading Affiliate, effected or agreed to effect any purchases or sales of the securities of the Company (including, without limitation, any Short Sales involving the Company's securities). Notwithstanding the foregoing, in the case of a Purchaser and/or Trading Affiliate that is, individually or collectively, a multi-managed investment bank or vehicle whereby separate portfolio managers manage separate portions of such Purchaser's or Trading Affiliate's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's or Trading Affiliate's assets, the representation set forth above shall apply only with respect to the portion of assets managed by the portfolio manager that have knowledge about the financing transaction contemplated by this Agreement. Other than to other Persons party to this Agreement, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

(h) Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company or any Purchaser for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Purchaser.

(i) Independent Investment Decision. Such Purchaser has independently evaluated the merits of its decision to purchase Securities pursuant to the Transaction Documents, and such Purchaser confirms that it has not relied on the advice of any other Purchaser's business and/or legal counsel in making such decision. Such Purchaser understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchaser in connection with the purchase of the Securities constitutes legal, tax or investment advice. Such Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities. Such Purchaser confirms that none of such Persons has made any representations or warranties to such Purchaser in connection with the transactions contemplated by the Transaction Documents.

(j) Reliance on Exemptions. Such Purchaser understands that the Securities being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Securities.

(k) Residency. Such Purchaser's residence (if an individual) or offices in which its investment decision with respect to the Securities was made (if an entity) are located at the address immediately below such Purchaser's name on its signature page hereto.

The Company and each of the Purchasers acknowledge and agree that no party to this Agreement has made or makes any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Article III and the Transaction Documents.

ARTICLE IV. OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) Notwithstanding any other provision of this Article IV, each Purchaser covenants that the Securities may be disposed of only pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act, or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with any applicable state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, or (iii) pursuant to Rule 144 (*provided* that the Purchaser provides the Company with reasonable assurances (in the form of seller and, if applicable, broker representation letters) that the Securities may be sold pursuant to such rule), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of a transfer other than pursuant to (i) through (iii) above, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights of a Purchaser under this Agreement with respect to such transferred Securities.

(b) Legends. Certificates evidencing the Securities shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form, until such time as they are not required under Section 4.1(c):

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

(c) Removal of Legends. The legend set forth in Section 4.1(b) above shall be removed and the Company shall issue a certificate without such legend or any other legend to the holder of the applicable Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at the Depository Trust Company (“DTC”), if (i) such Securities are sold or transferred pursuant to the effective registration statement registering the Securities for resale (during such time that such registration statement is effective and not withdrawn or suspended, and only as permitted by such registration statement) or Rule 144 (if the transferor is not an Affiliate of the Company), or (ii) such Securities are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Securities and without volume or manner-of-sale restrictions. Following the earliest of (x) one year from the Closing Date, (y) Rule 144 becoming available for the resale of Securities, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Securities and without volume or manner-of-sale restrictions and (z) the date, if any, that the registration statement covering the resale of the Securities has been declared effective by the Commission, the Company shall cause Company Counsel to issue to the Transfer Agent a legal opinion. Any fees (with respect to the Transfer Agent, Company Counsel or otherwise) associated with the issuance of such opinion or the removal of such legend shall be borne by the Company. Following such time as a legend is no longer required for certain Securities, the Company will, no later than two (2) Trading Days, in each case following the delivery by a Purchaser to the Company or to the Transfer Agent (with notice to the Company) of a legended certificate (or book entry certificate) representing Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer), deliver or cause to be delivered to such Purchaser a certificate representing such Securities that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4.1(c). Certificates for Securities subject to legend removal hereunder may be transmitted by the Transfer Agent to the Purchasers by crediting the account of the Purchaser’s prime broker with DTC as directed by such Purchaser.

(d) Acknowledgement. Each Purchaser hereunder acknowledges its primary responsibilities under the Securities Act and accordingly will not sell or otherwise transfer the Securities or any interest therein without complying with the requirements of the Securities Act.

4.2 Furnishing of Information. In order to enable the Purchasers to sell the Securities under Rule 144, until such time as the Purchasers may sell the Securities without limitation under Rule 144, the Company shall use its commercially reasonable efforts to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act and, if during such period, the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c) such information as is required for the Purchasers to sell the Securities under Rule 144.

4.3 Integration. Except for the offering contemplated by the Transaction Documents, the Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless such stockholder approval is obtained before the closing of such subsequent transaction.

4.4 Securities Laws Disclosure; Publicity. Within four (4) Business Days following the execution of this Agreement, the Company will file a Current Report on Form 8-K or Quarterly Report on Form 10-Q with the Commission describing the terms of the Transaction Documents (and including as exhibits to such Current Report on Form 8-K or Quarterly Report on 10-Q the material Transaction Documents (including, without limitation, this Agreement). Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser or an Affiliate of any Purchaser, or include the name of any Purchaser or an Affiliate of any Purchaser in any press release or filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, such consent not to be unreasonably withheld, except (i) as required by federal securities law in connection with (A) any registration statement registering the resale of the Securities and (B) the filing of final Transaction Documents (including signature pages thereto) with the Commission and (ii) to the extent such disclosure is required by law, request of the Staff or Trading Market regulations, in which case the Company shall provide the Purchasers with prior written notice of such disclosure permitted under this subclause (ii). From and after the filing of the Current Report on Form 8-K or Quarterly Report on Form 10-Q disclosing the terms of the Transaction Documents, no Purchaser shall be in possession of any material, non-public information received from the Company, any Subsidiary or any of their respective officers, directors, employees or agents, that is not disclosed in the Current Report on Form 8-K or Quarterly Report on Form 10-Q unless a Purchaser shall have executed a written agreement regarding the confidentiality and use of such information. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are required to be publicly disclosed by the Company as described in this Section 4.4, such Purchaser will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

4.5 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, including this Agreement, or as expressly required by any applicable securities law, the Company covenants and agrees that neither it, nor any other Person acting on its behalf, will provide any Purchaser or its agents or counsel with any information regarding the Company that the Company believes constitutes material non-public information without the express written consent of such Purchaser, unless (a) prior thereto such Purchaser shall have executed a written agreement regarding the confidentiality and use of such information or (b) such Purchaser or representative or agent of such Purchaser is an officer, director or employee of the Company and providing such information to such Person is reasonably necessary or advisable for such Person to perform such Person's work for and/or duties and responsibilities to the Company. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. Other than information provided pursuant to the foregoing clause (a) or clause (b), to the extent that the Company delivers any material, non-public information to a Purchaser without such Purchaser's consent, the Company hereby covenants and agrees that such Purchaser shall not have any duty of confidentiality to the Company or any of its officers, directors, agents, employees, Subsidiaries or Affiliates, or a duty to the Company or any of its officers, directors, agents, employees, Subsidiaries or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.6 Use of Proceeds. The Company shall use the net proceeds from the sale of the Securities hereunder for working capital and general corporate purposes.

4.7 Indemnification of Purchasers. Subject to the provisions of this Section 4.7, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon a material breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (x) the employment thereof has been specifically authorized by the Company in writing, (y) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (z) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (1) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (2) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.8 Reservation of Common Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Conversion Shares pursuant to any conversion of the Notes pursuant to the terms and conditions thereof.

4.9 Listing of Common Stock. The Company hereby agrees to use reasonable best efforts to maintain the listing or quotation of the Common Stock on the Trading Market on which it is currently listed, and concurrently with the Closing, the Company shall apply to list or quote all of the Conversion Shares on such Trading Market and promptly secure the listing of all of the Conversion Shares on such Trading Market. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will then include in such application all of the Conversion Shares, and will take such other action as is necessary to cause all of the Conversion Shares to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all action reasonably necessary to continue the listing and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through DTC or another established clearing corporation, including, without limitation, by timely payment of fees to DTC or such other established clearing corporation in connection with such electronic transfer.

4.10 Blue Sky. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Purchasers under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification) and shall provide evidence of such actions promptly upon the written request of any Purchaser.

