
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 September 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 November 13, 2024, the registrant had 16,876,774 shares of common stock, \$0.0005 par value per share, outstanding.

FLUENT, INC.

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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)

	September 30, 2024	December 31, 2023
ASSETS:		
Cash and cash equivalents	\$ 6,587	\$ 15,804
Accounts receivable, net of allowance for credit losses of \$497 and \$231, respectively	52,635	56,531
Prepaid expenses and other current assets	7,060	6,071
Total current assets	66,282	78,406
Restricted cash	1,255	—
Property and equipment, net	362	591
Operating lease right-of-use assets	2,016	3,395
Intangible assets, net	22,666	26,809
Goodwill	—	1,261
Other non-current assets	3,364	1,405
Total assets	\$ 95,945	\$ 111,867
LIABILITIES AND SHAREHOLDERS' EQUITY:		
Accounts payable	\$ 7,902	\$ 10,954
Accrued expenses and other current liabilities	27,273	30,534
Deferred revenue	428	430
Current portion of long-term debt	32,582	5,000
Current portion of operating lease liability	2,222	2,296
Total current liabilities	70,407	49,214
Long-term debt, net	500	25,488
Convertible Notes, at fair value with related parties	4,860	—
Operating lease liability, net	152	1,699
Other non-current liabilities	47	1,062
Total liabilities	75,966	77,463
Contingencies (Note 11)		
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 — 17,645,368 and 14,384,936, respectively; and Shares outstanding — 16,876,773 and 13,616,341, respectively (Note 8)	46	43
Treasury stock, at cost — 768,595 and 768,595 Shares, respectively (Note 8)	(11,407)	(11,407)
Additional paid-in capital	438,705	427,286
Accumulated deficit	(407,365)	(381,518)
Total shareholders' equity	19,979	34,404
Total liabilities and shareholders' equity	\$ 95,945	\$ 111,867

See notes to consolidated financial statements

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue	\$ 64,516	\$ 66,239	\$ 189,216	\$ 225,638
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization)	48,861	50,148	142,318	167,960
Sales and marketing	3,983	4,426	13,400	13,454
Product development	4,124	4,511	13,681	14,064
General and administrative	9,067	8,725	28,288	24,991
Depreciation and amortization	2,369	2,658	7,507	8,112
Goodwill and intangible assets impairment	—	29,705	2,241	55,405
Total costs and expenses	68,404	100,173	207,435	283,986
Loss from operations	(3,888)	(33,934)	(18,219)	(58,348)
Interest expense, net	(1,281)	(936)	(3,711)	(2,420)
Fair value adjustment of Convertible Notes, with related parties	(2,810)	—	(2,810)	—
Loss on early extinguishment of debt	—	—	(1,009)	—
Loss before income taxes	(7,979)	(34,870)	(25,749)	(60,768)
Income tax (expense) benefit	35	1,243	(98)	(551)
Net loss	(7,944)	(33,627)	(25,847)	(61,319)
Basic and diluted income (loss) per share:				
Basic	\$ (0.48)	\$ (2.43)	\$ (1.75)	\$ (4.46)
Diluted	\$ (0.48)	\$ (2.43)	\$ (1.75)	\$ (4.46)
Weighted average number of shares outstanding:				
Basic	16,452,273	13,813,423	14,783,253	13,751,910
Diluted	16,452,273	13,813,423	14,783,253	13,751,910

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 June 30, 2024	14,680,246	\$ 44	768,595	\$ (11,407)	\$ 438,237	\$ (399,421)	\$ 27,453
Vesting of restricted stock units and issuance of stock under incentive plans	10,038	1	—	—	(1)	—	—
Share-based compensation	—	—	—	—	470	—	470
Exercise of pre-funded warrants	2,955,084	1	—	—	(1)	—	—
Net loss	—	—	—	—	—	(7,944)	(7,944)
Balance at September 30, 2024	<u>17,645,368</u>	<u>\$ 46</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 438,705</u>	<u>\$ (407,365)</u>	<u>\$ 19,979</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	305,348	2	—	—	(2)	—	—
Share-based compensation	—	—	—	—	1,522	—	1,522
Issuance of pre-funded warrants	—	—	—	—	9,900	—	9,900
Exercise of pre-funded warrants	2,955,084	1	—	—	(1)	—	—
Net loss	—	—	—	—	—	(25,847)	(25,847)
Balance at September 30, 2024	<u>17,645,368</u>	<u>\$ 46</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 438,705</u>	<u>\$ (407,365)</u>	<u>\$ 19,979</u>

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
Balance at June 30, 2023	14,357,158	\$ 43	768,595	\$ (11,407)	\$ 425,491	\$ (345,992)	\$ 68,135
Vesting of restricted stock units and issuance of stock under incentive plans	8,750	—	—	—	—	—	—
Share-based compensation	—	—	—	—	982	—	982
Net income	—	—	—	—	—	(33,627)	(33,627)
Balance at September 30, 2023	<u>14,365,908</u>	<u>\$ 43</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 426,473</u>	<u>\$ (379,619)</u>	<u>\$ 35,490</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	236,378	1	—	—	(1)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	51,903	(236)	—	—	(236)
Share-based compensation	—	—	—	—	3,090	—	3,090
Net loss	—	—	—	—	—	(61,319)	(61,319)
Balance at September 30, 2023	<u>14,365,908</u>	<u>\$ 43</u>	<u>768,595</u>	<u>\$ (11,407)</u>	<u>\$ 426,473</u>	<u>\$ (379,619)</u>	<u>\$ 35,490</u>

See notes to consolidated financial statements

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

	Nine Months Ended September 30,	
	2024	2023
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (25,847)	\$ (61,319)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	7,507	8,112
Non-cash loan amortization expense	1,202	330
Non-cash gain on contingent consideration	(250)	—
Non-cash loss on early extinguishment of debt	1,009	—
Share-based compensation expense	1,490	2,958
Fair value adjustment of Convertible Notes, with related parties	2,810	—
Goodwill impairment	1,261	55,405
Impairment of intangible assets	980	—
Allowance for credit losses	412	(51)
Changes in assets and liabilities, net of business acquisitions:		
Accounts receivable	3,359	14,700
Prepaid expenses and other current assets	(1,542)	(4,563)
Other non-current assets	280	228
Operating lease assets and liabilities, net	(242)	(248)
Accounts payable	(3,052)	5,651
Accrued expenses and other current liabilities	(510)	(10,869)
Deferred revenue	185	(522)
Other	(1,015)	(117)
Net cash (used in) provided by operating activities	(11,963)	9,695
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capitalized costs included in intangible assets	(4,727)	(4,093)
Business acquisitions, net of cash acquired	—	(1,250)
Acquisition of property and equipment	(1)	(25)
Net cash used in investing activities	(4,728)	(5,368)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of long-term debt, net of debt financing costs	54,617	—
Repayments of long-term debt	(56,214)	(8,750)
Exercise of stock options	—	—
Debt financing costs	(1,625)	(375)
Proceeds from issuance of warrants	9,900	—
Proceeds from exercise of warrants	1	—
Proceeds from Convertible Notes, with related parties	2,050	—
Taxes paid related to net share settlement of vesting of restricted stock units	—	(236)
Net cash (used in) provided by financing activities	8,729	(9,361)
Net decrease in cash, cash equivalents, and restricted cash	(7,962)	(5,034)
Cash, cash equivalents, and restricted cash at beginning of period	15,804	25,547
Cash, cash equivalents, and restricted cash at end of period	<u>\$ 7,842</u>	<u>\$ 20,513</u>
SUPPLEMENTAL DISCLOSURE INFORMATION		
Cash paid for interest	\$ 2,661	2,234
Cash paid for income taxes	\$ 44	114
Share-based compensation capitalized in intangible assets	\$ 39	72
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	\$ 989	\$ —

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 September 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 economic environment and continued impact of the imposed regulatory requirements on its owned and operated digital media properties (see Note 11, *Contingencies*). On April 2, 2024, Fluent, LLC, a wholly-owned subsidiary of the Company (the "Borrower") entered into a credit agreement (as amended, the "SLR Credit Agreement") with the Company and certain subsidiaries of the Borrower as guarantors (collectively, the "Credit Parties"), 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 Credit Parties to maintain and comply with certain financial covenants. Moreover, the borrowings under the SLR Revolver (as defined in Note 5, *Long-term debt, net* under the SLR Credit Agreement are limited to a borrowing base, that fluctuates as regularly as weekly based on 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 that have continued into the third quarter of 2024, accounts receivable were insufficient to support the borrowing base needed to fund operations through the end of the third quarter of 2024. The Company therefore entered into convertible subordinated notes in August 2024 to raise funds (as defined in Note 5), further updated its projections to reflect the continued decline in its operating results and entered into the Second Amendment (as defined and discussed in Note 5) with SLR on August 19, 2024.

As of September 30, 2024, the Credit Parties were not in compliance with their financial covenants under the SLR Credit Agreement, which the Borrower had to report by October 31, 2024, and which would have resulted in an event of default. The Credit Parties then entered into a letter agreement on October 30, 2024 pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended September 30, 2024, and the related notice of event of default, to November 19, 2024.

On November 15, 2024, the Credit Parties and SLR entered into the Third Amendment (as defined and discussed in Note 5) to the SLR Credit Agreement, which, among other things, required that the Company raise at least \$7,500 of additional capital by November 29, 2024. In addition, the Third Amendment waived non-compliance with the financial covenants as of September 30, 2024, extended the duration of the call protection applicable to the loans, and modified the cash dominion provisions to remain in effect on an indefinite basis. The Company will seek to raise additional capital through equity, equity-linked, or subordinated debt financings; however, whether and when the Company can effect such financings and how much capital it can raise depend on a variety of factors, including, among others, market conditions, the trading price of the Company's common stock and the Company's determination as to the appropriate sources of funding for its operations. There can be no assurance that additional capital will be available by November 29, 2024.

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 12, *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.

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. However, the Company has not met its projections for certain recent quarters, so there can be no assurance that the Company will meet its projections in the future. If during any fiscal quarter, the Credit Parties do not comply with any of their financial covenants, such non-compliance would result in an event of default that would give SLR the right to accelerate maturities. Additionally, if the Company fails to raise capital in at least the amount required under the Third Amendment by November 29, 2024, such failure would also result in an event of default. In such case, the Company would not have sufficient funds to repay the SLR Term Loan (as defined herein) and the SLR Revolver (as defined herein). In addition, even if the Company is able to raise additional capital as required by the Third Amendment, there is no assurance that such capital plus the available cash plus borrowing base on the SLR Revolver will be sufficient to fund operations over the next twelve months. If needed, the Company will consider implementing other cost-saving measures, but there is no guarantee that such plans would 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.

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 quarter 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. The Company corrected this error related to the three months ended March 31, 2024 and prior periods with a write-off of 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, during the quarter ended June 30, 2024. 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 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.

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

(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 8, *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.

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.

In November 2024, the FASB issued ASU No. 2024-03, *Income Statement—Reporting Comprehensive Income—Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses*, which requires additional disclosures about a public business entity's costs and expenses on the face of the financial statements. The ASU follows investor's requests for more detailed information and disclosures of disaggregated financial reporting information about the types of expenses in commonly presented expense captions (such as cost of sales, selling, general, and administrative, and research and development), including purchases of inventory, employee compensation, depreciation, amortization, and depletion. The new guidance is effective for fiscal years beginning after December 15, 2026 and interim periods beginning after December 15, 2027, and early adoption is permitted. The guidance will be applied on a prospective basis to financial statements issued for reporting periods after the effective date, or retrospectively to any and 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.

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

(e) Revenue recognition

Data and performance-based marketing

Revenue is generated when there is a transfer of control of a good or service for a consideration amount the Company is expected to be entitled to. Revenue is recognized when a company has satisfied its performance obligations to a customer and can reasonably expect and measure the payment. The Company's performance obligations are 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. These Company performance obligations have the customer simultaneously receiving and consuming the benefits provided.

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 performance 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.

The Company has 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 the Company 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, the Company is considered to have acted as the principal. For performance obligations in which the Company 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 the Company, is primarily responsible for the performance and deliverable to the customer, and the Company solely arranges for the third-party supplier to provide services to the customer, the Company is considered to have acted as the agent. For performance obligations in which the Company 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 September 30, 2024, December 31, 2023, and December 31, 2022 the balance of deferred revenue was \$428, \$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.

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 corresponding amounts are recorded as unbilled revenue within accounts receivable on the consolidated balance sheets. As of September 30, 2024, December 31, 2023, and December 31, 2022, unbilled revenue included in the Company's accounts receivable was \$17,299, \$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.

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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 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. Due to the higher attrition of policies sold, the Company reassessed its estimated LTV for the health insurance policies by increasing the constraints applied to the amount of consideration deemed probable which led to a reduction of estimated LTV during the quarter ended June 30, 2024.

(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, fair value of the Convertible Notes based on input assumptions, 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.

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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.

See Note 6, *Fair Value Measurements*, for further details.

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 and restricted stock units ("RSUs") that have vested but not been delivered during the period. 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 8 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 nine months ended September 30, 2024 and 2023, basic and diluted income (loss) per share were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Numerator:				
Net loss	\$ (7,944)	\$ (33,627)	\$ (25,847)	\$ (61,319)
Denominator:				
Weighted average shares outstanding	16,164,301	13,526,824	14,495,341	13,466,371
Weighted average restricted shares vested not delivered	287,972	286,599	287,912	285,539
Total basic weighted average shares outstanding	16,452,273	13,813,423	14,783,253	13,751,910
Dilutive effect of assumed conversion of restricted stock units	—	—	—	—
Total diluted weighted average shares outstanding	16,452,273	13,813,423	14,783,253	13,751,910
Basic and diluted income (loss) per share:				
Basic	\$ (0.48)	\$ (2.43)	\$ (1.75)	\$ (4.46)
Diluted	\$ (0.48)	\$ (2.43)	\$ (1.75)	\$ (4.46)

Based on exercise prices compared to the average stock prices for the three and nine months ended September 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 September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Restricted stock units	993,623	916,563	993,623	916,563
Stock options	397,668	305,167	397,668	305,167
Total anti-dilutive securities	1,391,291	1,221,730	1,391,291	1,221,730

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3. Intangible assets, net

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

	Amortization period (in years)	September 30, 2024	December 31, 2023
Gross amount:			
Software developed for internal use	3	\$ 23,997	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		126,387	126,227
Accumulated amortization:			
Software developed for internal use		(15,474)	(12,142)
Acquired proprietary technology		(14,943)	(15,132)
Customer relationships		(35,800)	(37,249)
Trade names		(7,507)	(6,893)
Domain names		(85)	(77)
Databases		(28,144)	(26,157)
Non-competition agreements		(1,768)	(1,768)
Total accumulated amortization		(103,721)	(99,418)
Net intangible assets:			
Software developed for internal use		8,523	8,033
Acquired proprietary technology		849	1,840
Customer relationships		886	1,919
Trade names		9,150	9,764
Domain names		110	118
Databases		3,148	5,135
Total intangible assets, net		\$ 22,666	\$ 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 12, *Variable Interest Entity*); and the consolidation of TAPP Influencers Corp. ("TAPP") effective January 9, 2023 (see Note 12, *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 required that an impairment loss related to its customer relationships 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.

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The Company completed its quarterly triggering event assessment for the three months ended of September 30, 2024 and determined that no triggering event had occurred requiring further impairment assessment of its long-lived assets.

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 was disposed of as of September 30, 2024.

Amortization expenses of \$2,299 and \$2,559 for the three months ended September 30, 2024 and 2023, respectively, and \$7,277 and \$7,810 for the nine months ended September 30, 2024 and 2023, respectively, are included in depreciation and amortization expenses in the consolidated statements of operations. As of September 30, 2024, intangible assets with a carrying amount of \$601, 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 September 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	September 30, 2024
Remainder of 2024	\$ 2,536
2025	6,982
2026	4,329
2027	2,248
2028	828
2029 and thereafter	5,743
Total	\$ 22,666

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

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is to be 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 had been set to October 1, but with no remaining goodwill for the fiscal year ended December 31, 2024, the annual testing will not be performed.

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.

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5. Long-term debt, net

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

	September 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 \$1,154 and \$0, respectively)	31,332	—
Note Payable due 2026	1,750	—
Convertible Notes, with related parties	4,860	—
Long-term debt, net	37,942	30,488
Less: Current portion of long-term debt	(32,582)	(5,000)
Long-term debt, net (non-current)	<u>\$ 5,360</u>	<u>\$ 25,488</u>

Citizens Credit Facility

On April 2, 2024, the Company repaid the \$30,000 aggregate principal amount of the term loan ("Citizens 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 entered into the SLR Credit Agreement with certain of its subsidiaries and the Company, as guarantors, 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 September 30, 2024, the SLR Credit Facility had an outstanding principal balance of \$32,486 (of which \$12,486 relates to the SLR Revolver) and matures on April 2, 2029.

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

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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 a margin (the "Applicable Margin") of 5.25% which was increased to 5.75% pursuant to the Second Amendment to the SLR Credit Agreement (the "Second Amendment"). The Applicable Margin will be reduced to 5.0% when the Borrower'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 11.03% (SOFR + CSA+5.75%) as of September 30, 2024.

The SLR Credit Agreement contains restrictive covenants which impose limitations on the way the Credit Parties conducts business, including limitations on the amount of additional debt the Credit Parties are able to incur and their 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 the Borrower.