4.11 Short Sales and Confidentiality After The Date Hereof. Such Purchaser shall not, and shall cause its Trading Affiliates not to, engage, directly or indirectly, in any transactions in the Company's securities (including, without limitation, any Short Sales involving the Company's securities) during the period from the date hereof until the earlier of such time as (i) the transactions contemplated by this Agreement are first publicly announced as required by and described in Section 4.4 or (ii) this Agreement is terminated in full pursuant to Section 5.19. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company as described in Section 4.4, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents and Disclosure Schedules. Notwithstanding the foregoing, no Purchaser makes any representation, warranty or covenant hereby that it will not engage in Short Sales in the securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced as described in Section 4.4; *provided, however*, each Purchaser agrees, severally and not jointly with any Purchasers, that they will not enter into any Net Short Sales (as hereinafter defined) from the period commencing on the Closing Date and ending on the earliest of (x) the effective date, if any, of a registration statement covering the resale of the Securities, (y) the twenty-four (24) month anniversary of the Closing Date or (z) the date that such Purchaser no longer holds any Securities. For purposes of this Section 4.11, a "Net Short Sale" by any Purchaser shall mean a sale of Common Stock by such Purchaser that is marked as a short sale and that is made at a time when there is no equivalent offsetting long position in Common Stock held by such Purchaser. For purposes of determining whether there is an equivalent offsetting position in Common Stock held by the Purchaser, the amount of shares of Common Stock held in a long position shall be any shares of Common Stock or Common Stock Equivalents otherwise then held by such Purchaser. Notwithstanding the foregoing, in the event that a Purchaser is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall apply only with respect to the portion of assets managed by the portfolio manager that have knowledge about the financing transaction contemplated by this Agreement.

4.12 Stockholder Approval. To the extent Stockholder Approval is required by the applicable rules and regulations of the Trading Market prior to conversion of any portion of the Notes in accordance with the terms thereof, the Company shall use reasonable efforts to seek to obtain, and the Board of Directors shall recommend that the Company's stockholders vote in favor of the Company's proposal to obtain, Stockholder Approval at the Company's next annual meeting of stockholders following the Closing Date. No Purchaser shall be entitled to vote any Conversion Shares issued and outstanding as of the record date for such annual meeting, if any, on such Company proposal to obtain Stockholder Approval.

4.13 Conversion Procedures. The form of Notice of Conversion included in the Notes sets forth the totality of the procedures required of the Purchasers in order to convert the Notes into Conversion Shares. Subject to the limitations set forth in Section 4(e) (Principal Market Regulation) of the Notes, no additional legal opinion, other information or instructions shall be required of the Purchasers to convert their Notes. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert the Notes. Subject to the limitations set forth in Section 4(e) (Principal Market Regulation) of the Notes, the Company shall honor conversions of the Notes and shall deliver Conversion Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.14 Acknowledgements Regarding Investment Decision. Each Purchaser represents that it is making this investment based on the results of its own due diligence investigation of the Company, and has not relied on any information or advice furnished by or on behalf of the Company in connection with the transactions contemplated hereby. Each Purchaser acknowledges that the Company has not made, and will not make, any representations and warranties with respect to the Company or the transactions contemplated hereby, and the Purchaser will not rely on any statements made by the Company, orally or in writing, to the contrary.

ARTICLE V. MISCELLANEOUS

5.1 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees, stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.2 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company and the Purchasers will execute and deliver to the other such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

5.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the time of transmission, if such notice or communication is delivered via electronic mail at the e-mail address specified in this Section 5.3 prior to 5:00 P.M., New York City time, on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via electronic mail at the e-mail address specified in this Section 5.3 on a day that is not a Trading Day or later than 5:00 P.M., New York City time, on any Trading Day, (c) the Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service with next day delivery specified, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Company: Fluent, Inc.
 300 Vesey Street, 9th Floor
 New York, New York 10282
 Attention: Ryan Perfit, Chief Financial Officer
 E-mail: rperfit@fluentco.com

With a copy to: Sheppard, Mullin, Richter & Hampton LLP
 12275 El Camino Real, Suite 100
 San Diego, California 92130
 Attention: John Tishler, Esq.
 E-mail: jtishler@sheppardmullin.com

If to a Purchaser: To the address set forth under such Purchaser's name on the signature page hereof; or such other address as may be designated in writing hereafter, in the same manner, by such Person.

5.4 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed (a) in the case of an amendment, supplement or modification, by the Company and (i) if prior to the Closing, all of the Purchasers, and (ii) if after the Closing, Purchasers holding two-thirds or more of the aggregate outstanding principal amount of Notes or, (b) in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that, in any case, if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser. Any amendment effected in accordance with this Section 5.4 shall be binding upon each Purchaser and holder of Securities and the Company.

5.5 Equal Treatment of Purchasers. No consideration shall be offered or paid to any Purchaser to amend or consent to a waiver or modification of any provision of any Transaction Document unless the same consideration is also offered to all Purchasers who then hold Securities. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of the Securities or otherwise.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as set forth in Sections 4.7 and 5.19.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the Delaware Court of Chancery. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such Delaware Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

5.10 Survival. Subject to applicable statute of limitations, the representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or e-mail delivery of a “.pdf” format data file (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.14 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.15 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration 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 enforcement or setoff had not occurred.

5.16 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

5.17 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.18 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to prices of the Securities in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations, and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.19 Termination. This Agreement may be terminated and the sale and purchase of the Securities abandoned at any time prior to the Closing by either the Company or any Purchaser (with respect to itself only) upon written notice to the other, if the Closing has not been consummated on or prior to 5:00 P.M., New York City time, on August 19, 2024; *provided, however,* that the right to terminate this Agreement under this Section 5.19 shall not be available to any Person whose failure to comply with its obligations under this Agreement has been the cause of or resulted in the failure of the Closing to occur on or before such time. Nothing in this Section 5.19 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents. In the event of a termination pursuant to this Section 5.19, the Company shall promptly notify all non-terminating Purchasers. Upon a termination in accordance with this Section 5.19, the Company and the terminating Purchaser(s) shall not have any further obligation or liability (including arising from such termination) to the other, and no Purchaser will have any liability to any other Purchaser under the Transaction Documents as a result therefrom.

(Signature Pages Follow)

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

FLUENT, INC.

By: _____

Name:

Title:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO FLNT SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Authorized Signatory: _____

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Purchase Price: \$ _____

EIN Number: _____

SSN Number: _____

[SIGNATURE PAGES CONTINUE]

INSTRUCTION SHEET

(to be read in conjunction with the entire Securities Purchase Agreement)

- A. Complete the following items in the Securities Purchase Agreement:
1. Provide the information regarding the Purchaser requested on the signature page. The Securities Purchase Agreement must be executed by an individual authorized to bind the Purchaser.
 2. Exhibit B – Accredited Investor Questionnaire:

Provide the information requested by the Accredited Investor Questionnaire
- B. Instructions regarding the transfer of funds for the purchase of Notes is set forth on Exhibit C to the Securities Purchase Agreement.

EXHIBIT A

FORM OF NOTE

EXHIBIT B

ACCREDITED INVESTOR QUESTIONNAIRE

(ALL INFORMATION WILL BE TREATED CONFIDENTIALLY)

To: Fluent, Inc.

This Investor Questionnaire (“Questionnaire”) must be completed by each potential investor in connection with the offer and sale of convertible subordinated promissory notes (the “Securities”), of Fluent, Inc., a Delaware corporation (the “Corporation”). The Securities are being offered and sold by the Corporation without registration under the Securities Act of 1933, as amended (the “Act”), and the securities laws of certain states, in reliance on the exemption afforded by Section 4(2) of the Act and in reliance on similar exemptions under applicable state laws. The Corporation must determine that a potential investor meets certain suitability requirements before offering or selling Securities to such investor. The purpose of this Questionnaire is to assure the Corporation that each investor will meet the applicable suitability requirements. The information supplied by you will be used in determining whether you meet such criteria, and reliance upon the private offering exemptions from registration is based in part on the information herein supplied.

This Questionnaire does not constitute an offer to sell or a solicitation of an offer to buy any security. Your answers will be kept strictly confidential. However, by signing this Questionnaire, you will be authorizing the Corporation to provide a completed copy of this Questionnaire to such parties as the Corporation deems appropriate in order to ensure that the offer and sale of the Securities will not result in a violation of the Act or the securities laws of any state and that you otherwise satisfy the suitability standards applicable to purchasers of the Securities. All potential investors must answer all applicable questions and complete, date and sign this Questionnaire. Please print or type your responses and attach additional sheets of paper if necessary to complete your answers to any item.

PART A. BACKGROUND INFORMATION

Name of Beneficial Owner of the Securities:

Business Address: _____
(Number and Street)

(City) (State) (Zip Code)

Telephone Number: (____) _____

If a corporation, partnership, limited liability company, trust or other entity:

Type of entity: _____

State of formation: _____ Approximate Date of formation: _____

Were you formed for the purpose of investing in the Securities?

Yes ____ No ____

If an individual:

Residence Address: _____

(Number and Street)

(City)

(State)

(Zip Code)

Telephone Number: (____) _____

Age: _____

Citizenship: _____

Where registered to vote: _____

Set forth in the space provided below the state(s), if any, in the United States in which you maintained your residence during the past two years and the dates during which you resided in each state:

Are you a director or executive officer of the Corporation?

Yes ____ No ____

Social Security or Taxpayer Identification No. _____

PART B. ACCREDITED INVESTOR QUESTIONNAIRE

In order for the Company to offer and sell the Securities in conformance with state and federal securities laws, the following information must be obtained regarding your investor status. Please initial each category applicable to you as a purchaser of securities of the Company.

- (1) A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity;
- (2) A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;
- (3) An insurance company as defined in Section 2(13) of the Securities Act;
- (4) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act;
- (5) A Small Business Investment Company licensed by the U.S. Small Business Administration;
- (6) A Rural Business Investment Company as defined in Section 384A of the Consolidated Farm and Rural Development Act of 1972, as amended;
- (7) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;

- ___ (8) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- ___ (9) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- ___ (10) A tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation, Massachusetts or similar business trust, partnership or limited liability company, not formed for the specific purpose of acquiring the Securities, with total assets in excess of \$5,000,000;
- ___ (11) A trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Securities, whose purchase is directed by a sophisticated person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of investing in the Company;
- ___ (12) A revocable trust (including a revocable trust formed for the specific purpose of acquiring an interest in the Company) and the grantor or settlor of such trust is an Accredited Investor;
- ___ (13) A “family office” as defined in Rule 202(a)(11)(G)-1 under the Advisers Act, (a) with assets under management in excess of \$5,000,000, (b) that was not formed for the specific purpose of acquiring interests in the Company, and (c) whose prospective investment in the Company is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of an investment in the Company (such a family office, a “Qualified Family Office”);
- ___ (14) A “family client,” as defined in Rule 202(a)(11)(G)-1 under the Advisers Act, whose prospective investment in the Company is directed by its Qualified Family Office;
- ___ (15) A natural person whose individual net worth, or joint net worth with that person’s spouse (excluding primary residence), at the time of his purchase exceeds \$1,000,000;
- ___ (16) A natural person who had an individual income in excess of \$200,000 in each of the two most recent years, or joint income with that person’s spouse in excess of \$300,000, in each of those years, and has a reasonable expectation of reaching the same income level in the current year;
- ___ (17) A natural person who holds in good standing one or more of the following professional certifications: General Securities Representative license (Series 7), Private Securities Offerings Representative license (Series 82), or Investment Adviser Representative license (Series 65);

__ (18) A “family client,” as defined in Rule 202(a)(11)(G)-1 under the U.S. Investment Advisers Act of 1940, whose prospective investment in the Company is directed by that person’s Qualified Family Office;

__ (19) An entity in which all of the equity owners qualify under any of the above subparagraphs. If the undersigned belongs to this investor category only, list the equity owners of the undersigned, and the investor category which each such equity owner satisfies.

__ (20) None of the above (i.e., the undersigned is not an “accredited investor”).

A. FOR EXECUTION BY AN INDIVIDUAL:

_____ By _____
Date
Print Name: _____

B. FOR EXECUTION BY AN ENTITY:

Entity
Name: _____

_____ By _____
Date
Print Name: _____
Title: _____

C. ADDITIONAL SIGNATURES (if required by partnership, corporation or trust document):

Entity
Name: _____

_____ By _____
Date
Print Name: _____
Title: _____

Entity
Name: _____

_____ By _____
Date
Print Name: _____
Title: _____

EXHIBIT C

WIRE INSTRUCTIONS

COMPANY NAME AND ADDRESS

FLUENT, INC.
300 Vesey Street, 9th Floor
New York, New York 10282

ACCOUNT #

4021279201

ABA/ACH Routing #

021313103

BANK NAME AND ADDRESS

Citizens Bank
1 Citizens Dr. ROP-480
Riverside, RI 02915

EXHIBIT D

SUBORDINATION AGREEMENT

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE INDEBTEDNESS EVIDENCED BY THIS NOTE IS SUBORDINATE TO THE INDEBTEDNESS OF THE COMPANY (OR ANY SUCCESSOR THERETO) TO CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS, AS ADMINISTRATIVE AGENT, AND ITS SUCCESSORS AND ASSIGNS, PURSUANT TO THE TERMS OF A SECOND AMENDMENT SUBORDINATION AGREEMENT (THE “SUBORDINATION AGREEMENT”) DATED AS OF AUGUST 19, 2024, AS SUCH AGREEMENT MAY FROM TIME TO TIME BE AMENDED, RESTATED OR OTHERWISE MODIFIED (OR ANY SUCCESSOR AGREEMENT WHICH REPLACES AND REFERENCES SUCH AGREEMENT).

FLUENT, INC.

CONVERTIBLE SUBORDINATED PROMISSORY NOTE

Principal Amount: \$ _____

Issuance Date: August 19, 2024

For value received, Fluent, Inc., a Delaware corporation (“Company”), hereby promises to pay to the order of [_____] (“Purchaser”), the principal sum of \$[_____]. This convertible promissory note (the “Note”) is issued pursuant to the terms of that certain Securities Purchase Agreement (the “Purchase Agreement”) dated as of even date herewith between the Company and, among others, Purchaser. Interest shall accrue on the outstanding principal amount of this Note at the rate of thirteen percent (13.0%) per annum, computed on the basis of the actual number of days elapsed and a year of 365/366 days, and shall compound quarterly. Interest on this Note shall commence with the date hereof and shall continue accruing on the outstanding principal until paid in full or otherwise converted pursuant to the terms of Section 4 below. Unless earlier converted into Conversion Shares pursuant to Section 4, the principal and accrued and unpaid interest of this Note will be due and payable by the Company on the Maturity Date (as defined below). Subject to Section 1(b) below, all payments of principal and interest on the Maturity Date shall be in lawful money of the United States of America. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Purchase Agreement.

The following is a statement of the rights of Purchaser and the conditions to which this Note is subject, and to which Purchaser, by the acceptance of this Note, agrees:

1. **Payments**

(a) *Principal.* Unless a Note is previously converted, no payments of principal, including without limitation additional principal amounts that are added to the principal of this note pursuant to the PIK Interest provisions of Section 1(b), shall be required until the Maturity Date.

(b) *Interest.* Accrued interest on this Note shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each calendar year, beginning with December 31, 2024 (each such date an “Interest Payment Date”). Interest shall be payable by the Company in kind (“PIK Interest”) by adding such PIK Interest to the outstanding principal amount on each Interest Payment Date; provided, however, that (i) all accrued and unpaid PIK Interest shall be payable in full in cash on any Maturity Date and (ii) in lieu of PIK Interest, the Company may pay any such accrued interest (and any amount of interest previously added to principal as PIK Interest pursuant to Section 1(a)) in cash on such Interest Payment Date if the Cash Payment Conditions (as defined below) are met on such Interest Payment Date. For purposes hereof, “Cash Payment Conditions” means the “Second Amendment Subordinated Indebtedness Payment Conditions” as such is term is defined in the Second Amendment to Credit Agreement in effect on the date hereof.