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 and amendments of the SLR Revolver was \$903 and \$827, respectively, as of September 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 Credit Parties and SLR entered into the First Amendment to the SLR 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 (as defined herein) (see Note 8, *Equity*) (4) amended the definition of borrowing base (as defined in the SLR Credit Agreement), and (5) amended certain post-closing obligations.

On August 19, 2024, the Credit Parties and SLR entered into 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 below, raising an aggregate \$2,050. In addition, SLR waived non-compliance with the financial covenants as of June 30, 2024, modified the financial covenants through December 31, 2025, ended a requirement to engage a financial advisor, increased the Applicable Margin from 5.25% to 5.75%, and waived any required prepayments from the proceeds from the convertible subordinated notes financing.

As of September 30, 2024, the Credit Parties were not in compliance with their financial covenants under the SLR Credit Agreement, which the Borrower had to report by October 31, 2024, and which would have resulted in an event of default; however, on October 30, 2024, the Credit Parties 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 September 30, 2024, and the related notice of event of default, to November 19, 2024.

On November 15, 2024, the Credit Parties and SLR entered into the Third Amendment to the SLR Credit Agreement, which, among other things, required that the Company raise at least \$7,500 of additional capital by November 29, 2024. In addition, the Third Amendment waived non-compliance with the financial covenants as of September 30, 2024, extended the duration of the call protection applicable to the loans, and modified the cash dominion provisions to remain in effect on an indefinite basis.

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Based on current projections, the Company expects to be in compliance with the new financial covenants during the next twelve months. However, the Company has not met its projections for certain recent quarters, so there can be no assurance that the Company will meet its projections in the future. If during any fiscal quarter, the Credit Parties do not comply with any of their financial covenants, such non-compliance would result in an event of default that would give SLR the right to accelerate maturities. Additionally, if the Company fails to raise capital in at least the amount required under the Third Amendment by November 29, 2024, such failure would also 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 September 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 ("FDR") in the principal amount of \$2,000 in connection with the Berman Settlement Agreement (see Note 11, *Contingencies*). The Note Payable bears interest equal to one-month CME Term SOFR (defined as the rate published by the CME Group Benchmark Administration Limited) plus 11.0% per annum, compounded quarterly. The opening interest rate of the Note Payable was 16.32% (SOFR +11%), which decreased to 16.17% (SOFR + 11%) as of September 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 from FDR and applied as of July 17, 2024.

Convertible Notes, with related parties

On August 19, 2024, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with certain of the Company's officers and directors and the largest stockholder (the "Purchasers") to sell convertible subordinated promissory notes (the "Convertible Notes") in aggregate principal amount of \$2,050. The Convertible Notes mature on April 2, 2029, and bear interest at 13% per annum payable quarterly in kind or may be paid in cash (subject to payment conditions in the Subordination Agreement (as defined below)) beginning December 31, 2024. Subject to certain payment conditions in the Subordination Agreement, 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 stockholder approval without the consent of the applicable holder.

Each holder of the Convertible Notes 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. The "Conversion Amount" is the sum of all or any portion of the outstanding principal amount of the Convertible Note, as designated by the holder upon exercise of its right of conversion, plus all accrued and unpaid interest. 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.

In connection with the Second Amendment and the Securities Purchase Agreement, the Company and SLR entered into a Second Amendment Subordination Agreement with each purchaser of the Convertible Notes on August 19, 2024 (the "Subordination Agreements"). The Subordination Agreements confirm the subordinated nature of the Convertible Notes and restrict payments to and remedies of the holders of the Convertible Notes for so long as the SLR Credit Agreement has indebtedness outstanding. The Subordination Agreements provide that the Company may not make any payment of principal or interest on the Convertible Notes unless certain conditions are met.

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The Convertible Notes are accounted for at fair value due to the election of the fair value option ("FVO") in accordance with ASC 825, *Financial Instruments* ("ASC 825"). Within ASC 825, the FVO can be elected for debt host financial instruments containing embedded features which would otherwise be required to be bifurcated from the debt-host and recognized as separate derivative liabilities subject to initial and subsequent periodic estimated fair value measurements under ASC 815. Notwithstanding, ASC 825-10-15-4 provides for the FVO election, to the extent not otherwise prohibited by ASC 825-10-15-5, to be afforded to financial instruments, wherein bifurcation of an embedded derivative is not necessary, and the financial instrument is initially measured at its issue-date estimated fair value and then subsequently remeasured at estimated fair value on a recurring basis at each reporting period date.

Within ASC 825-10-45-5, the estimated fair value adjustments are recognized as a component of other comprehensive income with respect to the portion of the fair value adjustment attributed to a change in the instrument-specific credit risk, with the remaining amount of the fair value adjustment recognized as other income (expense) within the consolidated statement of operations. As then provided by ASC 825-10-50-30(b), the estimated fair value adjustment is presented in a respective single line item within other income (expense) in the consolidated statements of operations, as the Company concluded that the change in fair value of the Convertible Notes was not attributable to instrument specific credit risk. The Company then elected to not present the interest expense for the Convertible Notes separately.

The initial fair value was determined to be greater than the principal balance of the Convertible Notes. The Company noted that the transaction was entered into with certain of the Company's officers and directors and the largest stockholder and was required under the Second Amendment for liquidity needs. Further, the Company reviewed the valuation and determined it was appropriate. As a result, based on ASC 825-10, the Company recorded a day one unrealized loss on the Convertible Notes of \$2,110.

As of September 30, 2024, the principal balance of the Convertible Notes was \$2,050, with a fair value of \$4,860. The Company recognized an additional increase in fair value of \$700 for the three and nine months ended September 30, 2024, which was recognized as after current period other income (loss) from operations. For the three and nine months ended September 30, 2024, accrued interest was paid in kind.

Maturities

As of September 30, 2024, scheduled future maturities of the Company's debt are as follows, not reflective of the debt being accelerated as noted in Note 1:

Year	September 30, 2024
Remainder of 2024	\$ 5,420
2025	1,000
2026	250
2027	—
2028	—
2029	29,616
Total maturities	\$ 36,286

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6. Fair Value Measurement

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 September 30, 2024, the Company regards the fair value of its long-term debt to approximate its carrying value.

The following tables present the Company's fair value hierarchy for assets and liabilities that are measured at fair value on a recurring basis as of September 30, 2024 and December 31, 2023:

	September 30, 2024			December 31, 2023		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
Assets:						
Restricted cash	\$ 1,255	—	—	\$ —	—	—
Liabilities:						
Long term debt, net ⁽¹⁾	—	34,236	—	—	30,488	—
Convertible Notes, with related parties	—	—	4,860	—	—	—
Contingent consideration in connection with TAPP consolidation ⁽²⁾	—	—	958	—	—	1,950
Consideration for True North Sale ⁽³⁾	—	489	—	—	—	—

- (1) Inclusive of the credit facilities and notes payable. The debt fair value does not include debt issuance costs or debt discount. See Note 5, *Long-term debt, net*.
- (2) Balance recorded in prepaid and other expenses and other non-current assets with changes to the balance as a result of adjustment of the fair value related to the initial discount rate and payments made. See Note 12, *Variable Interest Entity*, for initial assumptions of the fair value.
- (3) Relates to the remaining net working capital and contribution margin owed based upon a discounted rate of average borrowing rates over the expected time frame to be earned. See Note 12, *Variable Interest Entity*.

Convertible Notes, with related parties

The Company issued the Convertible Notes on August 19, 2024 and elected the fair value option, see Note 5, *Long-term debt, net*. The following is a reconciliation of the fair value from the issuance date of such notes to September 30, 2024:

	Amount
Fair value as of August 19, 2024	\$ 4,160
Loss on change in fair value reported in the consolidated statement of operations	700
Fair value as of September 30, 2024	\$ 4,860

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As the Convertible Notes mature on April 2, 2029, and bear interest at 13% per annum paid in kind but may be converted into shares of the Company's common stock (the "call option"), the estimated fair value is computed as the sum of (a) the present value of the expected interest and principal payments using the discounted cash flow method based on an estimated discount rate and (b) the fair value of the call option computed using the Black-Scholes model. Both approaches are based on the following assumptions:

Assumptions	September 30, 2024
Face value of principal payable	\$ 2,050
Strike price	3.01
Value of common stock	3.66
Expected term (years)	4.5
Volatility	79.0%
Risk free rate	3.8%
Discount rate	16.8%

Contingent Consideration

In connection with the contingent consideration received related to the consolidation of TAPP, the Company had to determine the fair value of the identified assets acquired and liabilities assumed. The Company determined that the estimated fair value of the net assets acquired, excluding the net working capital, was a Level 3 measurement, as certain inputs to determine fair value were unobservable. See Note 12, *Variable Interest Entity*.

	Amount
Fair value as of December 31, 2023	\$ 1,950
Payment for annual bonus	(1,083)
Adjustment to compensation expense	91
Fair value as of September 30, 2024	\$ 958

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 September 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*.

7. 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 September 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 nine months ended September 30, 2024, the Company's effective income tax rate of 0.4% 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 nine months ended September 30, 2023, the Company's effective income tax rate of 0.9% 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.

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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 September 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 September 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.

8. 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.

As of September 30, 2024 and December 31, 2023, the number of issued shares of common stock was 17,645,368 and 14,384,936, respectively, which included shares of treasury stock of 768,595 and 768,595, respectively.

For the nine months ended September 30, 2024, the increase in the number of issued shares of common stock was the result of the exercise of 2,955,084 shares related to the warrants, as described below, and 305,348 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 September 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.

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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 nine months ended September 30, 2024, no shares of common stock were withheld to cover statutory taxes owed by certain employees for this purpose. See Note 9, *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 September 30, 2024, all of the Pre-Funded Warrants had been exercised. 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 as amended.

The settlement of the Pre-Funded Warrants was reflected in the Company's stockholder's equity within common stock and additional paid-in-capital as of September 30, 2024. In accordance with ASC 815-40, Derivatives and Hedging, a contract is 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 had 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.

9. 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 September 30, 2024, the Company had 488,254 shares of common stock available for grants pursuant to the 2022 Plan, which includes 262,517 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.

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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 September 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%

On September 9, 2024, the Compensation Committee of the Company's Board of Directors approved the grant of stock options to the Company's Chief Financial Officer in connection with his employment agreement. Subject to continuing service, 50% of the shares subject to these stock options will vest when the average closing price of the Company's common stock is equal to three times the exercise price of the option for ten consecutive trading days, and the remaining 50% of the shares subject to these stock options will vest when the average closing price of the Company's common stock is equal to five times the exercise price of the option for ten consecutive trading days. Notwithstanding the foregoing, the options will immediately vest upon the occurrence of certain conditions such as a change in control. The fair value of the stock option granted was estimated at the trading day of the date of the grant using a Monte Carlo simulation model. The key assumptions utilized to calculate the grant-date fair value for the award is summarized below:

Issuance Date	September 9, 2024
Fair value lower range	\$ —
Fair value higher range	\$ 15.59
Exercise price	\$ 2.75
Expected term (in years)	3.0 - 4.3
Expected volatility	65%
Dividend yield	—%
Risk-free rate	3.7%

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For the nine months ended September 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⁾	136,667	3.06	9.8	114
Exercised	—	—	—	—
Forfeited	(41,333)	—	—	—
Outstanding as of September 30, 2024	<u>397,667</u>	<u>\$ 21.74</u>	<u>5.8</u>	<u>\$ 114</u>
Options exercisable as of September 30, 2024	<u>249,001</u>	<u>\$ 25.78</u>	<u>4.6</u>	<u>\$ —</u>

(1) Balance includes the stock options granted on June 3, 2024 to one employee of the Company totaling 16,667 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 nine months ended September 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⁾	136,667	3.06	9.8
Forfeited	(6,000)	—	—
Vested	(105,834)	—	—
Unvested as of September 30, 2024	<u>148,666</u>	<u>\$ 5.66</u>	<u>9.6</u>

(1) Balance includes the stock options granted on June 3, 2024 to one employee of the Company totaling 16,667 that vest equally over four annual installments and are exercisable for ten years after the grant date.

Compensation expense recognized for stock options was \$4 and \$0 for the three months ended September 30, 2024 and 2023, respectively, and \$5 and \$0 for the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, there was \$264 of unrecognized share-based compensation with respect to outstanding stock options.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)
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Restricted stock units and restricted stock

For the nine months ended September 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	697,211	3.62
Vested and delivered	(305,348)	10.40
Withheld as treasury stock (1)	—	—
Vested not delivered (2)	3,833	10.60
Forfeited	(133,611)	11.59
Unvested as of September 30, 2024	<u>993,623</u>	<u>17.40</u>

(1) As discussed in Note 8, *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 September 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 nine months ended September 30, 2024, there was a change in the vested not delivered balance due to a net 568 shares that were deferred due to timing of delivery of certain shares, along with 3,265 shares that elected deferred delivery. As of September 30, 2024, 286,099 outstanding RSUs were vested not delivered.

Compensation expense recognized for RSUs of \$466 and \$982 for the three months ended September 30, 2024 and 2023, respectively, and \$1,517 and \$3,090 for the nine months ended September 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 September 30, 2024, unrecognized share-based compensation expense associated with the granted RSUs and stock options amounted to \$2,734, which is expected to be recognized over a weighted average period of 2.1 years.

For the three and nine months ended September 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 September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Sales and marketing	22	\$ 123	\$ 163	\$ 419
Product development	74	158	174	485
General and administrative	364	680	1,146	2,114
Share-based compensation expense	460	961	1,483	3,018
Capitalized in intangible assets	10	21	39	72
Total share-based compensation	<u>\$ 470</u>	<u>\$ 982</u>	<u>\$ 1,522</u>	<u>\$ 3,090</u>

As of September 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.

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10. 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 September 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 nine months ended September 30, 2024 and 2023 are shown in the following tables below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Fluent segment revenue(1):				
United States	\$ 42,674	\$ 44,041	\$ 117,644	\$ 127,149
International	19,460	20,060	63,233	92,199
Fluent segment revenue	<u>\$ 62,134</u>	<u>\$ 64,101</u>	<u>\$ 180,877</u>	<u>\$ 219,348</u>
All Other segment revenue(1):				
United States	\$ 2,382	\$ 2,138	\$ 8,339	\$ 6,290
International	—	—	—	—
All Other segment revenue	<u>\$ 2,382</u>	<u>\$ 2,138</u>	<u>\$ 8,339</u>	<u>\$ 6,290</u>
Segment EBITDA				
Fluent segment EBITDA	\$ (1,700)	\$ (28,879)	\$ (10,590)	\$ (47,773)
All Other segment EBITDA	181	(2,397)	(122)	(2,463)
Total EBITDA	<u>(1,519)</u>	<u>(31,276)</u>	<u>(10,712)</u>	<u>(50,236)</u>
Depreciation and amortization	2,369	2,658	7,507	8,112
Total loss from operations	<u>\$ (3,888)</u>	<u>\$ (33,934)</u>	<u>\$ (18,219)</u>	<u>\$ (58,348)</u>

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

	September 30,	December 31,
	2024	2023
Total assets:		
Fluent	\$ 84,873	\$ 97,629
All Other	11,072	14,238
Total assets	<u>\$ 95,945</u>	<u>\$ 111,867</u>

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

For the nine months ended September 30, 2024, 20% of the Company's consolidated revenue was earned from customers located in Israel.

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11. 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, the Company 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, the Company 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 the Company, 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. On August 12, 2024, the Company filed its required compliance report. The Company maintains insurance policies that cover certain legal costs, which include those incurred related to the FTC inquiry.

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 was 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. To satisfy its obligations under the Berman Settlement Agreement, the Company made a cash payment of \$1,100 on March 15, 2024 and entered into the \$2,000 Note Payable provided by co-defendant, FDR, as discussed in Note 5, *Long-term debt, net*.

12. 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.

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

In accordance with ASC 810, *Consolidation* ("ASC 810"), the Company determined that True North was a VIE based upon the receivable for the consideration to be received. Initially, as the majority membership owner of Caspian remained a full-time employee of the Company and had the power to unilaterally make significant decisions at True North, it was determined that the Company was the primary beneficiary of Caspian and therefore should consolidate Caspian's operations going forward, under the de facto agent guidance. As a result, no gain or loss was to be recognized on the True North Conveyance. On September 1, 2024, Caspian's operating agreement was amended to require the consent of multiple members rather than a majority interest for major decisions. As a result, the Company determined that it was no longer the primary beneficiary, and under ASC 810, True North was no longer consolidated as of September 1, 2024. No gain or loss was recognized for the three months ended September 30, 2024. The Company will have no continued business relationship with True North apart from receiving the remaining consideration owed by True North.

The Company's total exposure to True North consists solely of the carrying amount of the receivable related to the True North Conveyance which is recorded as other non-current assets totaling \$489 as of September 30, 2024.

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.

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 Commerce Media Solutions marketplace. Since the beginning of 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 name, 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 our Commerce Media Solutions platform on partner sites where we embed 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, our Adflow product connects our advertisers to consumers on e-commerce websites after check-out. These syndicated Commerce Media Solutions generate meaningful income for our media partners, while driving high-quality customer acquisition for our advertiser clients. In contrast to the media agreements we enter into to attract users to our owned and operated websites, which can be paused or cancelled on short notice, we sign agreements with media partners for our Commerce Media Solutions platform with terms of at least one year and up to five years. We typically remunerate our media partners on a revenue share and/or impression basis.