(c) *Prepayment*. Subject to satisfaction of the Payment Conditions, the Company may, upon ten (10) calendar days prior written notice to the Purchaser, prepay in whole or in part, in each case without prepayment fee or penalty, this Note; provided, however, that prior to Stockholder Approval (as defined below) no such prepayment shall be permitted without the consent of Purchaser (and provided that the Company has contemporaneously sought the corresponding consent of each other holder of Notes for such prepayment), which such consent may be given in the sole discretion of Purchaser; and provided further that any such prepayment shall only be made by the Company on a *pro rata* basis to all holders of Notes (or, in the case of a prepayment prior to Stockholder Approval, to such of the holders as have consented to such prepayment), in each case based on the principal amount of all Notes being so prepaid on the date of such prepayment .

2. ***Events of Default***. The occurrence of any of the following shall constitute an “Event of Default” under this Note:

(a) *Failure to Pay*. The Company shall fail to pay (i) any principal payment on the due date hereunder or (ii) any cash interest payment required under the terms of this Note on the date due and such payment shall not have been made within ten (10) business days following the Company’s receipt of written notice to the Company of such failure to pay; or

(b) *Voluntary Bankruptcy or Insolvency Proceedings*. The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) admit in writing its inability to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any action for the purpose of effecting any of the foregoing; or

(c) *Involuntary Bankruptcy or Insolvency Proceedings*. Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company, or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 60 days of commencement.

(d) *Breach of Representation or Warranty*. Other than as specifically set forth in another clause of this Section 2, the Company breaches any representation or warranty in the Purchase Agreement or violates any of the terms, including the covenants, of this Note, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) Business Days. For avoidance of doubt, compliance by the Company and/or Purchaser with the limitations pursuant to Section 4(e) hereof shall not be deemed to constitute a breach or other violation by or of the Company for purposes of this Section 2(d).

3. ***Rights of Purchaser upon Default***. Upon the occurrence of any Event of Default (other than an Event of Default described in Sections 2(b) or 2(c)) and at any time thereafter during the continuance of such Event of Default, Purchaser may, with the written consent of a Super Majority in Interest of Purchasers, by written notice to the Company, declare all outstanding Obligations payable by the Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. Upon the occurrence of any Event of Default described in Sections 2(b) or 2(c), immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence and during the continuance of any Event of Default, Purchaser may, with the written consent of a Super Majority in Interest of Purchasers, exercise any other right power or remedy granted to it by the Transaction Documents or otherwise permitted by law, either by suit in equity or by action at law, or both.

4. *Conversion.*

(a) *Optional Conversion.* Purchaser is entitled to, at any time or from time to time, convert the Conversion Amount (as defined below) into Conversion Shares, at a conversion price equal to the Conversion Price (as defined below). For purposes of this Note, the term “Conversion Price” shall mean an amount equal to the lesser of (i) \$3.01, subject to adjustment in accordance with Sections 4(c) and (d), and (ii) the greater of (A) the consolidated closing bid price of the Company’s Common Stock as reported on the Principal Market on the applicable Conversion Date or, if such date is not a Trading Day, then on the Trading Date that is immediately prior to the applicable Conversion Date and (B) \$1.00, subject to adjustment in accordance with Section 4(c) and (d); provided, however, that the applicable Conversion Price shall in no event be lower than the price established by clause (ii) above unless and until Stockholder Approval is obtained. For purposes of this Note, the term “Conversion Amount” shall mean the sum of (X) all or any portion of the outstanding principal amount of this Note, as designated by the Purchaser upon exercise of its right of conversion plus (Y) all accrued and unpaid interest.

(b) *Conversion Procedure.* Conversion shall be effectuated by delivering by email, mail or other delivery method to the Company of the completed form of conversion notice attached hereto as Annex A (the “Notice of Conversion”), executed by Purchaser evidencing Purchaser’s intention to convert this Note. No fractional shares of Common Stock or scrip representing fractions of shares will be issued on conversion, but the number of shares issuable shall be rounded to the nearest whole share. The date on which notice of conversion is given (the “Conversion Date”) shall be deemed to be the date on which the Company receives by email, mail or other means of delivery used by Purchaser the Notice of Conversion (such receipt being evidenced by electronic confirmation of delivery by email or confirmation of delivery by such other delivery method used by Purchaser). Delivery of a Notice of Conversion to the Company shall be given by Purchaser pursuant to the notice provisions set forth in the Purchase Agreement. The Company shall promptly deliver the Conversion Shares to Purchaser after receipt of the Notice of Conversion from the Purchaser. Conversion Shares may be delivered in certificated form, in electronic book-entry form on the Company’s records with its transfer agent, or delivered by DWAC so long as the Company is then DWAC Operational and the Conversion Shares are not required to bear a restrictive legend. Conversion Shares shall be deemed delivered (i) if delivered in certificated form, upon Purchaser’s actual receipt of the Conversion Shares in certificated form at the address specified by Purchaser in the Notice of Conversion, as confirmed by written receipt, (ii) if by book entry form, upon Purchaser’s actual receipt of a statement evidencing the issuance of the Conversion Shares in book-entry form with the Company’s transfer agent at the address specified by Purchaser in the Notice of Conversion, as confirmed by written receipt and (iii) if delivered by DWAC, upon deposit into Purchaser’s brokerage account.

(c) *Other Adjustments.* If, at any time after the Issuance Date, there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization, or other similar event, as a result of which shares of Common Stock of the Company shall be changed into the same or a different number of shares of another class or classes of stock or securities of the Company or another entity, or in case of any sale or conveyance of all or substantially all of the assets of the Company, then Purchaser shall thereafter have the right to receive upon conversion of this Note, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore issuable upon conversion, such stock, securities or assets which Purchaser would have been entitled to receive in such transaction had this Note been converted in full immediately prior to such transaction (without regard to any limitations on conversion set forth herein), and in any such case appropriate provisions shall be made with respect to the rights and interests of Purchaser to the end that the provisions hereof (including, without limitation, provisions for adjustment of the Conversion Price and of the number of shares issuable upon conversion of the Note) shall thereafter be applicable, as nearly as may be practicable in relation to any securities or assets thereafter deliverable upon the conversion hereof. The Company shall not effectuate any transaction described in this Section 4 unless (a) it first gives, to the extent practicable, at least five (5) days prior written notice of the record date of the special meeting of shareholders to approve, or if there is no such record date, the consummation of, such merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event or sale of assets (during which time Purchaser shall be entitled to convert this Note) and (b) the resulting successor or acquiring entity (if not the Company) assumes by written instrument all of the obligations of this Note. The above provisions shall similarly apply to successive consolidations, mergers, sales, transfers or share exchanges.

(d) *Stock Split Adjustment.* If the Company, at any time while this Note is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of its Common Stock on its outstanding shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) its outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of its shares of Common Stock, any shares of the Company, then, for the purpose of determining the Conversion Price in accordance with Section 4(a), the dollar amount in clause (i) of Section 4(a) and the amount of the Conversion Price referred to in clause (ii) of Section 4(a) shall be multiplied by a fraction the numerator of which shall be the number of shares of the Company’s Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and the denominator of which shall be the number of shares of the Company’s Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this Section shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment made pursuant to clauses (ii) through (iv) of this Section shall become effective immediately after the effective date of such subdivision, combination or re-classification, as applicable.

(e) Principal Market Regulation. Notwithstanding anything herein to the contrary, the Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market (the number of shares which may be issued without violating such rules and regulations, including rules related to offerings under Nasdaq Listing Rules 5635(b), (c) or (d). In the event that the Company is prohibited from issuing shares of Common Stock pursuant to this Section 4(e), the applicable Notice of Conversion shall be deemed void *ab initio* by the Company and the Purchaser with respect to, and only with respect to, the maximum number of shares of Common Stock necessary in order for the Company to remain in compliance with such Nasdaq Listing Rules. Without limiting the generality of the foregoing:

(i) the Purchaser shall not attempt to convert any portion of this Note and the Company shall not issue to the Purchaser any Conversion Shares to the extent such shares, after giving effect to such issuance and when added to the number of shares of Conversion Shares issued and issuable to the other holders pursuant to the other Notes, would result in the holders under all of the Notes (and their respective affiliates) being issued Common Stock that in the aggregate would exceed (i) 19.99% (the "Maximum Aggregate Ownership Amount"), of the number of shares of Common Stock outstanding (the "Total Common Stock Outstanding") or (ii) 19.99% (the "Maximum Aggregate Voting Amount") of the total voting power of the Company's securities outstanding that are entitled to vote on a matter being voted on by holders of the Common Stock (the "Total Voting Power"), unless and until the Company obtains stockholder approval of the transactions contemplated by the Notes, including the conversion features and pricing thereof, in accordance with applicable rules of the Principal Market (or any other applicable national securities exchange) (the "Stockholder Approval"). If on any attempted conversion of this Note the resulting issuance of Conversion Shares would result in such Persons (and their respective affiliates) exceeding the Maximum Aggregate Ownership Amount or the Maximum Aggregate Voting Amount and the Company shall not have previously obtained Stockholder Approval at the time of conversion, then the Company shall only issue to the Purchaser such number of Conversion Shares as may be issued below the Maximum Aggregate Ownership Amount or Maximum Aggregate Voting Amount, as the case may be; and

(ii) unless and until the Company obtains the Stockholder Approval, the Purchaser shall not attempt to convert any portion of this Note and the Company shall not issue to the Purchaser any Conversion Shares to the extent such shares would cause such Purchaser to beneficially own (as defined in accordance with applicable SEC rules and regulations) more than 20% of the Total Common Stock Outstanding or more than 20% of the Total Voting Power (together, the "20% Control Limitations"); provided, however, that the limitations provided for in this clause (ii) shall not apply (A) to the extent such Purchaser, immediately prior to the time of such conversion, already beneficially owns shares of Common Stock sufficient to meet each of the 20% Control Limitations and (B) to a Purchaser who is attempting to convert any portion of this Note and, upon such conversion, would meet one or more of the 20% Control Limitations so long as (and only so long as) such conversion would not result in such Purchaser beneficially owning an equal amount of or greater number shares of Common Stock than the largest beneficial owner of Total Common Stock Outstanding and/or Total Voting Power at the time of such conversion. If on any attempted conversion of this Note the resulting issuance of Conversion Shares would result in such Persons (and their respective affiliates) exceeding the limitations in this clause (ii) and the Company shall not have previously obtained Stockholder Approval at the time of conversion, then the Company shall only issue to the Purchaser such number of Conversion Shares as may be issued pursuant to and in accordance with such limitations.

5. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

“Business Day” shall mean any day other than a Saturday, Sunday and other day on which commercial banks in New York, New York are authorized or required by law to close.

“Common Stock” shall mean a class of equity securities of the Company that does not entitle the holder thereof to receive distributions prior or in priority to any other class of equity securities but specifically excluding any class of equity securities constituting profits interests.

“Conversion Shares” means the shares of Common Stock issuable upon conversion of the Notes.

“DWAC Operational” means that the Common Stock is eligible for clearing through the Depository Trust Company (“DTC”) via the DTC’s Deposit Withdrawal Agent Commission or “DWAC” system and active and in good standing for DWAC issuance by the Transfer Agent (as defined herein).

“Event of Default” has the meaning given in Section 2 hereof.

“Purchaser” shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

“Purchasers” shall mean the Purchasers that have purchased Notes.

“Super Majority in Interest of Purchasers” shall mean Persons holding two-thirds or more of the aggregate outstanding principal amount of Notes.

“Maturity Date” shall mean April 2, 2029.

“Obligations” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Purchaser of every kind and description, now existing or hereafter arising under or pursuant to the terms of this Note and the other Transaction Documents, including all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 *et seq.*), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“Purchase Agreement” shall mean the Securities Purchase Agreement (as amended, modified or supplemented), by and among the Company and the Purchasers (as defined in the Purchase Agreement) party thereto.

“Notes” shall mean the convertible subordinated promissory notes issued by the Company pursuant to the Purchase Agreement.

“Person” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

“Principal Market” shall mean the Nasdaq Capital Market or such other principal market or exchange on which the Common Stock is then traded.

“Second Amendment to Credit Agreement” shall mean that certain Second Amendment to Credit Agreement, dated on or about August 19, 2024 (the “Credit Agreement Amendment”), by and among the lenders identified therein, Crystal Financial LLC d/b/a SLR Credit Solutions, a Delaware limited liability company, as administrative agent for such lenders, Fluent, LLC, a Delaware limited liability company, the Company, and each of the guarantors identified on the signature pages thereto.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Trading Day**” shall mean any day during which the Principal Market is open for trading.

“**Transaction Documents**” shall mean this Note, each of the other Notes and the Purchase Agreement.

6. *Miscellaneous*

(a) *Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof.*

(i) Subject to the restrictions on transfer described in this Section 6(a), the rights and obligations of the Company and Purchaser shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

(ii) With respect to any offer, sale or other disposition of this Note or securities into which such Note may be converted, Purchaser will give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of Purchaser’s counsel, or other evidence if reasonably satisfactory to the Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification under any federal or state law then in effect. Upon receiving such written notice and reasonably satisfactory opinion, if so requested, or other evidence, the Company, as promptly as practicable, shall notify Purchaser that Purchaser may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to the Company. If a determination has been made pursuant to this Section 7(a) that the opinion of counsel for Purchaser, or other evidence, is not reasonably satisfactory to the Company, the Company shall so notify Purchaser promptly after such determination has been made. Each Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

(iii) Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of a Super Majority in Interest of Purchasers.

(b) *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified upon the written consent of the Company and a Super Majority in Interest of Purchasers; provided, however, that no such amendment, waiver or consent shall: (i) reduce the principal amount of this Note without Purchaser’s written consent, or (ii) reduce the rate of interest of this Note without Purchaser’s written consent unless in the case of (i) or (ii) all Notes are similarly amended in a proportionate manner. Any amendment effected in accordance with this subsection (b) shall be binding upon Purchaser regardless of whether Purchaser consented to such amendment.

(c) *Notices.* All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and mailed, emailed or delivered to each party at the respective addresses of the parties as set forth in the Convertible Purchase Agreement, or at such other address as the Company shall have furnished to Purchaser in writing. All such notices, requests, demands, consents, instructions and other communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being delivered by email (iv) one business day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.

(d) *Pari Passu Notes.* Purchaser acknowledges and agrees that the payment of all or any portion of the outstanding principal amount of this Note and all interest hereon shall be *pari passu* in right of payment and in all other respects to the other Notes. In the event Purchaser receives payments in excess of its *pro rata* share of the Company's payments to the Purchasers of all of the Notes, then Purchaser shall hold in trust all such excess payments for the benefit of the holders of the other Notes and shall pay such amounts held in trust to such other holders upon demand by such holders.

(e) *Payment.* Unless converted into the Company's Common Stock or paid as PIK Interest, in each case pursuant to the terms hereof, payment shall be made in lawful tender of the United States.

(f) *Usury.* In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

(g) *Waivers.* The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

(h) *Governing Law.* This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions of the State of New York, or of any other state.

(i) *Waiver of Jury Trial; Judicial Reference.* By acceptance of this Note, Purchaser hereby agrees and the Company hereby agrees to waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Note or any of the Transaction Documents.

(j) *Counterparts.* This Note may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

(k) *Delivery by Facsimile or Email.* This Note and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or email (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of a facsimile machine or email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or email as a defense to the formation or enforceability of this Note and each such party forever waives any such defense.