Additionally, we operate 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.

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 array of 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.

Third Quarter Financial Summary

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

- Revenue decreased 3% to \$64.5 million, compared to \$66.2 million
- Net loss was \$7.9 million, or \$0.48 per share, compared to net loss of \$33.6 million or \$2.43 per share
- Gross profit (exclusive of depreciation and amortization) decreased 3% to \$15.7 million, representing 24% of revenue for the three months ended September 30, 2024, from \$16.1 million, representing 24% of revenue for the three months ended September 30, 2023
- Media margin decreased 6% to \$18.2 million, representing 28.1% of revenue for the three months ended September 30, 2024, from \$19.3 million, representing 29.2% of revenue for the three months ended September 30, 2023
- Adjusted EBITDA was negative \$0.1 million, compared to negative \$1.7 million
- Adjusted net loss was \$3.7 million, or \$0.22 per share, compared to adjusted net loss of \$4.1 million, or \$0.30 per share

Nine months ended September 30, 2024, compared to nine months ended September 30, 2023:

- Revenue decreased 16% to \$189.2 million, compared to \$225.6 million
- Net loss was \$25.8 million, or \$1.75 per share, compared to \$61.3 million or \$4.46 per share
- Gross profit (exclusive of depreciation and amortization) decreased 19% to \$46.9 million, representing 25% of revenue for the nine months ended September 30, 2024, from \$57.7 million, representing 26% of revenue for the nine months ended September 30, 2023
- Media margin decreased 17% to \$56.0 million, representing 29.6% of revenue for the nine months ended September 30, 2024, from \$67.2 million, representing 29.8% of revenue for the nine months ended September 30, 2023
- Adjusted EBITDA was negative \$3.9 million, compared to positive \$4.3 million
- Adjusted net loss was \$15.2 million, or \$1.03 per share, compared to \$6.8 million, or \$0.49 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 have 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 commerce media marketplace. 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, however, we have experienced challenges growing traffic volume to our owned and operated properties, primarily due to the FTC inquiry 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 commerce media 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. Both data and performance-based spend has continued to be challenged in 2024 by general economic uncertainty. In the first nine months 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. In the fourth quarter of 2024, we expect that growth of our Commerce Media Solutions business will partially or completely offset the year over year revenue decline related to media supply challenges in our owned and operated marketplaces and within our AdParlor unit.

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, our retail specific media partners in our commerce media marketplace and our call solutions business that benefits from Medicare open enrollment period 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 fourth quarter 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 are continuing to invest into securing additional media partners for our commerce media marketplace 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 11, *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) fair value adjustment of Convertible Notes, (11) acquisition-related costs, (12) restructuring and other severance costs, and (13) 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) fair value adjustment of Convertible Notes, (8) acquisition-related costs, (9) restructuring and other severance costs, and (10) 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 nine months ended September 30, 2024 and 2023, which we believe is the most directly comparable GAAP measure:

(In thousands, except percentages)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue	\$ 64,516	\$ 66,239	\$ 189,216	\$ 225,638
Less: Cost of revenue (exclusive of depreciation and amortization)	48,861	50,148	142,318	167,960
Gross profit (exclusive of depreciation and amortization)	\$ 15,655	\$ 16,091	\$ 46,898	\$ 57,678
Gross profit (exclusive of depreciation and amortization) % of revenue	24%	24%	25%	26%
Non-media cost of revenue (1)	2,505	3,229	9,066	9,510
Media margin	\$ 18,160	\$ 19,320	\$ 55,964	\$ 67,188
Media margin % of revenue	28.1%	29.2%	29.6%	29.8%

(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 nine months ended September 30, 2024 and 2023, which we believe is the most directly comparable GAAP measure:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net loss	\$ (7,944)	\$ (33,627)	\$ (25,847)	\$ (61,319)
Income tax expense (benefit)	(35)	(1,243)	98	551
Interest expense, net	1,281	936	3,711	2,420
Depreciation and amortization	2,369	2,658	7,507	8,112
Share-based compensation expense	460	961	1,490	2,958
Loss on early extinguishment of debt	—	—	1,009	—
Goodwill impairment	—	29,705	1,261	55,405
Impairment of intangible assets	—	—	980	—
Fair value adjustment of Convertible Notes, with related parties	2,810	—	2,810	—
Acquisition-related costs ⁽¹⁾	443	516	1,250	1,701
Restructuring and other severance costs	545	(24)	1,821	456
Certain litigation and other related costs	—	(1,624)	—	(5,982)
Adjusted EBITDA	<u>\$ (71)</u>	<u>\$ (1,742)</u>	<u>\$ (3,910)</u>	<u>\$ 4,302</u>

(1) Balance includes compensation expense related to non-competition agreements and earn-out expense incurred as a result of business combinations (see Note 12, *Variable Interest Entity*, in the Notes to the consolidated financial statements). The earn-out expense was \$30 and (\$21) for the three months ended September 30, 2024 and 2023, respectively, and \$167 and \$89 for the nine months ended September 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 nine months ended September 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 September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net loss	\$ (7,944)	\$ (33,627)	\$ (25,847)	\$ (61,319)
Share-based compensation expense	460	961	1,490	2,958
Loss on early extinguishment of debt	—	—	1,009	—
Goodwill impairment	—	29,705	1,261	55,405
Impairment of intangible assets	—	—	980	—
Fair value adjustment of Convertible Notes, with related parties	2,810	—	2,810	—
Acquisition-related costs ⁽¹⁾	443	516	1,250	1,701
Restructuring and other severance costs	545	(24)	1,821	456
Certain litigation and other related costs	—	(1,624)	—	(5,982)
Adjusted net loss	<u>\$ (3,686)</u>	<u>\$ (4,093)</u>	<u>\$ (15,226)</u>	<u>\$ (6,781)</u>
Adjusted net loss per share:				
Basic	\$ (0.22)	\$ (0.30)	\$ (1.03)	\$ (0.49)
Diluted	\$ (0.22)	\$ (0.30)	\$ (1.03)	\$ (0.49)
Weighted average number of shares outstanding:				
Basic	16,452,273	13,813,423	14,783,253	13,751,910
Diluted	16,452,273	13,813,423	14,783,253	13,751,910

(1) Balance includes compensation expense related to non-competition agreements and earn-out expense incurred as a result of business combinations (see Note 12, *Variable Interest Entity*, in the Notes to the consolidated financial statements). The earn-out expense was \$30 and (\$21) for the three months ended September 30, 2024 and 2023, respectively, and \$167 and \$89 for the nine months ended September 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 11, *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 Nine Months Ended September 30, 2024 and 2023

Revenue

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Revenue	\$ 64,516	\$ 66,239	(3%)	\$ 189,216	\$ 225,638	(16%)

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

For the three months ended September 30, 2024 and 2023, revenue was comprised of owned and operated marketplaces \$43.5 million and \$53.1 million, Commerce Media Solutions \$10.4 million and \$2.3 million, and other streams \$10.6 million and \$10.8 million, respectively. The decrease in owned and operated revenue was primarily attributable to 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 and Staffing & Recruitment sectors. It was further negatively impacted by the enormous social media advertising spend driven by the US Presidential election, which started in late August and impacted our ability to buy media at acceptable margins for our demand. Partially offsetting that decline, our Commerce Media Solutions business added long-term contracts with new media partners which drove revenue up in the Retail & Consumer sector. Within our other streams, our call solutions business also grew based on increased demand from the healthcare sector, offset by a decrease related to the True North business we exited in the second quarter of 2024. Although we have seen stabilization in owned and operated media supply, we expect year-over-year declines in that marketplace to continue; however, we expect such declines to be offset by the continued growth of Commerce Media Solutions.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

For the nine months ended September 30, 2024 and 2023, revenue was comprised of owned and operated marketplaces \$130.2 million and \$185.8 million, Commerce Media Solutions \$24.0 million and \$3.5 million, and other streams \$35.0 million and \$36.3 million, respectively. The decrease in owned and operated revenue and increase in Commerce Media Solutions were mainly attributable to the items noted above. The decrease in other streams was related an increase in AdParlor offset by the decrease related to the True North business we exited in the second quarter of 2024.

Cost of revenue (exclusive of depreciation and amortization)

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Cost of revenue (exclusive of depreciation and amortization)	\$ 48,861	\$ 50,148	(3%)	\$ 142,318	\$ 167,960	(15%)

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

For the three months ended three months ended September 30, 2024 and 2023, cost of revenue (exclusive of depreciation and amortization) consisted mainly of owned and operated media and fulfillment costs of \$34.0 million and \$40.3 million, Commerce Media Solutions media cost of \$6.9 million and \$2.1 million, media and enablement costs related to our other revenue streams of \$6.9 million and \$6.8 million, and indirect costs of revenue of \$1.1 million and \$0.9 million, respectively. Our owned and operated 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 fulfillment costs related to rewards earned by consumers. The decrease in owned and operated media cost was largely attributable to the challenges in acquiring media due to changes in our business practices to comply with the FTC Consent Order. Our Commerce Media Solutions cost of revenue consists of fees and revenue share payments made to media partners for revenue generated on their properties. The increase in cost of revenue in the Commerce Media Solutions was driven by increased media from new media partners added over the period. The increase in cost of revenue for other revenue streams, which includes, in addition to media costs, enablement costs and tracking costs related to our consumer data associated with our call centers, was attributable to these added costs needed to support the increased demand from the healthcare sector offset by a decrease related to our exit from the True North business in the second quarter of 2024. Indirect costs of revenue increased as a result of escalated hosting costs.

For the three months ended September 30, 2024 the total cost of revenue (exclusive of depreciation and amortization) as a percentage of revenue remained consistent at 76% compared to 76% for the three months ended September 30, 2023.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

For the nine months ended September 30, 2024 and 2023, cost of revenue (exclusive of depreciation and amortization) consisted mainly of owned and operated media and fulfillment costs of \$100.6 million, and \$137.1 million, Commerce Media Solutions media cost of \$16.5 million and \$4.0 million, media and enablement costs related to other revenue streams of \$22.0 million and \$24.0 million, and indirect costs of \$3.2 million and \$2.9 million, respectively. The decrease in owned and operated costs and increase in Commerce Media Solutions costs were attributable to the items noted above. The decrease in all other streams was related to the True North business we exited in the second quarter of 2024, partly offset by an increase associated with our call centers, as noted above. The increase in indirect costs was also due to the reason noted above.

For the nine months ended September 30, 2024, the total cost of revenue (exclusive of depreciation and amortization) as a percentage of revenue increased minimally to 75% compared to 74% for the nine months ended September 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 three and nine months ended September 30, 2024, owned and operated 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. 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 as these uncertainties in our business play out.

Sales and marketing

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Sales and marketing	\$ 3,983	\$ 4,426	(10%)	\$ 13,400	\$ 13,454	(0%)

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

For the three months ended September 30, 2024 and 2023, sales and marketing expenses consisted mainly of employee salaries and benefits of \$3.3 million and \$3.9 million, restructuring and severance costs of \$0.2 million and \$0.0 million, advertising costs of \$0.2 million and \$0.1 million, professional fees of \$0.1 million and \$0.1 million, and non-cash share-based compensation expense of \$0.0 million and \$0.1 million, respectively. The decrease in salaries and benefits was primarily due to lower salaries and other employee related costs driven by lower headcount, partly offset by an increase in restructuring costs due to the current year period reductions in workforce, as described below.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

For the nine months ended September 30, 2024 and 2023, sales and marketing expenses consisted mainly of employee salaries and benefits of \$11.3 million and \$11.4 million, restructuring and severance costs of \$0.6 million and \$0.1 million, professional fees of \$0.4 million and \$0.3 million, advertising costs of \$0.4 million and \$0.7 million, travel and entertainment of \$0.3 million and \$0.3 million, and non-cash share-based compensation expense of \$0.2 million and \$0.4 million, respectively. The relatively consistent sales and marketing was primarily due to the decline of third-party referral fees and lower non-cash share-based compensation due to lower grants and performance, mainly offset by the increase in restructuring costs due to the current year period reductions in workforce, as described below, and higher professional fees related to consulting.

Product development

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Product development	\$ 4,124	\$ 4,511	(9%)	\$ 13,681	\$ 14,064	(3%)

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

For the three months ended September 30, 2024 and 2023, product development expenses consisted mainly of salaries and benefits of \$3.1 million and \$3.4 million, professional fees of \$0.4 million and \$0.3 million, software license and maintenance costs of \$0.3 million and \$0.5 million, restructuring and severance costs of \$0.1 million and \$0.0 million, and non-cash share-based compensation expense of \$0.1 million and \$0.2 million, respectively. The decrease in salaries and benefits was primarily due to lower salaries and other employee related costs due in part to lower headcount and spend on IT-related vendors, partly offset by an increase in restructuring and severance costs in the current year period due to the reductions in workforce, as described below.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

For the nine months ended September 30, 2024 and 2023, product development expenses consisted mainly of salaries and benefits of \$9.8 million and \$10.3 million, professional fees of \$1.4 million and \$1.3 million, software license and maintenance costs of \$1.2 million and \$1.4 million, restructuring and severance costs of \$0.7 million and \$0.1 million, and non-cash share-based compensation expense of \$0.2 million and \$0.5 million, respectively. The decrease in product development expense was primarily due to changes as described above.

General and administrative

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
General and administrative	\$ 9,067	\$ 8,725	4%	\$ 28,288	\$ 24,991	13%

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

For the three ended September 30, 2024 and 2023, general and administrative expenses consisted mainly of employee salaries and benefits of \$3.9 million and \$4.4 million, professional fees of \$1.5 million and \$2.1 million, office overhead of \$1.1 million and \$1.0 million, software license and maintenance costs of \$0.8 million and \$0.7 million, acquisition-related costs of \$0.4 million and \$0.5 million, non-cash share-based compensation expense of \$0.4 million and \$0.7 million, and certain litigation and related costs of \$0.0 million and a credit of (\$1.6) million, respectively. The increase in general and administrative expenses was primarily related to the absence of the credit for certain litigation and related costs due to insurance reimbursements for previously incurred legal fees and lower than expected regulatory settlement and an increase in restructuring or severance costs. This was partially offset by a reduction in salaries and benefits due to lower headcount, a decrease in professional fees, and a decline in share-based compensation expense.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

For the nine months ended September 30, 2024 and 2023, general and administrative expenses consisted mainly of employee salaries and benefits of \$12.8 million and \$13.9 million, professional fees of \$4.9 million and \$5.0 million, office overhead of \$3.1 million and \$3.2 million, software license and maintenance costs of \$2.3 million and \$1.9 million, acquisition-related costs of \$1.2 million and \$1.7 million, non-cash share-based compensation expense of \$1.1 million and \$2.1 million, and certain litigation and related costs of \$0.0 million and a credit of (\$6.0) 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 conveyance of True North, LLC and its direct and indirect subsidiaries.

During the first quarter of 2023 and the first, second, and third quarters of 2024, the Company implemented reductions in the workforce that resulted in the termination of 20, 20, 19, and 29 employees, respectively, following management's determination to more effectively align resources with the Company's strategic initiatives. In connection with the first quarter 2023 reductions, 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 first quarter 2024 reductions, the Company incurred \$0.7 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, fully settled in cash by September 30, 2024. In connection with the second quarter 2024 reductions, 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. In connection with the third quarter 2024 reductions, the Company incurred \$0.5 million in exit-related restructuring costs, consisting primarily of one-time termination benefits and associated costs, to be fully settled in cash by March 31, 2025. Apart from these exit-related restructuring costs, these reductions in workforce are expected to result in corresponding reductions in future salary and benefits within sales and marketing, product development, and general and administrative expenses.

Depreciation and amortization

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Depreciation and amortization	\$ 2,369	\$ 2,658	(11%)	\$ 7,507	\$ 8,112	(7%)

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

The decrease in depreciation and amortization costs was mainly due to the full amortization of certain intangible assets as compared to the three months ended September 30, 2023.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

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

Goodwill impairment and write-off of intangible assets

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Goodwill impairment and impairment of intangible assets	\$ —	\$ 29,705	(100%)	\$ 2,241	\$ 55,405	(96%)

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

The Company recognized no goodwill impairment in the current year period, compared to \$29.7 million goodwill impairment loss related to both the Fluent and All Other Reporting Unit for the prior period.

Nine months ended September 30, 2024 compared to the nine months ended September 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 in the current year period, compared to the goodwill impairment of \$55.4 million for the Fluent and All Other Reporting Unit for the nine months ended September 30, 2023.

Interest expense, net

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Interest expense, net	\$ 1,281	\$ 936	37%	\$ 3,711	\$ 2,420	53%

Three months ended September 30, 2024 compared to the three months ended September 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.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

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

Fair value adjustment of Convertible Notes with related parties

(In thousands)	Three Months Ended September 30,			As of the Three Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Fair value adjustment of Convertible Notes, with related parties	\$ 2,810	\$ —	100%	\$ 2,810	\$ —	100%

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

The Company recognized \$2.8 million of an unrealized loss related to the fair value of Convertible Notes entered into in the current period and therefore none in the prior period.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

The Company recognized \$2.8 million of an unrealized loss related to the fair value of Convertible Notes, as described above.

Loss on early extinguishment of debt

(In thousands)	Three Months Ended September 30,			As of the Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Loss on early extinguishment of debt	\$ —	\$ —	—	\$ 1,009	\$ —	100%

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

The Company recognized no loss on early extinguishment of debt in the current year period or prior period.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

The Company recognized a \$1.0 million loss on early extinguishment of debt related to the Citizens Credit Agreement due on September 30, 2025, as compared to no loss on debt extinguishment in the prior period.