(Signature Page Follows)

The Company has caused this Note to be issued as of the date first written above.

FLUENT, INC.,
a Delaware corporation,

By:
Name:
Title:

AGREED AND ACCEPTED:

PURCHASER:

[Signature Page to Convertible Promissory Note]

ANNEX A

FLUENT, INC.

NOTICE OF CONVERSION

(To Be Executed by the Registered Holder in Order to Convert the Note)

The undersigned hereby irrevocably elects to convert \$ _____ of the principal amount of its Fluent, Inc. (the "Company"), Convertible Promissory Note issued on _____ (the "Note") into shares of Common Stock of the Company, according to the conditions of the Note, as of the date written below. After giving effect to the conversion requested hereby, the outstanding principal amount of such Note is \$ _____, absent manifest error.

Pursuant to the Note, certificates representing Common Stock upon conversion must be promptly delivered from the date of delivery of the Notice of Conversion to the Company.

Conversion Date

Applicable Conversion Price

Signature

Print Name

Address

SECOND AMENDMENT SUBORDINATION AGREEMENT

This SECOND AMENDMENT SUBORDINATION AGREEMENT (as the same may from time to time be amended, restated or otherwise modified, this "Agreement") is made and entered into as of August 19, 2024, by and among FLUENT, INC., a Delaware corporation ("Parent"), [____], [an individual] [a trust organized under the Laws of the State of Florida] ("Subordinated Creditor"), and CRYSTAL FINANCIAL LLC d/b/a SLR CREDIT SOLUTIONS, as administrative agent for and on behalf of the Lenders, as hereinafter defined ("Administrative Agent").

WHEREAS, Parent is indebted to the Subordinated Creditor pursuant to a Convertible Subordinated Promissory Note dated August 19, 2024 in the original principal amount of [____] (\$[____]) (the "Second Amendment Subordinated Note");

WHEREAS, the Administrative Agent and the Lenders (as hereinafter defined) have provided financial accommodations to Parent pursuant to the Credit Agreement by and among Parent, Fluent, LLC, a Delaware limited liability company ("Borrower"), the other credit parties party thereto, the lenders from time to time party thereto (collectively, together with their respective successors and assigns, the "Lenders" and, individually, each a "Lender") and the Administrative Agent, dated as of April 2, 2024, (as amended by that certain First Amendment to the Credit Agreement, dated as of May 15, 2024, as further amended by that certain Second Amendment to the Credit Agreement, dated as of August 19, 2024 and as the same may from time to time be further amended, restated or otherwise modified or replaced, the "Credit Agreement"); and

WHEREAS, in order to continue to induce the Administrative Agent and the Lenders to provide the financial accommodations established pursuant to the Credit Agreement, the Subordinated Creditor desires to and does hereby subordinate, in accordance with the provisions of this Agreement, the indebtedness and other obligations evidenced by the Second Amendment Subordinated Note, to any and all indebtedness now or hereafter owing by Parent to the Administrative Agent and the Lenders in accordance with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Definitions.

(a) As used herein, the following terms shall have the following meanings:

"Discharge of Senior Indebtedness" means the indefeasible payment in full in cash of all Senior Indebtedness (other than contingent indemnification obligations for which no claim has then been asserted) and the termination of the Aggregate Commitments thereunder.

"Senior Indebtedness" means, collectively, all Obligations, including, without limitation, all indebtedness and other obligations of Parent and any of its subsidiaries to the Administrative Agent and the Lenders, or any affiliate thereof, pursuant to the Credit Agreement and the other Loan Documents, in each case, whether owing by only Parent or by Parent with one or more others in a several, joint or joint and several capacity, whether owing absolutely or contingently, whether created by note, overdraft, guaranty of payment or other contract or by quasi-contract, or statute or other operation of law, whether incurred directly to the Administrative Agent or a Lender (or any affiliate thereof) or acquired by the Administrative Agent or such Lender (or any affiliate thereof) by purchase, pledge or otherwise and whether participated to or from the Administrative Agent or such Lender (or any affiliate thereof) in whole or in part.

¹ NTD: To be executed by each Subordinated Lender.

“Subordinated Indebtedness” means, collectively, all indebtedness and other obligations evidenced by the Second Amendment Subordinated Note and any other indebtedness or other obligations now owing, or that hereafter may become owing, from Parent or any of its subsidiaries to the Subordinated Creditor, howsoever such indebtedness may be hereafter created, extended, renewed or evidenced.

(b) Any term used in this Agreement and not defined in this Agreement has the meaning set forth in the Credit Agreement.

2. Subordination of Subordinated Payments. The Subordinated Indebtedness shall at all times and in all respects be subordinate and junior in right of payment to all Senior Indebtedness.

3. Restrictions on Subordinated Payments and Enforcement. Until the Discharge of Senior Indebtedness, no payments of principal or interest, or any other amount payable in connection therewith, shall be made on or with respect to the Subordinated Indebtedness (other than as permitted by Section 7.04(b) of the Credit Agreement). In addition, until the Discharge of Senior Indebtedness, the Subordinated Indebtedness shall be subject to the following restrictions:

(a) The Subordinated Creditor shall not ask for, demand, sue for, accept or receive payment from Parent or any other person or entity, by set-off or in any other manner, either in whole or in part, on or with respect to, the Subordinated Indebtedness, or any security therefor (in each case, except to the extent permitted by the Credit Agreement);

(b) In the event of (i) any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of Parent or the proceeds thereof, to creditors of Parent by reason of the liquidation, dissolution or other winding up of Parent’s business, or (ii) any sale, receivership, insolvency or bankruptcy proceeding, or assignment for the benefit of creditors, or any proceeding by or against Parent for any relief under any bankruptcy or insolvency laws relating to the relief of debtors, readjustment of indebtedness, reorganization, compositions or extensions, the Subordinated Creditor covenants that any payment or distribution of any kind or character, either in cash, securities or other property that shall be paid or delivered, or payable or deliverable, upon or with respect to the Subordinated Indebtedness immediately shall be paid or delivered directly to the Administrative Agent for application on the Senior Indebtedness, whether or not due, until the Senior Indebtedness first shall have been fully paid and satisfied in cash;

(c) So long as any portion of the Senior Indebtedness remains outstanding, the Subordinated Creditor shall not enforce any judgment that it might obtain with respect to the Subordinated Indebtedness (including, without limitation, execution, attachment or foreclosure of judgment liens against any assets of Parent or any affiliate of Parent or any other person or entity), regardless of whether Parent is in default of any of its obligations to the Subordinated Creditor under the Subordinated Indebtedness; and

(d) The Subordinated Creditor will not take or omit to take any action or assert any claim with respect to the Subordinated Indebtedness or otherwise which is inconsistent with the provisions of this Agreement. Without limiting the foregoing, the Subordinated Creditor will not enforce the Subordinated Indebtedness or any part thereof or take any action to foreclose or realize upon the Subordinated Indebtedness or any part thereof or enforce any of the Second Amendment Subordinated Note except to the extent (but only to such extent) that the commencement of a legal action may be required to toll the running of any applicable statute of limitation. Until the Discharge of Senior Indebtedness, the Subordinated Creditor shall not have any right of subrogation, reimbursement, restitution, contribution or indemnity whatsoever from any assets of the Parent or any guarantor or provider of collateral security for the Senior Indebtedness. The Subordinated Creditor further waives any and all rights with respect to marshalling.

4. No Liens. The Subordinated Indebtedness is and shall remain unsecured. In the event that, notwithstanding the preceding sentence, the Subordinated Creditor ever acquires a lien on or security interest in any assets of the Parent or any other person or entity, then the Senior Indebtedness, the Credit Agreement and the other Loan Documents and any and all other documents and instruments evidencing or creating the Senior Indebtedness and all guaranties, mortgages, security agreements, pledges and other collateral guarantying or securing the Senior Indebtedness or any part thereof shall be senior to the Subordinated Indebtedness and all of the Second Amendment Subordinated Note irrespective of the time of the execution, delivery or issuance of any thereof or the filing or recording for perfection of any thereof or the filing of any financing statement or continuation statement relating to any thereof.