Loss before income taxes

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Loss before income taxes	\$ (7,979)	\$ (34,870)	(77%)	\$ (25,749)	\$ (60,768)	(58%)

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

The decline in loss before income taxes of \$26.9 million was primarily driven by the decrease in goodwill impairment of \$29.7 over the prior year period, a decline in cost of revenue of \$1.3 million, and a decrease in operating expenses of \$0.5 million driven mainly by the lower reductions in workforce, described above, partly offset by the \$2.8 million unrealized loss for the fair value adjustment of the convertible notes and the decrease in revenue of \$1.7 million.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

The decline in loss before income taxes of \$35.0 million was primarily due to a decrease in goodwill impairment of \$54.1 over the prior year period and a decline in cost of revenue of \$25.6 million, partly offset by a decline in revenue of \$36.4 million, an increase in operating expenses of \$2.9 million driven mainly by the prior year period legal fee reimbursement and settlement of the FTC inquiry for less than expected, along with the impact of the unrealized loss related to the fair value adjustment of the convertible notes and loss on the early extinguishment of debt.

Income tax (expense) benefit

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Income tax (expense) benefit	\$ 35	\$ 1,243	(97%)	\$ (98)	\$ (551)	(82%)

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

For the three months ended September 30, 2024, the effective income tax rate of 0.4% 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 September 30, 2023, the Company's effective income tax rate of 3.6% primarily driven by the impact of a non-deductible goodwill impairment against pre-tax year-to-date losses offset by the benefit of federal research and development credits.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

For the nine months ended September 30, 2024, the effective income tax rate of 0.4% 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 nine months ended September 30, 2023, the Company's effective income tax rate of 0.9% primarily driven by the impact of a non-deductible goodwill impairment against pre-tax year-to-date losses offset by the benefit of federal research and development credits.

As of September 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 loss

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2024	2023	% Change	2024	2023	% Change
Net loss	\$ (7,944)	\$ (33,627)	(76%)	\$ (25,847)	\$ (61,319)	(58%)

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

For the three months ended September 30, 2024 and 2023, net loss was \$7.9 million and \$33.6 million, respectively, as a result of the foregoing.

Nine months ended September 30, 2024 compared to the nine months ended September 30, 2023

For the nine months ended September 30, 2024 and 2023, net loss was \$25.8 million and \$61.3 million, respectively, as a result of the foregoing.

Liquidity and Capital Resources

Cash (used in) provided by operating activities. For the nine months ended September 30, 2024, net cash used in operating activities was \$12.0 million, compared to net cash provided by operating activities of \$9.7 million for the nine months ended September 30, 2023. Net loss in the current year period of \$25.8 million represents a decrease of \$35.5 million, as compared with net loss of \$61.3 million in the prior period. Adjustments to reconcile net loss to net cash provided by operating activities of \$16.4 million in the current year period decreased by \$50.4 million, as compared with \$66.8 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 \$55.4 million in the prior period, partly offset by the current year period loss on the fair value adjustment of Convertible Notes of \$2.8, loss on early extinguishment of debt of \$1.0 million, and an increase in amortization of debt. There were changes in assets and liabilities consuming cash of \$2.5 million in the current year period, as compared with sourcing of cash of \$4.3 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 nine months ended September 30, 2024 and 2023, net cash used in investing activities was \$4.7 million and \$5.4 million, respectively. The decrease was mainly due to the impact of the 2023 TAPP consolidation, compared to the increase in investment in capitalized software in the current year period.

Cash (used in) provided by financing activities. For the nine months ended September 30, 2024, net cash provided by financing activities was \$8.7 million, compared to net cash used in financing activities of \$9.4 million for the nine months ended September 30, 2023. The increase was mainly due to the sale of warrants, the net proceeds received from the issuance of the new debt, and the Convertible Notes, which was partly offset by repayment of the prior debt and repayments on the new debt revolver as well as debt financing costs.

As of September 30, 2024, we had noncancelable operating lease commitments of \$2.3 million and long-term debt with a \$34.2 million principal balance. For the nine months ended September 30, 2024, we funded our operations using available cash.

As of September 30, 2024, we had cash, cash equivalents, and restricted cash of \$7.8 million, a decrease of \$8.0 million from \$15.8 million as of December 31, 2023.

As of September 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 then-outstanding obligations under the Citizens Credit Agreement dated March 31, 2021, prior to its maturity. As of September 30, 2024, the SLR Credit Facility had an outstanding principal balance of \$32.5 million (of which \$12.5 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, we entered into the First Amendment to the 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.

We entered into two letter agreements with SLR, one on July 31, 2024, and another on August 14, 2024, 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 (See Note 5, *Long-term debt, net* in the Notes to the consolidated financial statements) raising an aggregate of \$2.1 million. In addition, the Second Amendment (1) waived non-compliance with the financial covenants as of June 30, 2024, (2) modified the financial covenants through December 31, 2025, (3) ended a requirement to engage a financial advisor, (4) increased the interest rate margin from 5.25% to 5.75%, and (5) and waived any required prepayments from the proceeds from the convertible subordinated notes financing.

As a result of our economic downward trends as described above in "Advertiser Trends & Seasonality", we updated our projections in the fourth quarter of 2024 to reflect the continued pressure on our operating results. On October 30, 2024, we entered into a letter agreement with SLR, pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended September 30, 2024, and the related notice of event of default, to November 19, 2024. On November 15, 2024, we entered into the Third Amendment to the SLR Credit agreement, which, among other things, required that we raise at least \$7.5 million of additional capital by November 29, 2024. In addition, the Third Amendment waived non-compliance with the financial covenants as of September 30, 2024, extended the duration of the call protection applicable to the loans, and modified the cash dominion provisions to remain in effect on an indefinite basis. (See Note 5, *Long-term debt, net* in the Notes to the consolidated financial statements).

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 currently bear interest at a rate per annum equal to a 3-month term SOFR plus 0.26161%, subject to a 1.50% floor, plus 5.75% (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 11.03% (SOFR + CSA+5.75%) as of September 30, 2024.

Given the continued challenges we have faced achieving profitability, we made reductions in workforce throughout 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. We had divested a non-core business unit (see Note 12, *Variable Interest Entity*, in the Notes to the consolidated financial statements), transferred another business unit (see Note 3, *Intangible assets, net* in the Notes to the consolidated financial statements), and are 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.

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. However, we have not met our projections for certain recent quarters, so there can be no assurance that we will meet our projections in the future. 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. Additionally, if we fail to raise capital in at least the amount required under the Third Amendment by November 29, 2024, such failure would also result in an event of default that would give SLR the right to accelerate maturities. In such case, we would not have sufficient funds to repay the SLR Term Loan and the SLR Revolver (as described above). In addition, even if we are able to raise capital as required by the Third Amendment, there is no assurance that such capital plus borrowing base on the SLR Revolver will be sufficient to fund operations over the next twelve months. If needed, we will consider implementing other cost saving measures, but there is no guarantee that such plans would 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.

As disclosed in Note 5, *Long-term debt, net*, we evaluated the terms of our convertible notes to determine whether the debt instrument contained an embedded derivative, and therefore a hybrid instrument, in which then the fair value option can be elected. The determination is based on judgment when considering the terms of the agreement. To then determine the fair value of the convertible notes, we considered the length of the term until conversion and then applied a discount rate based on that. We then applied the Black Scholes methodology to determine the conversion date stock price based on assumptions for volatility, risk free-rate, the current stock price, and term, noting that if any were to change driven by macro-economic factors as well as Company specific results, the impact to the fair value may be significant. As such, we concluded that its fair value was \$4,860 as of the third 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 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 September 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 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 Chief Financial Officer carried out an evaluation of the effectiveness of the Company's disclosure controls and procedures as of September 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 September 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 as updated and supplemented by our Quarterly Reports on Form 10-Q. The risk factors below supplement or update the risk factors in our periodic reports filed with the SEC.

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 third quarter of 2024, our accounts receivable were insufficient to support the borrowing base needed to fund operations through the end of the third quarter of 2024. We therefore entered into convertible subordinated notes in August 2024, further updated our projections to reflect the continued decline in our operating results, and entered into the Second Amendment with SLR on August 19, 2024.

As of September 30, 2024, we were not in compliance with our financial covenants under the SLR Credit Agreement, which we had to report by October 31, 2024, and which would have resulted in an event of default. However, we entered into a letter agreements pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended September 30, 2024, and the related notice of event of default, to November 19, 2024.

On November 15, 2024, we entered into the Third Amendment to the SLR Credit Agreement, which, among other things, required us to raise at least \$7.5 million of additional capital by November 29, 2024. In addition, the Third Amendment waived non-compliance with the financial covenants as of September 30, 2024, extended the duration of the call protection applicable to the loans, and modified the cash dominion provisions to remain in effect on an indefinite basis. We will seek to raise additional capital through equity, equity-linked, or subordinated debt financings; however, whether and when we can effect such financings and how much capital we can raise depend on a variety of factors, including, among others, market conditions, the trading price of our common stock, and our determination as to the appropriate sources of funding for our operations. There can be no assurance that additional capital will be available by November 29, 2024.

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. However, we have not met our projections for certain recent quarters, so there can be no assurance that we will meet our projections in the future. 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. Additionally, if we fail to raise capital in at least the amount required under the Third Amendment by November 29, 2024, such failure would also result in an event of default. In such case, we would not have sufficient funds to repay the SLR Term Loan and the SLR Revolver. In addition, even if we are able to raise additional capital as required by the Third Amendment, there is no assurance that such capital plus the available cash plus borrowing base on the SLR Revolver will be sufficient to fund operations over the next twelve months. If needed, we will consider implementing other cost-saving measures, but there is no guarantee that such plans would 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.

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

We intend to continue to make investments to support our growth and may require additional capital to pursue our business objectives and respond to business opportunities, challenges, or unforeseen circumstances. While the SLR Credit Agreement includes an undrawn revolving credit facility of up to \$30 million that we can use subject to certain conditions, we require additional capital to satisfy the requirements of the Third Amendment to SLR Credit Agreement and we may require additional capital not available under the SLR Credit Agreement due to limitations in the borrowing base.

In addition to revenue from business operations and proceeds from the SLR Credit Agreement, the Company's primary source of working capital to date has been through the sale of equity and subordinated debt securities to officers, directors and a principal stockholder. We may seek to raise additional capital through equity, equity-linked, or subordinated debt financings; however, when we can effect such financings and how much capital we can raise depends on a variety of factors, including, among others, market conditions, the trading price of our common stock and our determination as to the appropriate sources of funding for our operations. The SLR Credit Agreement generally prohibits debt financings without SLR's consent and requires proceeds from equity financings to be used to prepay indebtedness to SLR. Accordingly, we will not be able to raise capital for uses other than prepayment of SLR indebtedness without SLR's consent. In addition, the SLR Credit Agreement contains various financial and other covenants, and any non-compliance with those covenants could result in an acceleration of the repayment of the amounts outstanding thereunder. Furthermore, equity or debt financings may have a dilutive effect on the holdings of our existing stockholders, and debt financings may subject us to restrictive covenants, operational restrictions and security interests in our assets.

There can be no assurance that other capital will be available when needed or that, if available, it will be obtained on terms favorable to us and our stockholders. Disruptions in the global equity and credit markets may also limit our ability to access capital. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue certain operations. Any of these events could significantly harm our business and results of operations.

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

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 kind or may be paid in cash (subject to payment conditions in the Subordination Agreement described below). 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 2025 annual meeting of stockholders. The "Conversion Amount" is the sum of all or any portion of the outstanding principal amount of the Convertible Note, as designated by the holder upon exercise of its right of conversion, plus all accrued and unpaid interest. 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. 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.

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 3. Defaults Upon Senior Securities.

None.

Item 5. Other Information.

Rule 10b5-1 Trading Plans

During the fiscal quarter ended September 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."

Third Amendment to SLR Credit Agreement

As of September 30, 2024, we were not in compliance with its financial covenants under the SLR Credit Agreement, which we had to report by October 31, 2024, and which would have resulted in an event of default; however, on October 30, 2024, we entered into a letter agreement pursuant to which SLR extended the deadline for delivery of the compliance certificate required for the fiscal month ended September 30, 2024, and the related notice of event of default, to November 19, 2024.

On November 15, 2024, we entered into the Third Amendment (as defined and discussed in Note 5 in the Notes to the consolidated financial statements included herein) to the SLR Credit Agreement, which, among other things, required that the Company raise at least \$7.5 million of additional capital by November 29, 2024. In addition, the Third Amendment waived non-compliance with the financial covenants as of September 30, 2024, extended the duration of the call protection applicable to the loans, and modified the cash dominion provisions to remain in effect on an indefinite basis.

The foregoing description of the Third Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of Third Amendment, which is incorporated by reference as Exhibit 10.11 to this Quarterly Report on Form 10-Q and is incorporated by reference herein.

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	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.	10-Q	001-37893	10.6	8/19/2024	
10.2	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.	10-Q	001-37893	10.7	8/19/2024	
10.3	Second Amendment to Letter Agreement for Consulting Services, effective as of August 1, 2024, by and between Fluent, LLC and CRIO, LLC.	10-Q	001-37893	10.9	8/19/2024	
10.4	Securities Purchase Agreement, dated as of August 19, 2024, by and among Fluent, Inc. and the purchasers.	10-Q	001-37893	10.10	8/19/2024	
10.5	Form of Convertible Subordinated Promissory Note, dated as of August 19, 2024, by and between Fluent, Inc. and purchaser party thereto.	10-Q	001-37893	10.11	8/19/2024	
10.6	Form of Second Amendment Subordination Agreement, dated as of August 19, 2024, by and among Fluent, Inc., Crystal Financial LLC D/B/A SLR Credit Solutions, and the Subordinated Creditor party thereto.	10-Q	001-37893	10.12	8/19/2024	
10.7	Second Amendment to Credit Agreement, dated as of August 19, 2024, by and among Crystal Financial LLC D/B/A SLR Credit Solutions, Crystal Financial SPV LLC, and Fluent, LLC.	10-Q/A	001-37893	10.8	8/21/2024	
10.8++	Employment Agreement, by and between Fluent, Inc. and Ryan Perfit, dated September 1, 2024.					X

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10.9	<u>Letter Agreement to Credit Agreement, dated as of October 30, 2024, by and among Crystal Financial LLC D/B/A SLR Credit Solutions, Crystal Financial SPV LLC, and Fluent, LLC.</u>	X
10.10+	<u>Joinder Agreement to Credit Agreement, dated as of November 1, 2024, by and among Crystal Financial LLC D/B/A SLR Credit Solutions, Crystal Financial SPV LLC, and Fluent, LLC.</u>	X
10.11	<u>Third Amendment to Credit Agreement, dated as of November 15, 2024, by and among Crystal Financial LLC D/B/A SLR Credit Solutions, Crystal Financial SPV LLC, and Fluent, LLC.</u>	X
31.1	<u>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.</u>	X
31.2	<u>Certification of Chief Financial Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>	X
32.1*	<u>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.</u>	
32.2*	<u>Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>	
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.	
++	Management contract or compensatory plan or arrangement	

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.

November 15, 2024

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

EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is made by and between Fluent, Inc. (the “Company”) and Ryan Perfit (the “Employee”) effective as of the Effective Date.