5. Appointment of Power of Attorney. The Subordinated Creditor hereby irrevocably authorizes, appoints, and empowers the Administrative Agent, on behalf of the Lenders to (if the Subordinated Creditor refuses to do so within two business days after request of the Administrative Agent) demand, sue for, collect, and receive every such payment or distribution and give acquittance therefor and to file claims and take such other proceedings, in the Administrative Agent's own name or in the name of and as attorney-in-fact for the Subordinated Creditor, as the Administrative Agent may deem necessary or advisable for the enforcement of this Agreement; and the Subordinated Creditor shall execute and deliver to the Administrative Agent such powers of attorney, assignments, or other instruments as may be requested by the Administrative Agent to enable the Administrative Agent to enforce any and all claims upon or with respect to the Subordinated Indebtedness and any security therefor and to collect and receive all payments or distributions that may be payable or deliverable at any time upon or with respect to the Subordinated Indebtedness.

6. Delivery of Payment to Administrative Agent. If any payment, distribution, security or proceeds thereof is received by the Subordinated Creditor upon or with respect to the Subordinated Indebtedness prior to the Discharge of Senior Indebtedness (other than any such payment or distribution that is permitted by the Credit Agreement), the Subordinated Creditor shall receive and hold such payment, distribution, security or proceeds in trust for the Administrative Agent and the Lenders and immediately shall deliver the same to the Administrative Agent, for the benefit of the Lenders in precisely the form received (except for the endorsement or assignment of the Subordinated Creditor where necessary), for application to the Senior Indebtedness, whether or not due, and until so delivered the same shall be held in trust by the Subordinated Creditor as property of the Administrative Agent, for the benefit of the Lenders. In the event of the failure of the Subordinated Creditor to make any such endorsement or assignment, the Administrative Agent, or any of its officers or employees, hereby irrevocably is constituted and appointed attorney-in-fact of the Subordinated Creditor with full power to make the same.

7. Assignment of Claims. The Subordinated Creditor shall not assign or transfer any claim, or suffer or permit the creation or attachment of any lien, claim, encumbrance, hypothecation or pledge upon any claim, that the Subordinated Creditor has or may have against Parent or with respect to the Subordinated Indebtedness while any portion of the Senior Indebtedness remains unpaid, unless such assignment or transfer is made (a) expressly subject to this Agreement, and (b) upon obtaining the Administrative Agent's prior written consent to such an assignment or transfer.

8. No Challenge to Senior Indebtedness or Liens. The Subordinated Creditor agrees that it will not at any time contest the validity, perfection, priority or enforceability of the Senior Indebtedness, the Credit Agreement, any other Loan Document or any security or other document executed in connection therewith, or in connection with any Refinancing, as hereinafter defined, or the liens and security interests of the Administrative Agent, for the benefit of the Lenders, or any Refinancing Party, as hereinafter defined, in the collateral securing the Senior Indebtedness.

9. Proceedings and Distributions.

(a) For the purposes of this Section 9, the following terms shall have the following meanings:

(i) "Proceeding" means any assignment by Parent for the benefit of creditors, or any filing of a voluntary petition by or involuntary petition against Parent pursuant to any chapter of the federal bankruptcy code, or any institution of a voluntary proceeding by or involuntary proceeding against Parent under any other federal or state law relating to relief of debtors, or any appointment of a receiver, trustee or liquidator of Parent or of all or a substantial part of its assets, or any liquidation or dissolution of Parent, or any other marshaling of the assets and liabilities of Parent; and

(ii) "Distributions" means, collectively, all cash securities and other properties payable or otherwise distributable on or in respect of the Subordinated Indebtedness in any Proceeding;

(b) In any Proceeding, the Administrative Agent shall have the right, but not the duty, to prepare and file a proof of claim based upon the Subordinated Indebtedness and to vote and otherwise enforce and use the same in such manner as the Administrative Agent shall deem advisable; provided that, if the Administrative Agent fails to file such proof of claim on or before the fifth day next preceding the last day permitted for such filing, the Subordinated Creditor shall give the Administrative Agent written notice of such failure and thereupon file a proof of claim, based on the Subordinated Indebtedness and giving effect to this Agreement. In each such Proceeding, the Subordinated Creditor shall, at no cost or expense to the Administrative Agent, furnish such witnesses and such supporting records and other data, execute and deliver such writings, and make and do all such other and further acts and things as the Administrative Agent may request; and

(c) The Administrative Agent shall be entitled to receive Distributions in respect of the Subordinated Indebtedness until the Discharge of Senior Indebtedness (including, but not limited to, all interest accruing from time to time on the Senior Indebtedness after the commencement of any Proceeding, whether or not a claim for such interest is allowable under such Proceeding). All Distributions (other than cash and bearer instruments) shall be issued in the Administrative Agent's name, and all Distributions, whatever the form thereof, shall be delivered directly to the Administrative Agent. No one delivering any Distributions to the Administrative Agent shall have any responsibility to follow the Administrative Agent's application thereof. If, for any reason, the Subordinated Creditor shall receive any payment of or security for or Distribution in respect of the Subordinated Indebtedness, or any part thereof, before the Discharge of Senior Indebtedness (including, but not limited to, all interest accruing from time to time on the Senior Indebtedness after the commencement of any Proceeding, whether or not a claim for such interest is allowable under such Proceeding), the Subordinated Creditor shall receive the same in trust and shall deliver the same, in the form received, directly to the Administrative Agent. The Subordinated Creditor shall execute and deliver such endorsements, assignments, transfer powers and other writings in respect of the foregoing as the Administrative Agent may from time to time demand, and the Administrative Agent shall have the right to execute and deliver the same for and on behalf of the Subordinated Creditor and in the name of the Subordinated Creditor whenever the Subordinated Creditor omits doing so.

10. Legend. The Second Amendment Subordinated Note, and any other instrument evidencing any of the Subordinated Indebtedness, or any portion thereof, shall bear the following legend on the first page thereof: "THE INDEBTEDNESS EVIDENCED BY THIS NOTE IS SUBORDINATE TO THE INDEBTEDNESS OF THE COMPANY (OR ANY SUCCESSOR THERETO) TO CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS, AS ADMINISTRATIVE AGENT, AND ITS SUCCESSORS AND ASSIGNS, PURSUANT TO THE TERMS OF A SECOND AMENDMENT SUBORDINATION AGREEMENT DATED AS OF AUGUST 19, 2024, AS SUCH AGREEMENT MAY FROM TIME TO TIME BE AMENDED, RESTATED OR OTHERWISE MODIFIED (OR ANY SUCCESSOR AGREEMENT WHICH REPLACES AND REFERENCES SUCH AGREEMENT)."

11. Representation of the Subordinated Creditor; Amendment of the Second Amendment Subordinated Note. The Subordinated Creditor represents and warrants to the Administrative Agent and the Lenders that, as of the date hereof, the entire indebtedness of Parent to the Subordinated Creditor is evidenced by the Second Amendment Subordinated Note. Copies of all of the Second Amendment Subordinated Note have been delivered to the Administrative Agent a copy of which is attached hereto as Exhibit A. The Second Amendment Subordinated Note and any related documents may not be amended or modified in any manner that adversely affects the rights or interests of the Administrative Agent or the Lenders without the prior written consent of the Administrative Agent.

12. Additional Agreements with Administrative Agent and the Lenders. At any time, and from time to time, the Administrative Agent and the Lenders may enter into any agreements with Parent as the Administrative Agent and the Lenders may deem proper, including, without limitation, extending the time of payment or renewing, increasing the amount, or otherwise altering the terms of the Senior Indebtedness, the Credit Agreement, any other Loan Documents or any document executed in connection therewith or affecting the security or guaranties, if any, underlying any or all of such obligations, or may exchange, sell, or surrender or otherwise deal with any such security or guaranties without notice to the Subordinated Creditor, and without in any way impairing or affecting this Agreement thereby.

13. Reliance by Administrative Agent on the Subordinated Creditor. The Subordinated Creditor hereby consents and covenants that all obligations and liabilities of Parent to the Administrative Agent and the Lenders shall be deemed to have been made or incurred, in part, in reliance upon this Agreement

14. Modifications. Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in any event unless the same is in writing and signed by the Administrative Agent and the Subordinated Creditor, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given.

15. Waiver of Notice and Successors and Assigns. The Subordinated Creditor hereby waives (a) notice of acceptance of this Agreement; (b) notice of the existence, creation, extension, refunding, refinancing or non-payment of all or any of the Senior Indebtedness; (c) all diligence in collection or protection of or realization upon the Senior Indebtedness, or any part thereof or any security therefor; and (d) notice of the release, waiver or cancellation of any obligors or guarantors of all or any portion of the Senior Indebtedness or any security therefor. This Agreement shall be immediately binding upon Parent and the Subordinated Creditor, and its successors, heirs, executors, administrators and assigns, and the subordination described herein shall inure to the benefit of the Administrative Agent and the Lenders, and their respective successors and assigns.

16. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of New York (excluding the laws applicable to conflicts or choice of law (other than the New York General Obligations Laws §5-1401 and §5-1402)). Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17. Entire Agreement. This Agreement represents the entire agreement and understanding among the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, and undertakings of every kind and nature among them with respect to the subject matter hereof.

18. Non-waiver of Payments. In the event that the Subordinated Creditor is required to pay to Administrative Agent, for the benefit of the Lenders, any funds or other property that the Subordinated Creditor receives in respect of the Subordinated Indebtedness, the Administrative Agent and Parent acknowledge that the Subordinated Creditor shall not have waived the rights of the Subordinated Creditor to payment in full under the Second Amendment Subordinated Note, subject, however, to the terms of this Agreement.

19. Refinancing of Senior Indebtedness. The Administrative Agent and the Lenders may, from time to time, without notice to the undersigned, assign or transfer any or all of the Senior Indebtedness or any interest therein or permit another person or entity (a "Refinancing Party") to extend credit to Borrower to enable Borrower to repay all or a portion of the Senior Indebtedness (a "Refinancing"), and, notwithstanding any such assignment, transfer or Refinancing or any subsequent assignment, transfer or Refinancing, such indebtedness shall be and remain Senior Indebtedness for the purposes of this Agreement, and every immediate and successive assignee, transferee or Refinancing Party of any of the Senior Indebtedness or of any interest therein, including, without limitation, any Refinancing Party, shall, to the extent of the interest of such assignee, transferee or Refinancing Party in the Senior Indebtedness, be entitled to the rights and benefits of this Agreement to the same extent as if such assignee, transferee or Refinancing Party were the Administrative Agent or a Lender, and have the same irrevocable powers of attorney granted hereunder to the Administrative Agent. On and after the date of the Refinancing, (a) such Refinancing Party shall be deemed to be Administrative Agent hereunder, (b) references to the Senior Indebtedness shall be deemed to be the obligations owing to the Refinancing Party, and (c) references to the loan documents of the Administrative Agent shall be deemed to refer to the loan documents of the Refinancing Party. In connection with any Refinancing, Subordinated Creditor agrees, promptly upon request of the Refinancing Party, to correct any material defect or error that may be discovered in this Agreement, such that the Refinancing Party fails to obtain the full benefits intended by this Agreement.

20. Termination. The subordinations, agreements and priorities set forth in this Agreement shall remain in full force and effect until the earlier to occur of (x) the indefeasible payment in full in cash of the Subordinated Indebtedness or (y) the Discharge of Senior Indebtedness, regardless of whether any party hereto in the future seeks to rescind, amend, terminate or reform, by litigation or otherwise, its respective agreements with Parent. To the extent that the Parent or any other person or entity makes any payment on the Senior Indebtedness that is subsequently invalidated, declared to be fraudulent or preferential or set aside or is required to be repaid to a trustee, receiver or any other party under any bankruptcy, insolvency or reorganization act, state or federal law, common law or equitable cause (such payment being hereinafter referred to as a "Voided Payment"), then to the extent of such Voided Payment, that portion of the Senior Indebtedness that had been previously satisfied by such Voided Payment shall be revived and continue in full force and effect as if such Voided Payment had never been made. To the extent that the Subordinated Creditor has received any payments with respect to the Subordinated Indebtedness subsequent to the date of the Administrative Agent's or any Lender initial receipt of such Voided Payment and such payments have not been invalidated, declared to be fraudulent or preferential or set aside or are required to be repaid to a trustee, receiver, or any other party under any bankruptcy act, state or federal law, common law or equitable cause, the Subordinated Creditor shall be obligated and hereby agrees that any such payment so made or received shall be deemed to have been received in trust for the benefit of the Administrative Agent and the Lenders, and the Subordinated Creditor hereby agrees to pay to the Administrative Agent, upon demand, the full amount so received by the Subordinated Creditor during such period of time to the extent necessary fully to restore to the Administrative Agent and the Lenders the amount of such Voided Payment. Upon the earlier to occur of (x) the indefeasible payment in full in cash of the Subordinated Indebtedness or (y) the Discharge of Senior Indebtedness, this Agreement will automatically terminate without any additional action by any party hereto.

21. Counterparts. This Agreement may be executed in any number of counterparts, by different parties hereto in different counterparts and by telecopy or other electronic signature, and each such counterpart, when executed and delivered, shall be deemed to be an original, and all of which taken together shall constitute but one and the same Agreement.

22. Notice. All notices, requests, demands and other communications provided for hereunder shall be in writing and, if to Parent, the Administrative Agent or the Subordinated Creditor, mailed, delivered or sent by facsimile to Parent, the Administrative Agent or the Subordinated Creditor, as the case may be, addressed to the address specified on the signature page of this Agreement. 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).

23. Jurisdiction and Venue. All judicial proceedings arising out of or relating to this Agreement or any obligation hereunder will be brought in the courts of the State of New York sitting in New York County, or of the United States of America for the Southern District of New York, and by their respective execution and delivery of this Agreement, the undersigned accept for themselves and in connection with their properties, generally and unconditionally, the jurisdiction of the aforesaid courts and waive any defense of forum nonconveniens, and irrevocably agree to be bound by any judgment rendered thereby in connection with this Agreement.

24. JURY TRIAL WAIVER. EACH PARTY HERETO, TO THE EXTENT PERMITTED BY LAW, EACH HEREBY IRREVOCABLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG THE SUBORDINATED CREDITOR, PARENT, THE ADMINISTRATIVE AGENT AND THE LENDERS, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED THERETO.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement as of the date first set forth above.

Address: [_____]

FLUENT, INC.

Attention: [_____]

By: _____
Name:
Title:

Address: Two International Place, 17th Floor Boston, MA 02110
Attention: Rebecca Tarby

CRYSTAL FINANCIAL LLC D/B/A SLR
CREDIT SOLUTIONS

By: _____
Name
Title:

Address for Subordinated Creditor:

By: _____
[_____], [in his individual capacity]

Signature Page to
Second Amendment Subordination Agreement

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Donald Patrick, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q 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.

August 19, 2024

By: /s/ Donald Patrick
Donald Patrick
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ryan Perfit, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q 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.

August 19, 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 Quarterly Report on Form 10-Q of Fluent, Inc. for the quarter ended June 30, 2024 (the "Report"), the undersigned hereby certifies in his capacity as Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to his 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.

August 19, 2024

By: /s/ Donald Patrick
Donald Patrick
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT
TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Fluent, Inc. for the quarter ended June 30, 2024 (the "Report"), the undersigned hereby certifies in his capacity as Interim Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to his 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.

August 19, 2024

By: /s/ Ryan Perfit
Ryan Perfit
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)