RECITALS

WHEREAS the Company’s wholly owned subsidiary, Fluent, LLC, and its subsidiaries engage in the business of performance-based digital advertising and marketing services and solutions to advertisers, publishers, and advertising agencies using proprietary and third-party platforms; and

WHEREAS, Employee has served as the Company’s Interim CFO since February 1, 2023 pursuant to a Consulting Agreement, as amended, dated January 20, 2023 (the “Consulting Agreement”);

WHEREAS, from and after the date hereof, the Company and Employee wish to terminate the Consulting Agreement and the Company desires to retain the services of the Employee pursuant to the terms and conditions set forth herein and the Employee desires to be employed by the Company on such terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Employee agree as follows:

AGREEMENT

1. **Term of Agreement.** This Agreement shall be effective on the Effective Date. The initial term of the Executive’s employment shall be for the period set forth on Exhibit A attached hereto (the “Initial Term”); provided that, at the end of the Initial Term, this Agreement shall automatically renew for successive one (1) year terms (each, a “Renewal Term” and collectively with the Initial Term, the “Term”), unless either party provides written notice to the other no less than sixty (60) days prior to the commencement of such Renewal Term, setting forth a desire to terminate this Agreement. The Employee’s employment shall terminate upon a non-renewal of the Term.
 2. **Position and Duties.** During the Term, the Employee shall serve the Company in the position and perform the duties as are set forth on Exhibit A attached hereto.
 3. **Full Time and Attention.** Except as otherwise set forth in this Agreement, the Employee shall: (a) devote Employee’s full business time, attention, skill and energy exclusively to the duties and responsibilities of Employee’s position; (b) service the Company faithfully, diligently and to the best of Employee’s ability; (c) use Employee’s best efforts to promote the success of the Company; and (d) cooperate fully with the Company’s Board of Directors (the “Board”) in the advancement of the Company’s best interests to assure full and efficient performance of Employee’s duties hereunder.
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4. Compensation and Benefits. During the Term:

a. Base Salary. The Employee shall be paid the annual base salary set forth on Exhibit A attached hereto, or such greater amount as may be determined by the Company from time to time in its sole discretion, payable in equal periodic installments according to the Company's customary payroll practices, but not less frequently than monthly (the "Base Salary"). The Base Salary may be increased but not decreased without the Employee's written consent.

b. Benefits. The Employee shall, during the Term, be eligible to participate, commensurate with the Employee's position, in such retirement, life insurance, hospitalization, major medical, fringe and other employee benefit plans that the Company generally maintains for its full-time employees (collectively, the "Benefits"). Notwithstanding the foregoing, the Company may discontinue or terminate at any time any employee benefit plan, policy or program now existing or hereafter adopted and will not be required to compensate the Employee for such discontinuance or termination; provided, however, that the Company shall be required to offer to the Employee any rights or benefits extended to other employees in the event of termination of such plans or benefits, including, but not limited to coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

c. Bonus. During the Term, the Employee shall have an annual target cash bonus opportunity of no less than one hundred percent (100%) of one (1) year's Base Salary (the "Bonus"), based on the achievement of Company to be determined in good faith by the Compensation Committee of the Board of Directors ("Comp Committee") in advance and in consultation with the Employee. The 2024 Bonus is set forth on Exhibit A; future Bonus plans will be determined by the Comp Committee in consultation with the CEO, Chief Strategy Officer and Chief Customer Officer (collectively, "Senior Management") and Employee.

d. Equity Incentive Compensation. The Employee shall be entitled to participate, commensurate with the Employee's position, in the Fluent, Inc. 2022 Omnibus Equity Incentive Plan (together with any successor plan, the "Incentive Plan"), as further described on Exhibit A attached hereto.

e. Expenses. The Company shall pay on behalf of the Employee (or reimburse Employee for) reasonable documented expenses incurred by Employee in the performance of Employee's duties under this Agreement and, in accordance with the Company's existing policies and procedures pertaining to the reimbursement of expenses to employees in general. Notwithstanding anything herein to the contrary or otherwise, except to the extent any expense or reimbursement provided pursuant to this Section 4(g) does not constitute a "deferral of compensation" within the meaning of Section 409A of the Code (as defined below): (i) the amount of expenses eligible for reimbursement provided to the Employee during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to the Employee in any other calendar year, (ii) the reimbursements for expenses for which the Employee is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred, (iii) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit and (iv) the reimbursements shall be made pursuant to objectively determinable and nondiscretionary Company policies and procedures regarding such reimbursement of expenses. In addition, the Company shall reimburse Employee for his travel expenses to find a suitable residence and moving expenses associated with his relocation to the New York City Metropolitan area.

5. Termination of Employment.

- a. By the Company. The Company may terminate this Agreement and Employee's employment, for the following reasons:
- i. Death. This Agreement shall terminate immediately upon the death of the Employee.
 - ii. Disability. The Company may terminate this Agreement and the Employee's employment with the Company immediately upon a determination of Disability. For purposes of this Agreement the Employee has a "Disability" if, for physical or mental reasons, the Employee is unable to perform the essential duties required of the Employee under this Agreement, even with a reasonable accommodation, for a period of six (6) consecutive months or a period of one-hundred eighty (180) days during any twelve (12) month period, as determined by an independent medical professional mutually acceptable to the parties, acceptance not to be unreasonably withheld or delayed. The Employee shall submit to a reasonable number of examinations by the independent medical professional making the determination of Disability.
 - iii. For Cause. The Company may terminate this Agreement and the Employee's employment with the Company at any time for Cause. For purposes of this Agreement, "Cause" is defined as: (1) Employee's conviction of or plea of guilty or nolo contendere to a felony involving moral turpitude or which results in material harm to the Company or , (2) Employee's fraud against the Company or any breach of fiduciary duty owed to the Company, (3) Employee's conviction of or the production by the Company of credible evidence of theft, misappropriation or embezzlement of the assets or funds of the Company or any customer, or engagement in misconduct that is materially injurious to the Company, (4) Employee's gross negligence of Employee's duties or willful misconduct in the performance of Employee's duties under this Agreement, and (5) Employee's material breach of this Agreement, including any violation of any of the restrictions set forth in Section 7, or any written Company policies, including the Company's Code of Ethics and Sexual Harassment Policy, which breach or violation, if capable of being cured, is not cured to the Board's reasonable satisfaction within ten (10) business days after written notice thereof to the Employee.

- iv. Without Cause. Notwithstanding anything in this Agreement to the contrary, the Company may terminate this Agreement and the Employee's employment at any time during the Term without Cause for any reason or no reason at all by providing the Employee with thirty (30) days' prior written notice; provided, that during such thirty (30) day notice period, the Company may, in its discretion, place restrictions upon the Employee's contact with the workplace, customers and other-business related parties. If, at the end of the Term, the Term is not renewed, such non-renewal shall constitute a termination without Cause.

- b. By Employee. The Employee may terminate this Agreement and his employment with the Company for any of the following reasons:
 - i. For Any Reason. Upon 60 days' prior written notice, the Employee may terminate this Agreement and his employment hereunder for any reason or no reason at all.

 - ii. For Good Reason. The Employee may terminate this Agreement and Employee's employment hereunder for "Good Reason" (as hereinafter defined). For purposes of this Agreement, "Good Reason" shall mean any one of the conditions set forth below, so long as (1) Employee has provided written notice to the Company of the existence of such condition within sixty (60) days of its initial existence, (2) the Company has not remedied the condition caused by the occurrence within thirty (30) days of such notice, to the extent such condition is capable of being cured, and (3) the Employee terminates his employment within thirty (30) days after the end of such thirty (30) day period to remedy such condition. The following conditions will constitute "Good Reason": (A) a material diminution in the Employee's duties, responsibilities or authority provided if the Company is merged with or acquired by another company, Employee's duties, responsibilities and/or authority shall be evaluated with respect to other Senior Management members after the transaction; (B) a breach of a material term of this Agreement by the Company; (C) the Company materially reduces the Employee's Base Salary as in effect from time to time or disproportionately reduces Employee's Cash Performance Compensation as compared to other Senior Management members without the Employee's prior written consent; (D) the Company requests that the Employee participate in an unlawful act; and (E) a material change in the geographic location in which the Employee must provide services of more than 25 miles from Manhattan.

c. Compensation Upon Termination. Upon payment to the Employee of the compensation upon termination set forth in this Section 5(c), the Company shall have no further obligation or liability to or for the benefit of the Employee under this Agreement, except as required by applicable law.

- i. Death or Disability. Within thirty (30) days following the termination of this Agreement due to the Employee's death or Disability, the Company shall pay to the Employee's estate, or the Employee, as applicable, the Employee's Base Salary, any Cash Performance Compensation for the year prior to the year in which the Employee's death, or Employee's termination due to Disability, as applicable, occurs (to the extent unpaid), a pro-rata Cash Performance Compensation for the year in which the termination occurs if the termination occurs after June 30th in a fiscal year with the portion of the Cash Performance Compensation based on percentage pacing to goal measured through the date of termination, payable in a lump sum when the Cash Performance Compensation for the applicable year is paid to other employees receiving Cash Performance Compensation for such year,] and Benefits accrued through the date of the Employee's death, or the date of the determination of the Employee's Disability, as applicable.
- ii. For Cause. Upon termination of this Agreement for Cause, the Company shall pay to the Employee the Employee's Base Salary and Benefits accrued through the date of the Employee's termination.
- iii. Without Cause or For Good Reason. In the event the Company terminates this Agreement without Cause or in the event that the Employee terminates this Agreement and the Employee's employment for Good Reason, the Company shall pay to the Employee the sum of: (1) the greater of (A) the Employee's Base Salary for the remainder of the Term or (B) twelve (12) months' Base Salary; (2) Cash Performance Compensation for the year prior to the year in which the termination occurs, to the extent unpaid; (3) a pro-rata Cash Performance Compensation for the year in which the termination occurs if the termination occurs after June 30th in a fiscal year with the portion of the Cash Performance Compensation based on percentage pacing to goal measured through the date of termination, and (4) Benefits accrued through the date of the Employee's termination. Item (1) above, shall be paid in accordance with the Company's payroll practices in effect from time to time, but not less frequently than monthly, provided that if the Release Period spans two calendar years, the first payment of such compensation shall not be paid prior to the first Company regular payroll date of the second calendar year (and shall contain all amounts which should have been paid prior to such date, but were not paid), and Items (2) and (3) will be paid in a lump sum when the Cash Performance Compensation for the applicable year is paid to other employees receiving Cash Performance Compensation for such year.
- iv. For Any Reason. In the event the Employee terminates this Agreement with the Company for any reason other than Good Reason during the Term, the Company shall pay to the Employee the Employee's Base Salary, any Cash Performance Compensation for the year prior to the year in which the Employee's termination occurs (to the extent unpaid) (which shall be paid in a lump sum when the Cash Performance Compensation for such year is paid to other employees receiving Cash Performance Compensation for such year) and Benefits accrued through the date of the Employee's termination.

- v. Release. As an additional prerequisite for receipt of the severance benefits described in Sections 5(c)(i) and (iii) above, the Employee must execute, deliver to the Company a Release and such Release must become irrevocable (to the extent the Employee is allowed to do so) within fifty-three (53) days of the date of the Employee's termination of employment (the "Release Period"). "Release" shall mean a release of all claims that the Employee has or may have against the Company, its board of directors, any of its subsidiaries or affiliates, or any of their employees, directors, officers, employees, agents, plan sponsors, administrators, successors, fiduciaries, or attorneys, arising out of the Employee's employment with, and termination of employment from, the Company. The Release shall be in a form that is reasonably acceptable to the Company or the Board (which shall not contain any restrictive covenants different than those already agreed to by Employee) **and** shall be delivered to the Employee within three (3) business days of the date of Employee's termination.

6. Indemnification and Claw Back Policy. While employed by the Company, (i) the Company will indemnify the Employee pursuant to the terms of the Indemnification Agreement between the Company and Employee dated March 1, 2024 and (ii) the Employee shall be subject to the Fluent, Inc. Clawback Policy.

7. Restrictive Covenants.

a. Confidentiality. The Employee acknowledges that the Confidential Information (as defined below) is a valuable, special, sensitive and unique asset of the business of the Company, the continued confidentiality of which is essential to the continuation of its business, and the improper disclosure or use of which could severely and irreparably damage the Company. The Employee agrees, for and on behalf of himself, the Employee's legal representatives, and the Employee's successors and assigns that all Confidential Information is the property of the Company (and not of the Employee). The Employee further agrees that during the Term and at all times thereafter, the Employee (i) will continue to keep all Confidential Information strictly confidential and not disclose the Confidential Information to any other person or entity and (ii) shall not, directly or indirectly, disclose, communicate or divulge to any person, or use or cause or authorize any person to use any Confidential Information, except as may be used in the performance of the Employee's duties hereunder in compliance with this Agreement and in the best interests of the Company. "Confidential Information" means all information, data and items relating to the Company (or any of its customers) which is valuable, confidential or proprietary, including, without limitation, information relating to the Company's software, software code, accounts, receivables, customers and customer lists and data, prospective customers and prospective customer lists and data, Work Product, vendors and vendor lists and data, business methods and procedures, pricing techniques, business leads, budgets, memoranda, correspondence, designs, plans, schematics, patents, copyrights, equipment, tools, works of authorship, reports, records, processes, pricing, costs, products, services, margins, systems, software, service data, inventions, analyses, plans, intellectual property, trade secrets, manuals, training materials and methods, sales and marketing materials and compilations of and other items derived (in whole or in part) from the foregoing. Confidential Information may be in either paper, electronic or computer readable form. Notwithstanding the foregoing, "Confidential Information" shall not include information that: (i) becomes publicly known without breach of the Employee's obligations under this Section 7(a), or (ii) is required to be disclosed by law or by court order or government order; provided, however, that if the Employee is required to disclose any Confidential Information pursuant to any law, court order or government order, (x) the Employee shall promptly notify the Company of any such requirement so that the Company may seek an appropriate protective order or waive compliance with the provisions of this Agreement, (y) the Employee shall reasonably cooperate with the Company to obtain such a protective order at the Company's cost and expense, and (z) if such order is not obtained, or the Company waives compliance with the provisions of this Section 7(a), the Employee shall disclose only that portion of the Confidential Information which the Employee is advised by counsel that the Employee is legally required to so disclose. The Employee will notify the Company promptly and in writing of any circumstances of which the Employee has knowledge relating to any possession or use of any Confidential Information by any Person other than those authorized by the terms of this Agreement.

b. Immunity Notice. The Employee shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (i) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Should the Employee file a lawsuit against the Company for retaliation for reporting a suspected violation of law, the Employee may disclose the trade secret to the Employee's attorney and use the trade secret information in the court proceeding, if the Employee: (x) files any document containing the trade secret under seal, and (y) does not disclose the trade secret, except pursuant to court order.

c. Return of Company Property. The Employee will deliver to the Company at the termination of the Employee's employment with the Company, or at any other time the Company may request, all equipment, files, property, memoranda, notes, plans, records, reports, computer tapes, printouts, Confidential Information, Work Product, software, documents and data (and all electronic, paper or other copies thereof) belonging to the Company, which the Employee may then possess or have under the Employee's control.

d. Intellectual Property Rights. The Employee acknowledges and agrees that all inventions, technology, processes, innovations, ideas, improvements, developments, methods, designs, analyses, trademarks, service marks, and other indicia of origin, writings, audiovisual works, concepts, drawings, reports and all similar, related, or derivative information or works (whether or not patentable or subject to copyright), including but not limited to all patents, copyrights, copyright registrations, trademarks, and trademark registrations in and to any of the foregoing, along with the right to practice, employ, exploit, use, develop, reproduce, copy, distribute copies, publish, license, or create works derivative of any of the foregoing, and the right to choose not to do or permit any of the aforementioned actions, which relate to the Company of its actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by the Employee while employed by the Company (collectively, the "Work Product") belong to the Company. All Work Product created by the Employee while employed by the Company (whether or not on the premises) will be considered "work made for hire," and as such, the Company is the sole owner of all rights, title, and interests therein. All other rights to any new Work Product, including but not limited to all of the Employee's rights to any copyrights or copyright registrations related thereto, are hereby conveyed, assigned and transferred to the Company. The Employee will promptly disclose and deliver such Work Product to the Company and, at the Company's expense, perform all actions reasonably requested by the Company (whether during or after the Term) to establish, confirm and protect such ownership (including, without limitation, the execution of assignments, copyright registrations, consents, licenses, powers of attorney and other instruments).

e. Non-Competition. While employed by the Company and for a period of one (1) years thereafter (the “Restricted Period”), the Employee shall not, directly or indirectly, enter into the employment of, render any services to, engage, manage, operate, join, or own, or otherwise offer other assistance to or participate in, as an officer, director, employee, principal, agent, proprietor, representative, stockholder, partner, associate, consultant, sole proprietor or otherwise, any person directly engaged in Competitive Business (as hereinafter defined), anywhere in the Restricted Area (as hereinafter defined). Notwithstanding the foregoing, the Employee may own up to two percent (2%) of the outstanding stock of a publicly held corporation which constitutes or is affiliated with any entity that is a Competitive Business so long as the Employee is not an officer, director, employee or consultant or otherwise maintains voting control, whether by contract or otherwise, of such entity. For purposes of this Section 7, “Restricted Area” means any U.S. state or territory in which the Company, Parent or any of their affiliates has conducted business or offers any services, or any other jurisdiction in or to which the Company, Parent or any of their affiliates has conducted or proposes to conduct as manifested by the Company’s devotion of material internal resources and/or engaging third parties such as local counsel any business or offers any services. For purposes of this Section 7, “Competitive Business” means, specifically, a business that creates and deploys promotional registration based websites (*i.e.*, Rewards, Prizes & Sweepstakes, Samples & Savings, Survey Voices and Job Search/Career Search/Job Matching promoted websites) whereby paid media enables customer acquisition for advertisers, and branded content-based websites such as The Smart Wallet whereby organic traffic and paid media enables customer acquisition and retention with monetization through advertorials, sponsored links and other means, the placement of ad modules on e-commerce and other websites and any anticipated business considered by the Board towards which the Company, Parent or any affiliates thereof have taken material steps or incurred material expenditures in furtherance thereof prior to the termination date.

f. Non-Solicitation. During the Restricted Period, the Employee shall not, directly or indirectly, whether for the Employee’s own account or for the account of any other person, solicit, attempt to solicit, endeavor to entice away from the Company, attempt to hire, hire, , attempt to attract business from, accept business from, or otherwise interfere with (whether by reason of cancellation, withdrawal, modification of relationship or otherwise) any actual or prospective relationship of the Company, Parent or any of their affiliates with any person (i) who is or was within the last two (2) years of termination employed by or otherwise engaged to perform services for the Company, Parent or any of their affiliates including, but not limited to, any independent contractor or representative. or (ii) who is or was within the last two (2) years of termination known to the Employee to be an actual or bona fide prospective licensee, landlord, customer, supplier, or client of the Company, Parent or any of their affiliates (or other person with which the Company, Parent or any of their affiliates had an actual or prospective bona fide business relationship).

g. Non-Disparagement. The Employee agrees that the Employee will not make or publish any statement or communication which is false, negative, unflattering or disparaging with respect to the Company, Parent or any of their respective affiliates and/or any of their respective direct or indirect shareholders, officers, directors, members, managers, employees or agents. Reciprocally, the Company and Parent agree that they and their respective managers, officers and directors will never make or publish any statement or communication which is false, negative, or disparaging with respect to the Employee. The foregoing shall not be violated by (i) statements as required in response to legal proceedings or governmental investigations (including, without limitation, depositions in connection with such proceedings), and (ii) statements made in the context of prosecuting or defending any legal dispute (whether or not litigation has commenced) as between the Employee on the one hand and the Company on the other.

h. Non-Interference with Employee's Agency Rights. The Employee understands that the terms of this Agreement, including the provisions regarding confidentiality and non-disparagement, are not intended to interfere with or waive any right (if any such right otherwise existed) to file a charge, cooperate, testify or participate in an investigation with any appropriate federal or state governmental agency, including the ability to communicate with such agency, such as, but not limited to, the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), any other securities regulatory agency or authority, or any other self-regulatory organization, or any other federal or state regulatory authority ("Government Agencies"), whether in connection with reporting a possible securities law violation or otherwise, without notice to Company. This Agreement further does not limit the Employee's right to receive a bounty or reward for information provided to any such Government Agencies, to the SEC staff, or to any other securities regulatory agency or authority.

i. Rationale for and Scope of Covenants. If any of the covenants contained in this Section 7 are held to be invalid or unenforceable due to the unreasonableness of the time, geographic area, or range of activities covered by such covenants, such covenants shall nevertheless be enforced to the maximum extent permitted by law and effective for such period of time, over such geographical area, or for such range of activities as may be determined to be reasonable by a court of competent jurisdiction and the parties hereby consent and agree that the scope of such covenants may be judicially modified, accordingly, in any proceeding brought to enforce such covenants. The Employee agrees that the Employee's services hereunder are of a special, unique, extraordinary and intellectual character and the Employee's position with the Company places the Employee in a position of confidence and trust with the customers, suppliers and employees of the Company. The Employee and the Company agree that, in the course of employment hereunder, the Employee has and will continue to develop a personal relationship with the Company's customers, and a knowledge of these customers' affairs and requirements as well as confidential and proprietary information developed by the Company after the date of this Agreement. The Employee agrees that it is reasonable and necessary for the protection of the goodwill, confidential and proprietary information, and legitimate business interests of the Company that the Employee make the covenants contained herein, that the covenants are a material inducement for the Company to employ or continue to employ the Employee and to enter into this Agreement. For the avoidance of doubt, for purposes of this Section 7, the term "Company" includes Parent and each of its direct and indirect subsidiaries, including the Company.

j. Remedies.

- i. The Employee consents and agrees that if the Employee violates any covenants contained in this Section 7, the Company could sustain irreparable harm and, therefore, in addition to any other remedies which may be available to it, the Company shall be entitled to seek an injunction restraining the Employee from committing or continuing any such violation of this Section 7. Nothing in this Agreement shall be construed as prohibiting the Company or the Employee from pursuing any other remedies including, without limitation, recovery of damages. The Employee acknowledges that Parent and each of its direct and indirect subsidiaries is an express third-party beneficiary of this Agreement and that it may enforce these rights as a third-party beneficiary. These restrictive covenants shall be construed as agreements independent of any other provision in this Agreement, and the existence of any claim or cause of action of the Employee against the Company, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of any restrictive covenant. The Company has fully performed all obligations entitling it to the restrictive covenants, and the restrictive covenants therefore are not executory or otherwise subject to rejection and are enforceable under the Bankruptcy Code. In the event of the breach by the Employee of any of the provisions of this Section 7, the Company shall be entitled, in addition to all other available rights and remedies, to terminate the Employee's employment status hereunder and the provision of any unaccrued benefits and compensation conditioned upon such status. The Company may assign the restrictive covenants set forth in this Section 7 in connection with the acquisition of all or a part of the assets of the Company or its subsidiaries, and any such assignee or successor shall be entitled to enforce the rights and remedies set forth in this Section 8. The Employee acknowledges and agrees that the Restricted Period shall be tolled on a day for day basis for all periods in which the Employee is found to have violated the terms of this Section 7 so that the Company receives the full benefit of the Restricted Period to which the Employee has agreed.
- ii. In addition, and without limitation to the foregoing, except as required by law, if (A) the Company files a civil action against the Employee based on the Employee's alleged breach of the Employee's obligations under Section 7 hereof, and (B) a court of competent jurisdiction issues a judgment that the Employee has breached any of such obligations and has issued injunctive relief, then the Employee shall promptly repay to the Company any such severance payments the Employee previously received pursuant to Section 5(c) in excess of the Employee's Base Salary and Benefits accrued through the date of the Employee's termination, and the Company will have no obligation to pay any of such excess amounts that remain payable by the Company under Section 5(c).

8. Notice. Any notice required or desired to be given under this Agreement shall be in writing and shall be addressed as follows:

If to Company: Fluent, LLC
 300 Vesey Street
 9th Floor
 New York, NY 10282
 Attn: Daniel J. Barsky, General Counsel
 dbarsky@fluentco.com

If to Employee: Ryan Perfit
 1332 Park Place
 Brooklyn, NY 11213
 rperfit@fluentco.com

Notice shall be deemed given on the date it is emailed and deposited in the United States mail, first class postage prepaid and addressed in accordance with the foregoing, or the date otherwise delivered in person, whichever is earlier. The address to which any notice must be sent may be changed by providing written notice in accordance with this Section 8.

9. General Provisions.

a. Amendments. This Agreement contains the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements regarding such subject matter. No agreements or representations, verbal or otherwise, express or implied, with respect to the subject matter of this Agreement have been made by either party which are not set forth expressly in this Agreement. This Agreement may only be altered or amended by mutual written consent of the Company and the Employee.

b. Applicable Law. This Agreement shall be governed in accordance with the laws of the State of New York regardless of the conflict of laws rules or statutes of any jurisdiction.

c. Successors and Assigns. This Agreement will be binding upon the Employee's heirs, executors, administrators or other legal representatives or assigns. This Agreement will not be assignable by the Employee, but shall be assigned by the Company in connection with the sale, lease, license, assignment, merger, consolidation, share exchange, liquidation, transfer, conveyance or other disposition (whether direct or indirect) of all or substantially all of its business and/or assets in one or a series of related transactions (individually and/or collectively, a "Fundamental Transaction"). The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Employment Agreement. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Employment Agreement referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Employment Agreement with the same effect as if such Successor Entity had been named as the Company herein.

d. No Waiver. The failure of any party to this Agreement to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of any party under this Agreement to enforce each and every such provision. No waiver or any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

e. Section Headings, Construction. The headings used in this Agreement are provided for convenience only and shall not affect the construction or interpretation of this Agreement. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require. In no event shall the terms or provisions hereof be construed against any party on the basis that such party or counsel for such party drafted this Agreement or the attachments hereto.

f. Severability. If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

g. Survival. The provisions of Sections 4, 5, 6 and 7 of this Agreement shall survive the termination of this Agreement for any reason.

h. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed to be an original of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

i. Opportunity to Review. The Employee represents that the Employee has been provided with an opportunity to review the terms of the Agreement with legal counsel.

j. Compliance with Code Section 409A. This Agreement is intended, and shall be construed and interpreted, to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and, if necessary, any provision shall be held null and void to the extent such provision (or part thereof) fails to comply with Code Section 409A. For purposes of Code Section 409A, each payment of compensation under this Agreement shall be treated as a separate payment of compensation. Any amounts payable solely on account of an involuntary termination shall be excludible from the requirements of Code Section 409A, either as separation pay or as short-term deferrals to the maximum possible extent. Any reference to the Employee's "termination," "termination of employment" or "termination of this Agreement" shall mean the Employee's "separation from service" as defined in Code Section 409A from the Company and all entities with whom the Company would be treated as a single employer for purposes of Code Section 409A. Nothing herein shall be construed as a guarantee of any particular tax treatment to Employee and the Company shall have no liability to the Employee with respect to any penalties that might be imposed on the Employee by Code Section 409A for any failure of this Agreement or otherwise. In the event that the Employee is a "specified employee" (as described in Code Section 409A), and any payment or benefit payable pursuant to this Agreement constitutes deferred compensation under Code Section 409A, then no such payment or benefit shall be made before the date that is six months after the Employee's "separation from service" (as described in Code Section 409A) (or, if earlier, the date of the Employee's death). Any payment or benefit delayed by reason of the prior sentence shall be paid out or provided in a single lump sum at the on the first regular Company payroll date which occurs immediately following the end of such required delay period in order to catch up to the original payment schedule.

k. Attorney's Fees. In any action or proceeding (including any appeals) brought to enforce any provision of this Agreement, each party shall be responsible for its own attorneys' fees and costs.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

Fluent, LLC

Ryan Perfit

By: _____
Name: Daniel J Barsky, General Counsel
Date:

Date:

EXHIBIT A

1. Effective Date: September 1, 2024
2. Position: Chief Financial Officer, Principal Financial Officer and Principal Accounting Officer.
3. Duties: Lead and oversee the Accounting and Financial functions, in consultation with the Chief Executive Officer, and such other duties and responsibilities that are typically exercised by an individual serving as the chief financial officer at entities of the size and nature of the Company.
4. Location of Employment: Manhattan, New York.
5. Initial Term: Commencing on Effective Date and ending on August 31, 2025.
6. Base Salary: \$376,723 per annum
7. Bonus: Employee will be eligible for a bonus based 50% on achievement of Company AEBITDA goal and 50% based on achievement of Company gross profit goal, payable quarterly within 45 days after the quarter end; at 100% of AEBITDA and Gross Profit goals, bonus is approximately 100% of Base Salary. Employee will also be eligible for AEBITDA Profit Share of 6% for annual AEBITDA in excess of 110% of AEBITDA goal. The Profit Share will be payable 45 days after end of year. The Comp Committee, in consultation with Senior Management, reserves the right make changes to future bonus plans.
8. Initial Equity Grant: Employee will be granted 25,000 Restricted Stock Units (“Sign-on RSUs”) issued under the Incentive Plan with vesting in three equal annual installments starting September 1, 2025. Employee will be granted a stock option with respect to 120,000 shares of Company’s common stock (“Option”) issued under the Incentive Plan with a grant date when the Company’s Compensation Committee approves the grant (“Grant Date”) with an exercise price equal to the closing price of the Company’s common stock on the Grant Date (the “Grant Date Exercise Price”). Half of the Option (“3x Portion”) will vest when the average closing Company stock price is three times the Grant Date Exercise Price for a period of 10 consecutive trading days and half (“5x Portion”) will vest when the average closing Company stock price is five times the Grant Date Exercise Price for 10 consecutive trading days (the day an applicable portion of the Option will vest, “Option Vesting Date”). Option shall expire 10 years after Grant Date. Any portion of the Sign-on RSUs and Option which remains unvested as of the date of Employee’s termination of employment shall become forfeited on such date; provided, in the event there is a termination of employment of Employee which is covered by Section 5(c)(iii) of the Agreement, subject to Employee executing a Release and such Releases becoming irrevocable during the Release Period and Employee continuing to comply with all of Employee’s restrictive covenants during the 12 months period following such termination, (1) any unvested Sign-on RSUs that are scheduled to vest within one year after such termination of employment shall continue to vest during such 12 months period (and all remaining Sign-on RSUs shall be forfeited), (2) any unvested Option shall vest on a termination of employment (the portion of the Option which becomes vested by reason of this clause, “Termination Option”), and (3) the vested portion of the Option and the Termination Option will remain exercisable for a 90 day period following such termination of employment, provided that the Option will expire or be canceled, as applicable, to the extent it would otherwise expire or be canceled if such termination of employment did not occur). Any unvested portion of the Sign-on RSUs and the Option will vest upon the occurrence of a Change in Control, as defined in the Incentive Plan. Both the Option and Sign-on RSUs shall otherwise be governed by the terms of the Plan and applicable award agreement thereof (including with respect expiration of Option in case of termination of employment).
9. Future Equity Grants. During the Term, the Employee may participate in incentive plans of the Company and receive incentive awards thereunder as, and solely to the extent, determined by the Board (in its sole discretion) and under such terms and conditions as determined by the Board (in its sole discretion).

October 30, 2024

VIA EMAIL

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

RE: SLR-Fluent Credit Agreement 2024 Q3 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 (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 November 19, 2024, the deadline for delivery of (i) the Compliance Certificate required by Section 6.04(b)(ii) for the Fiscal Month ended September 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 September 30, 2024. The Lenders and the Administrative Agent are willing to, and by delivery of this letter hereby agree to, extend such deadlines until November 19, 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 Q3 Extension 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 Q3 Extension Letter]

JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of November 1, 2024 (this "Agreement"), to the Credit Agreement referred to below is entered into by and among FLUENT, INC., a Delaware corporation ("Parent"), FLUENT, LLC, a Delaware limited liability company (the "Borrower"), the other guarantors signatory hereto (together with Parent, the "Guarantors"; and the Guarantors collectively with the Borrower, the "Existing Credit Parties"), the Persons listed on Annex 1 hereto (each an "Additional Guarantor" and, collectively, the "Additional Guarantors") and CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

WHEREAS, the Existing Credit Parties, the Lenders party thereto and the Administrative Agent have entered into that certain Credit Agreement, dated as of April 2, 2024 (as amended by that certain First Amendment to Credit Agreement, dated as of May 15, 2024, as amended by that certain Second Amendment to Credit Agreement, dated as of August 19, 2024, as further amended by this Agreement, and as may be further amended, restated, amended and restated, extended, modified, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement"), pursuant to which the Lenders have agreed to provide certain extensions of credit (collectively the "Loans") to the Borrower.

WHEREAS, the Borrower's obligation to repay the Loans and all other Obligations are guaranteed, jointly and severally, by the Guarantors;

WHEREAS, pursuant to Section 6.12(a) of the Credit Agreement, the Additional Guarantors are required to become Guarantors by, among other things, executing and delivering this Agreement to the Administrative Agent; and

WHEREAS, the Additional Guarantors have determined that the execution, delivery and performance of this Agreement directly benefits, and is within the corporate or other organizational purposes and in the best interests of the Additional Guarantors.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. Definitions. Reference is hereby made to the Credit Agreement for a statement of the terms thereof. All terms used in this Agreement which are defined therein and not otherwise defined herein, including in the preamble and recitals, shall have the same meanings herein as set forth therein.

SECTION 2. Joinder of Additional Guarantor.

(a) By its execution of this Agreement, each Additional Guarantor hereby (i) confirms that the representations and warranties contained in Article V of the Credit Agreement are true and correct in all material respects (or, in the event that such representations and warranties are qualified by materiality or material adverse effect or language of similar import, such representations shall be true and correct in all respects) as to such Additional Guarantor as of the effective date of this Agreement, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects on and as of such earlier date (or, in the event that such representations and warranties are qualified by materiality or material adverse effect or language of similar import, such representations shall be true and correct in all respects on and as of such earlier date)), and (ii) agrees that, from and after the effective date of this Agreement, it shall be a party to the Credit Agreement and the other Loan Documents, as applicable, and shall each be bound, as a Guarantor, by all the provisions thereof and shall comply with and be subject to all of the terms, conditions, covenants, agreements and obligations set forth therein and applicable to the Guarantors, including, without limitation, the guaranty of the Obligations made by the Guarantors, jointly and severally with the other Existing Credit Parties, in favor of the Administrative Agent and the Lenders pursuant to Section 2.12(b) of the Credit Agreement. The Additional Guarantors hereby agree that from and after the effective date of this Agreement, each reference to a "Guarantor" or a "Credit Party" and each reference to the "Guarantors" or the "Credit Parties" in any Loan Document shall include the Additional Guarantors. The Additional Guarantors acknowledge that each has received a copy of the Credit Agreement and each other Loan Document and that it has read and understands the terms thereof.

SECTION 3. Effectiveness. This Agreement shall become effective upon receipt by the Administrative Agent of the following, in each case in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts to this Agreement, duly executed by the Borrower, the Guarantors, the Additional Guarantors and the Administrative Agent;

(ii) a Security Agreement Supplement substantially in the form of Exhibit 1 to the Security Agreement (the "Security Agreement Supplement"), duly executed by the Additional Guarantors, and any instruments of assignment or other documents required to be delivered to the Administrative Agent pursuant to the terms thereof;

(iii) a Pledge Agreement Supplement to the Pledge Agreement (a "Pledge Supplement") to which each parent company of the Additional Guarantors that is an Existing Credit Party is a party, in substantially the form of Exhibit 1 thereto, duly executed by such Existing Credit Party or Parties and providing for all Pledged Securities (as defined in the Pledge Agreement) of the Additional Guarantors owned by such Existing Credit Parties to be pledged to the Administrative Agent pursuant to the terms thereof;

(iv) (A) subject to any limitations in the Loan Documents, certificates, if any, representing the issued and outstanding Pledged Securities (as defined in the Pledge Agreement) of the Additional Guarantors and each Subsidiary of the Additional Guarantors required to be delivered under the Loan Documents and (B) all original promissory notes of the Additional Guarantors, if any that are required to be delivered under the Loan Documents, in each case, accompanied by instruments of assignment and transfer in such form as the Administrative Agent may reasonably request;

(v) appropriate financing statements on Form UCC-1 authorized for filing in such office or offices as may be necessary or, in the reasonable opinion of the Administrative Agent, desirable to perfect the security interests purported to be created by the Security Agreement (as supplemented by the Security Agreement Supplement) and any Mortgage; and

(vi) if requested pursuant to Section 6.12(a)(v) of the Credit Agreement, a written opinion of counsel to the Additional Guarantors as to such matters as the Administrative Agent may reasonably request.

SECTION 4. Notices, Etc. All notices and other communications shall be made in accordance with the terms of Section 10.02 of the Credit Agreement.

SECTION 5. General Provisions.

(a) Except as supplemented hereby, the Credit Agreement and each other Loan Document shall continue to be, and shall remain, in full force and effect. Except as supplemented hereby, this Agreement shall not be deemed (i) to be a waiver of, or consent to, or a modification or amendment of, any other term or condition of the Credit Agreement or any other Loan Document or (ii) to prejudice any right or rights which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with the Credit Agreement or the other Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

(b) Without limiting the generality of the foregoing, each Additional Guarantor hereby irrevocably authorizes the Administrative Agent for the benefit of the Secured Parties at any time and from time to time to file in any relevant jurisdiction, and if requested will deliver to the Administrative Agent, any initial financing statements or financing change statements with respect to the Collateral or any part thereof and amendments thereto that (i) indicate the Collateral as all assets of such Additional Guarantor or words of similar effect as being of an equal or lesser scope or with greater detail, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction and (ii) contain the information required by Article 9 of the UCC of each applicable jurisdiction or the analogous legislation of each applicable jurisdiction for the filing of any financing statement or financing change statement, including whether such Additional Guarantor is an organization, the type of organization and, if applicable, any organizational identification number or incorporation number issued to such Additional Guarantor. Each Additional Guarantor agrees to provide such information to the Administrative Agent promptly upon reasonable request.

(c) The Borrower agrees to pay or reimburse the Administrative Agent for all of reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement, including, without limitation, the reasonable and documented out-of-pocket fees and disbursements of one outside counsel, in the manner and to the extent set forth in the Credit Agreement.

(d) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

(e) Section headings in this Agreement are included herein for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(f) In addition to and without limitation of any of the foregoing, this Agreement shall be deemed to be a Loan Document and shall otherwise be subject to all of the terms and conditions contained in Section 10.14 of the Credit Agreement, *mutatis mutandis*.

(g) This Agreement, together with the Credit Agreement and the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and thereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

[Remainder of Page Intentionally Left Blank]

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

BORROWER:

FLUENT, LLC, a Delaware limited liability company

By: _____

Name:

Title:

PARENT:

FLUENT, INC., a Delaware corporation

By: _____

Name:

Title:

[Fluent – Signature Page to Joinder Agreement]

GUARANTORS:

**ADPARLOR, LLC
AMERICAN PRIZE CENTER LLC
BIG PUSH MEDIA LLC
DELIVER TECHNOLOGY LLC
EARN BIG REWARDS, LLC
EARNVIRTUAL, LLC
EASE WINS, LLC
FIND DREAM JOBS, LLC
FLUENT MEDIA LABS, LLC
HVGUS, LLC
HUNT FOR JOBS, LLC
INBOX PAL, LLC
INFLUENTZ, LLC
MAIN SOURCE MEDIA, LLC
PURPOSE APP, LLC
PURPOSE INSURANCE AGENCY, LLC
RETROPOINT, LLC
REWARD ZONE USA LLC
REWARDSFLOW LLC
SAMPLES & SAVINGS, LLC
SEA OF SAVINGS LLC
SEARCH WORKS MEDIA LLC
THE SMART WALLET, LLC
VESEY STUDIOS, LLC,**
each a Delaware limited liability company

By: _____
Name:
Title:

WINOPOLY LLC, a New York limited liability company

By: _____
Name:
Title:

[Fluent – Signature Page to Joinder Agreement]

ADDITIONAL GUARANTORS:

**2 THREADS MEDIA, LLC,
828 COMMUNICATIONS, LLC,
ADFLOW SOLUTIONS, LLC,
OGLP VENTURES, LLC,
POWER HOUR DIGITAL, LLC,
SMALL PUSH MEDIA, LLC,
VICTORY EDGE, LLC,**
each a Delaware limited liability company

By: _____

Name:

Title:

[Fluent – Signature Page to Joinder Agreement]

ADMINISTRATIVE AGENT:

CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS

By: _____

Name:

Title:

[Fluent – Signature Page to Joinder Agreement]

Annex 1

ADDITIONAL GUARANTORS

1.	2 Threads Media, LLC, a Delaware limited liability company
2.	828 Communications, LLC, a Delaware limited liability company
3.	AdFlow Solutions, LLC, a Delaware limited liability company
4.	OGLP Ventures, LLC, a Delaware limited liability company
5.	Power Hour Digital, LLC, a Delaware limited liability company
6.	Small Push Media, LLC, a Delaware limited liability company
7.	Victory Edge, LLC, a Delaware limited liability company

THIRD AMENDMENT TO CREDIT AGREEMENT

This **THIRD AMENDMENT TO CREDIT AGREEMENT**, dated as of November 14, 2024 (this "Amendment"), is entered into by and among the lenders identified on the signature pages hereto (each such lender, together with its successors and permitted assigns, is referred to hereinafter as a "Lender"), **CRYSTAL FINANCIAL LLC D/B/A SLR CREDIT SOLUTIONS**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent"), **FLUENT, LLC**, a Delaware limited liability company (the "Borrower"), **FLUENT, INC.**, a Delaware corporation ("Parent"), and each of the Guarantors (as defined in the Credit Agreement referred to below) identified on the signature pages hereto.

WHEREAS, the Borrower, the other Credit Parties (as defined in the Credit Agreement referred to below), the Lenders and the Administrative Agent entered into that certain Credit Agreement, dated as of April 2, 2024 (as amended by that certain First Amendment to Credit Agreement, dated as of May 15, 2024 and that certain Second Amendment to Credit Agreement, dated as of August 19, 2024, the "Existing Credit Agreement"), and as amended by this Amendment and as may be further amended, restated, amended and restated, extended, modified, supplemented or otherwise modified and in effect from time to time, the "Credit Agreement";

WHEREAS, the Borrower has requested that the Lenders and the Administrative Agent amend (i) the covenants set forth in Section 7.12(b) of the Existing Credit Agreement (the "Financial Covenant Amendments") and (ii) certain other provisions of the Credit Agreement; and

WHEREAS, the Lenders and the Administrative Agent are willing to agree to (i) the Financial Covenant Amendments and (ii) amend certain other provisions of the Credit Agreement, subject to all of the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows

1. **Definitions.** Capitalized terms used and not defined in this Amendment are used herein as defined in the Credit Agreement as amended hereby.

2. **Amendments to Credit Agreement.**

(a) **Composite Credit Agreement.** The Credit Agreement is hereby amended to delete the bold, stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-under lined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Annex A hereto.

(b) **Exhibits to Credit Agreement.**

(i) Exhibit A to the Existing Credit Agreement is hereby deleted in its entirety and replaced by a new Exhibit A (*Form of Borrowing Request/Reserved Cash Release Notice*) in the form attached hereto as Annex B.

(ii) Exhibit C to the Existing Credit Agreement is hereby deleted in its entirety and replaced by a new Exhibit C (*Form of Compliance Certificate*) in the form attached hereto as Annex C.

(iii) Exhibit I to the Existing Credit Agreement is hereby deleted in its entirety and replaced by a new Exhibit I (*Subordinated Indebtedness Payment Conditions*) in the form attached hereto as Annex D.

3. Representations, Warranties, Covenants and Acknowledgments.

(a) Each Credit Party represents and warrants to the Administrative Agent and the Lenders that, upon and after giving effect to this Amendment, (i) each of the representations and warranties made by such Credit Party under the Loan Documents are true and correct in all material respects (but without duplication of any materiality qualifications) on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (but without duplication of any materiality qualifications) as of such earlier date, (ii) it has the power and authority and is duly authorized to enter into and to deliver this Amendment and to perform all of its obligations under this Amendment, (iii) this Amendment has been duly executed and delivered by each Credit Party that is party hereto, (iv) this Amendment, the Credit Agreement and each of the other Loan Documents to which it is a party is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally and (v) the execution, delivery and performance of this Amendment in accordance with its terms does not and will not (A) violate any provision of federal, state, provincial, foreign or local law or regulation applicable to any Credit Party or its Subsidiaries or any order, judgment, or decree of any court or other Governmental Authority binding on any Credit Party or its Subsidiaries, (B) violate the Governing Documents of any Credit Party or its Subsidiaries, (C) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Agreement of any Credit Party or its Subsidiaries, (D) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Credit Party, other than Permitted Liens, or (E) require any approval of any board of directors, member, manager, partner (or similar governing body) or any holder of equity interests of a Credit Party or any approval or consent of any Person under any material agreement of any Credit Party, other than consents or approvals that have been obtained and that are still in force and effect, except in each case referred to in clauses (A), (C), (D) and (E), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Each Credit Party represents and warrants to the Administrative Agent and the Lenders that no Default or Event of Default shall exist after giving effect to this Amendment, or would result from giving effect to this Amendment.

(c) Each Credit Party does hereby acknowledge and agree that, as of the date hereof, no known right of offset, defense, counterclaim, claim, causes of action or objection exists in favor of any Credit Party against the Administrative Agent or any Lender arising out of or with respect to (i) the Obligations, this Amendment, the Credit Agreement or any of the other Loan Documents, (ii) any other documents evidencing, securing or in any way relating to the foregoing, or (iii) the administration or funding of the Loans or the Obligations.

(d) All representations and warranties made in this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Administrative Agent or the Lenders shall affect such representations or warranties or the right of the Administrative Agent and the Lenders to rely upon them.

4. **Amendment Fee.** In consideration of the agreements set forth herein, the Borrower hereby agrees to pay to the Administrative Agent for the ratable benefit of the Lenders, an amendment fee in the amount of \$250,000 (the “Third Amendment Fee”), which fee is non-refundable when paid and is fully-earned as of the date of this Amendment, of which \$125,000 is due and payable on November 14, 2024 and \$125,000 is due and payable no later than the first Third Amendment Capital Raise Date (as defined in the Credit Agreement).

5. **Closing; Conditions Precedent.**

(a) Each party hereto agrees that the Financial Covenant Amendments shall be effective on September 30, 2024 so long as the Third Amendment Effective Date has occurred.

(b) Each party hereto agrees that this Amendment (other than the Financial Covenant Amendments) shall be effective on the date on which each of the following conditions precedent has been fulfilled to the reasonable satisfaction of the Administrative Agent (such date being the “Third Amendment Effective Date”):

(i) The Administrative Agent shall have received counterparts to this Amendment duly executed by the Credit Parties and the Lenders.

(ii) The Administrative Agent shall have received the portion of the Third Amendment Fee that is due and payable on the date hereof.

(iii) Any consents or approvals required in connection with the effectiveness of this Amendment and the other Loan Documents shall have been obtained and shall be in full force and effect.

(iv) The representations and warranties contained in Section 4 shall be true and correct as of the Third Amendment Effective Date.

6. **Fees and Expenses.** Without limiting the generality of Section 10.04 of the Credit Agreement, the Borrower agrees to pay on demand, without duplication, all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent in connection with the preparation, execution, delivery and performance of this Amendment and all other documents, instruments and agreements entered into in connection herewith and in connection with any other transactions contemplated hereby, including, without limitation, the reasonable fees, charges and disbursements of legal counsel to the Administrative Agent.

7. **Release.** As a material inducement to the Administrative Agent and the Lenders entering into this Amendment each Credit Party, for itself and its respective successors and assigns, (a) does hereby remise, release, waive, relinquish, acquit, satisfy and forever discharge the Administrative Agent and each Lender and all of the respective past, present and future officers, directors, employees, agents, attorneys, representatives, participants, heirs, Affiliates, successors and assigns of the Administrative Agent and each Lender (collectively the “Discharged Parties” and each a “Discharged Party”), from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, suits, claims, counterclaims, demands, defenses, setoffs, objections and causes of action of any nature whatsoever, whether at law or in equity, either now accrued or hereafter maturing and whether known or unknown, including, but not limited to, any and all claims which may be based on allegations of breach of contract, failure to lend, fraud, promissory estoppel, libel, slander, usury, negligence, misrepresentation, breach of fiduciary duty, bad faith, lender malpractice, undue influence, duress, tortious interference with contractual relations, interference with management, or misuse of control which such Credit Party now has or hereafter can, shall or may have by reason of any matter, cause, thing or event occurring on or prior the date of this Agreement, in each case, arising out of, in connection with or relating to (i) the Obligations, including, but not limited to, the administration or funding thereof, (ii) any of the Loan Documents or the indebtedness evidenced and secured thereby, and (iii) any other agreement or transaction between any Credit Party and any Discharged Party relating to or in connection with the Loan Documents or the transactions contemplated therein; and (b) does hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any Discharged Party, by reason of or in connection with any of the foregoing matters, claims or causes of action, provided, however, that the foregoing release and covenant not to sue shall not apply to any claims first arising after the date of this Amendment with respect to acts, occurrences or events after the date of this Amendment.

8. Additional Acknowledgement. Each Credit Party expressly acknowledges and agrees that the waivers, estoppels and releases in favor of the Administrative Agent and the Lenders contained in this Amendment shall not be construed as an admission of any wrongdoing, liability or culpability on the part of the Administrative Agent or any Lender, or as an admission by the Administrative Agent or any Lender of the existence of any claims by any Credit Party against the Administrative Agent or any Lender. Each Credit Party further acknowledges and agrees that, to the extent that any such claims exist, they are of a speculative nature so as to be incapable of objective valuation and that, to the extent that any such claims may exist and may have value, such value would constitute primarily “nuisance” value or “leverage” value in adversarial proceedings between any Credit Party and the Administrative Agent or any Lender. In any event, each Credit Party acknowledges and agrees that the value to such Credit Party of the covenants and agreements on the part of the Administrative Agent and each Lender contained in this Amendment substantially and materially exceeds any and all value of any kind or nature whatsoever of any claims or other liabilities waived or released by such Credit Party hereunder.

9. Conflict; Amendments; Covenants. In the event of any conflict between the provisions of the Loan Documents and this Amendment, the provisions of this Amendment shall govern, it being the intent of the parties hereto that this Amendment shall constitute an amendment and modification of the Credit Agreement.

10. No Waiver. Nothing contained in this Amendment shall extend to or affect in any way any of the rights or obligations of the Borrower, the other Credit Parties and their respective affiliates and/or subsidiaries, as applicable, or the Administrative Agent’s and the Lenders’ obligations and rights and remedies under the Loan Documents and applicable law. Except as expressly set forth herein, all of the terms and provisions of the Credit Agreement and the other Loan Documents shall remain in full force and effect. This Amendment shall be binding upon the Borrower, the other Credit Parties, any successors or assigns thereof, and any other guarantor or co-obligor of any of the Obligations.

11. Ratification. Each of the Credit Parties hereby ratifies and confirms all of its Obligations to the Administrative Agent and the Lenders and all of the terms and conditions of each of the Loan Documents to which it is a party, and each of the Credit Parties acknowledges and agrees that each of the Loan Documents (including any schedules thereto and exhibits thereto), as amended by this Amendment, remains in full force and effect. Each of the Credit Parties hereby acknowledges, confirms and agrees that the Loan Documents, and any and all Collateral previously pledged to the Administrative Agent, for the benefit of the Secured Parties, pursuant thereto, shall continue to secure all Obligations of the Credit Parties at any time and from time to time outstanding under the Credit Agreement and the Loan Documents, as such Obligations have been, and may hereafter be, amended, restated, supplemented, increased or otherwise modified from time to time. Each Credit Party agrees that this Amendment is not intended to be, and is not, a novation of any of the Loan Documents or any of the Obligations thereunder.

12. Miscellaneous.

(a) Each Credit Party agrees to take such further action as the Administrative Agent shall reasonably request in connection herewith to evidence the agreements herein contained.

(b) This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment.

(c) This Amendment shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

(d) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCLUDING THE LAWS APPLICABLE TO CONFLICTS OR CHOICE OF LAW (OTHER THAN THE NEW YORK GENERAL OBLIGATIONS LAW §5-1401 and §5-1402)).

(e) This Amendment may not be modified, altered or amended except by agreement in writing signed by all of the parties hereto. Each Credit Party acknowledges that it has consulted with counsel and with such other expert advisors as it deemed necessary in connection with the negotiation, execution and delivery of this Amendment. This Amendment shall be construed without regard to any presumption or rule requiring that it be construed against the party causing this Amendment or any part hereof to be drafted. Nothing in this Amendment shall be construed to alter the debtor-creditor relationship between the Borrower, on the one hand, and the Administrative Agent and the Lenders, on the other. Wherever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provisions of this Amendment shall be prohibited by or rendered invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Amendment. This Amendment is not intended as, nor shall it be construed to create, a partnership or joint venture relationship between or among any of the parties.

(f) This Amendment shall be deemed a Loan Document, and all obligations included in this Amendment (including, without limitation, all obligations for the payment of principal, interest, fees and other amounts and expenses) shall constitute Obligations under the Loan Documents and shall be secured by the Collateral as security for the Obligations. This Amendment 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.

(g) This Amendment shall in all respects be subject to the confidentiality provisions of Section 10.07 of the Credit Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective duly authorized representatives as of the date first above written, and the Guarantors (i) join in the execution and delivery of this Amendment and give their consent to this Amendment, and to the execution, delivery and performance thereof by the Borrower, (ii) agree to be bound by the terms of this Amendment, and (iii) waive any right (to notice or otherwise) owed, or defense otherwise available, to such Guarantor in respect of this Amendment or the execution, delivery or performance thereof by the Borrower.

BORROWER:

FLUENT, LLC, a Delaware limited liability company

By: _____
Name:
Title:

PARENT:

FLUENT, INC., a Delaware corporation

By: _____
Name:
Title:

[Fluent – Signature Page to Third Amendment to Credit Agreement]

GUARANTORS:

**2 THREADS MEDIA, LLC,
828 COMMUNICATIONS, LLC,
ADFLOW SOLUTIONS, LLC,
ADPARLOR, LLC
AMERICAN PRIZE CENTER LLC
BIG PUSH MEDIA LLC
DELIVER TECHNOLOGY LLC
EARN BIG REWARDS, LLC
EARNVIRTUAL, LLC
EASE WINS, LLC
FIND DREAM JOBS, LLC
FLUENT MEDIA LABS, LLC
HVGUS, LLC
HUNT FOR JOBS, LLC
INBOX PAL, LLC
INFLUENTZ, LLC
MAIN SOURCE MEDIA, LLC
OGLP VENTURES, LLC,
POWER HOUR DIGITAL, LLC,
PURPOSE APP, LLC
PURPOSE INSURANCE AGENCY, LLC
RETROPOINT, LLC
REWARD ZONE USA LLC
REWARDSFLOW LLC
SAMPLES & SAVINGS, LLC
SEA OF SAVINGS LLC
SEARCH WORKS MEDIA LLC
SMALL PUSH MEDIA, LLC,
THE SMART WALLET, LLC
VESEY STUDIOS, LLC,
VICTORY EDGE, LLC,**
each a Delaware limited liability company

By: _____
Name:
Title:

WINOPOLY LLC, a New York limited liability
company

By: _____
Name:
Title:

ADMINISTRATIVE AGENT:

**CRYSTAL FINANCIAL LLC D/B/A SLR
CREDIT SOLUTIONS**

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

[Fluent – Signature Page to Third Amendment to Credit Agreement]

LENDER:

CRYSTAL FINANCIAL SPV LLC, as a Lender

By: _____

Name: Rebecca Tarby

Title: Senior Managing Director

[Fluent – Signature Page to Third Amendment to Credit Agreement]

ANNEX A

Composite Credit Agreement

[see attached]

ANNEX B

Exhibit A to Existing Credit Agreement
(Borrowing Request/Reserved Cash Release Notice)

[see attached]

ANNEX C

Exhibit C to Existing Credit Agreement
(Compliance Certificate)

[see attached]

ANNEX D

Exhibit I to Existing Credit Agreement
(Subordinated Indebtedness Payment Conditions)

[see attached]

CREDIT AGREEMENT

Dated as of April 2, 2024,
as amended by the First Amendment, dated as of May 15, 2024
as amended by the Second Amendment, dated as of August 19, 2024
as amended by the Third Amendment, dated as of November 14, 2024

by and among

FLUENT, LLC,
as the Borrower

The Other Credit Parties Party Hereto,

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

and

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

with

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

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CREDIT AGREEMENT

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

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

RECITALS:

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

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

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

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

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

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

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

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

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

“Act” has the meaning specified in Section 10.15.

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

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

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

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

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

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

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

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

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

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

“Agreement” has the meaning specified in the introductory paragraph hereto.

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

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

“Applicable Rate” means,

(a) on the Closing Date and through the day immediately preceding the Second Amendment Effective Date, the percentage per annum equal to 5.25%.

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

<u>Level</u>	<u>Consolidated Fixed Charge Coverage Ratio</u>	<u>Applicable Rate</u>
1	Less than 1.10:1.00	5.75%
2	Greater than or equal to 1.10:1.00	5.00%

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

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

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

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

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

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

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

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

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

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

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

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

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

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Breakage Costs” has the meaning specified in Section 3.04.

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

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

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

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

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

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

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

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

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

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

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

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

“CERCLA” has the meaning specified in the definition of “Environmental Laws”.

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

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

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

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

“Closing Date” means April 2, 2024.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) any provision for federal, state, local or foreign taxes based on income or profits or capital gains;
 - (ii) Consolidated Interest Expense;
 - (iii) depreciation and amortization expense;
 - (iv) (A) transaction costs in connection with the closing of the Loan Documents in an aggregate amount not to exceed \$2,600,000, ~~and~~ (B) transaction fees and expenses due and payable to a single investment banking firm or investment advisor retained by the Credit Parties in connection with the Third Amendment Capital Raise, and (C) transaction costs in connection with the closing of consents, amendments, and other modifications to the Loan Documents; plus
 - (v) non-cash charges, losses or expenses (excluding reserves for future cash charges);
- and minus
- (c) without duplication, to the extent included in the calculation of Consolidated Net Income of the Credit Parties for such period in accordance with GAAP, non-cash gains or income and non-cash charges previously added back to Consolidated Net Income in determining Consolidated EBITDA to the extent such non-cash charges have become cash charges during such period.

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

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

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

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

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

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

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

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

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

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

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

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

“Daily Cash Sweep Repayment Amount” means for any day, with respect to repayments of the Revolving Credit Loans pursuant to Section 2.03(h), the aggregate principal amount of the Revolving Credit Loans repaid on such date.

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

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

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

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

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

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

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

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

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

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

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

“Early Termination Premium Trigger Event” means:

- (a) Except for any mandatory prepayment pursuant to Section 2.03(g) or Section 2.03(h), any prepayment by any Credit Party of all, or any part, of the principal balance of any Term Loan for any reason (including, but not limited to, any optional prepayment or mandatory prepayment, and any refinancing thereof), any full or partial termination by the Borrower of the Revolving Credit Commitments, and whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement or any institution of any Insolvency Proceeding;

(b) the acceleration of the Obligations for any reason, including, but not limited to, acceleration in accordance with Section 8.02, including as a result of the commencement or any institution of any Insolvency Proceeding;

(c) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to the Administrative Agent, for the account of the Lenders in full or partial satisfaction of the Obligations; or

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

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

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

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

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

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

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

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

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

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

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

(f) Accounts that are not payable in Dollars,

(g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or (ii) is not organized under the laws of the United States, any state thereof or the District of Columbia,

(h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which a Credit Party has complied with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States or any other Governmental Authority (other than Accounts with respect to which such Credit Party has complied with any applicable state assignment of claims act),

(i) Accounts with respect to which the Account Debtor is a creditor of a Credit Party, or with respect to which the Account Debtor has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose Eligible Domestic Accounts owing to a Credit Party exceed (x) twenty percent (20%) with respect to any such Account Debtor who has an Investment Grade Rating, (y) fifteen percent (15%) with respect to Moon Active Ltd. and its Affiliates and (z) ten percent (10%) for all other Account Debtors (such percentage, as applied to a particular Account Debtor, being subject to reduction by the Administrative Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by the Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Credit Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, the Administrative Agent in its Permitted Discretion determines to be doubtful, including by reason of the Account Debtor's financial condition,

(m) (i) any Account with respect to which a Credit Party does not have good and marketable title and the right to grant a Lien on, or pledge, assign and deliver, such Account to the Administrative Agent (other than to the extent any prohibition would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, or 9-409 of the UCC) free from all Liens or claims whatsoever, or (ii) Accounts that are not subject to a valid and perfected first priority the Administrative Agent's Lien,

(n) Accounts with respect to which the services giving rise to such Account have not been fully earned by performance and/or not billed to the Account Debtor as evidenced by a "final" reconciled invoice which has been delivered to the applicable Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by a Credit Party of the subject contract for goods or services, or (ii) that represent credit card sales or Credit Card Receivables, or

(q) Accounts owned by a target acquired in connection with a Permitted Acquisition or permitted Investment, or Accounts owned by a Person that is joined to this Agreement as a Credit Party pursuant to the provisions of this Agreement, until the completion of a field examination with respect to such Accounts, in each case, satisfactory to the Administrative Agent in its Permitted Discretion.

"Eligible Domestic Investment Grade Accounts" means Eligible Domestic Accounts owing by an Account Debtor who has an Investment Grade Rating.

"Eligible Domestic Non-Investment Grade Accounts" means Eligible Domestic Accounts which are not Eligible Domestic Investment Grade Accounts.

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

- (a) Accounts that the Account Debtor has failed to pay within the earlier of (i) ninety (90) days of original invoice date or (ii) sixty (60) days of due date,
- (b) Accounts owed by an Account Debtor (or its Affiliates) where fifty percent (50%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,
- (c) Accounts with selling terms of more than sixty (60) days,
- (d) Accounts with respect to which the Account Debtor is an Affiliate of a Credit Party or an employee or agent of a Credit Party or any Affiliate of a Credit Party,
- (e) (i) Accounts that are not evidenced by an invoice which has been delivered to the applicable Account Debtor or (ii) any Account for which the documents and instruments (including, without limitation, any contract evidencing such Account, or the origination thereof) (w) are not subject to a contract governed by the Laws of a state of the United States (other than Accounts of Account Debtors located in a province of Canada (or in other jurisdictions as may be determined by the Administrative Agent in its Permitted Discretion), whose contract will meet the requirements of this clause (w) if governed by the Laws of a province of Canada or the Laws of a state of the United States), unless the Administrative Agent agrees otherwise in writing in its sole discretion (provided that the Administrative Agent agrees that Accounts owed by Account Debtors set forth on Schedule 1.01A(ii) shall not be excluded as a result of this clause (w) but for the avoidance of doubt will continue to be subject to the other eligibility criteria set forth in this Agreement), (x) do not comply in all material respects with all applicable Laws, (y) cannot be enforced in accordance with their terms, (z) for which the cancellation or rescission periods related thereto (if applicable) have not expired, or (iii) any Account that is not in full force and effect or does not represent a legal, valid and binding obligation of the Account Debtor,
- (f) Accounts that are not payable in Dollars and Accounts the payment instructions for which do not require the Account Debtor to make payment to a deposit account domiciled in the United States,
- (g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in, and is not organized under the laws of, Canada, the United Kingdom, Ireland, Germany, Austria, the Netherlands, France, Spain, Israel, Singapore or Australia or any other jurisdiction in which the Borrower fails to comply with any requirements set forth in the Security Agreement as determined by the Administrative Agent in its Permitted Discretion; provided that, following the date that is thirty (30) days after the Closing Date (or such longer period as the Administrative Agent may reasonably agree in writing), any such Accounts with respect to which the Account Debtor either maintains its chief executive office in, or is organized under the laws of, Germany, Austria, France, Spain, Israel or Singapore shall be covered by credit insurance in form, substance and amount, and by an insurer, reasonably satisfactory to the Administrative Agent, or (ii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, in each case unless (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to the Administrative Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Administrative Agent and, if requested by Administrative Agent, is directly drawable by Administrative Agent or (B) such Account is otherwise reasonably acceptable in all respects to the Administrative Agent (subject to such lending formula with respect thereto as the Administrative Agent may reasonably determine),
- (h) Accounts with respect to which the Account Debtor is any Governmental Authority,

(i) Accounts with respect to which the Account Debtor is a creditor of a Credit Party, or as to which the Account Debtor has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts with respect to an Account Debtor whose Eligible Foreign Accounts owing to a Credit Party exceed (x) fifteen percent (15%) with respect to Moon Active Ltd. and its Affiliates and (y) ten percent (10%) for all other Account Debtors (such percentage, as applied to a particular Account Debtor, being subject to reduction by the Administrative Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by the Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Credit Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, the Administrative Agent in its Permitted Discretion determines to be doubtful, including by reason of the Account Debtor's financial condition,

(m) (i) any Account with respect to which a Credit Party does not have good and marketable title and the right to grant a Lien on, or pledge, assign and deliver, such Account to the Administrative Agent (other than to the extent any prohibition would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, or 9-409 of the UCC or pursuant to any similar provisions of any foreign laws) free from all Liens or claims whatsoever, or (ii) Accounts that are not subject to a valid and perfected first priority the Administrative Agent's Lien,

(n) Accounts with respect to which the services giving rise to such Account have not been fully earned by performance and/or not billed to the Account Debtor as evidence by a "final" reconciled invoice which has been delivered to the applicable Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the Credit Parties of the subject contract for goods or services, or (ii) that represent credit card sales or Credit Card Receivables, or

(q) Accounts owned by a target acquired in connection with a Permitted Acquisition or permitted Investment, or Accounts owned by a Person that is joined to this Agreement as a Credit Party pursuant to the provisions of this Agreement, until the completion of a field examination with respect to such Accounts, in each case, satisfactory to the Administrative Agent in its Permitted Discretion.

"Eligible Unbilled Domestic Accounts" means all Accounts with respect to which the invoice and other necessary billing documentation have not been submitted to the applicable Account Debtor in connection with a completed (or contracted) sale of goods or rendition of services, but which otherwise satisfy the criteria for "Eligible Domestic Accounts" (as set forth in the definition thereof), until the earlier of (a) such Account has converted into a billed Account or (b) the thirtieth (30th) day of the subsequent month following the completion (or contracting) of the sale of goods or rendition of services (for the avoidance of doubt, and by way of an example only, if such Eligible Unbilled Domestic Accounts were earned and accrued in the month of March, with regards to this clause (b) they would remain eligible until the 30th day of April), and so long as (i) no additional goods need be provided to or further services need be performed for the applicable Account Debtor by the Credit Party as a condition to such Account Debtor's obligation to pay such Credit Party, (ii) such Account is verifiable by the Administrative Agent, and (iii) such Account was not previously an Eligible Unbilled Domestic Account that had ceased to be an Eligible Unbilled Domestic Account.

“Eligible Unbilled Foreign Accounts” means all Accounts with respect to which the invoice and other necessary billing documentation have not been submitted to the applicable Account Debtor in connection with a completed (or contracted) sale of goods or rendition of services, but which otherwise satisfy the criteria for “Eligible Foreign Accounts” (as set forth in the definition thereof), until the earlier of (a) such Account has converted into a billed Account or (b) the thirtieth (30th) day of the subsequent month following the completion (or contracting) of the sale of goods or rendition of services (for the avoidance of doubt, and by way of an example only, if such Eligible Unbilled Foreign Accounts were earned and accrued in the month of March, with regards to this clause (b) they would remain eligible until the 30th day of April), and so long as (i) no additional goods need be provided to or further services need be performed for the applicable Account Debtor by the Credit Party as a condition to such Account Debtor’s obligation to pay such Credit Party, (ii) such Account is verifiable by the Administrative Agent, and (iii) such Account was not previously an Eligible Unbilled Foreign Account that had ceased to be an Eligible Unbilled Foreign Account.

“Enhanced Collateral Reporting Period” means a period commencing on the date (a) (i) the Consolidated Fixed Charge Coverage Ratio shall have been less than 1.10:1.00 (as determined based on the immediately preceding Fiscal Month for which a Compliance Certificate was required to have been delivered to the Administrative Agent) and (ii) Excess Availability shall have been less than the greater of (x) 17.5% of the Line Cap or (y) \$7,500,000 (the “Enhanced Collateral Reporting Start Date”) and (b) continuing until the date (i) the Consolidated Fixed Charge Coverage Ratio shall have been equal to or greater than 1.10:1.00 (as determined based on the immediately preceding Fiscal Month for which a Compliance Certificate was required to have been delivered to the Administrative Agent) and (ii) Excess Availability shall have been equal to or greater than the greater of (x) 17.5% of the Line Cap or (y) \$7,500,000, in the case of this clause (ii), for at least five consecutive weeks after the Enhanced Collateral Reporting Start Date; provided, that an Enhanced Collateral Reporting Period shall be deemed to be in effect immediately upon the occurrence and during the continuance of any Specified Event of Default.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any Hazardous Materials into the environment, including those related to discharges to waste or public systems and including without limitation, those arising under the Resource Conservation and Recovery Act (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (“CERCLA”) and the Superfund Amendments and Reauthorization Act of 1986 (“SARA”).

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of a Credit Party, any other Credit Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any, approval, identification number, license or other authorization required under any Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any Credit Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Credit Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Credit Party or any ERISA Affiliate.

“Erroneous Payment” has the meaning assigned to such term in Section 10.19.

“Erroneous Payment Return Deficiency” has the meaning assigned to such term in Section 10.19.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Accounts” means any deposit account, securities account or commodities account (a) that is used exclusively and for the sole purpose of making payroll and withholding tax payments related thereto and other employee wage and benefits payments and accrued and unpaid employee compensation payments (including salaries, wages, benefits and expense reimbursements, 401(k) and other retirement plans and employee benefits, including rabbi trusts for deferred compensation and health care benefits), (b) that is used for the sole purpose of paying taxes, including sales taxes, (c) that no less frequently than on each Business Day automatically transfer all amounts contained therein to a deposit account subject to an Agency Account Agreement, (d) that is the Well Fargo Bank, N.A. account of FM Canada whose account number has been disclosed to the Administrative Agent in writing prior to the Closing Date, (e) that contains cash or Cash Equivalents to secure letter of credit reimbursement obligations to the extent such letters of credit are permitted under Section 7.02(f) and prohibit the granting of a Lien; provided that all cash or Cash Equivalents remaining in such account after the expiry or draw of such letter of credit shall be transferred to a deposit account subject to an Agency Account Agreement (f) that has an average daily balance for any Fiscal Month of less than (i) \$25,000 for each such account at any time and (ii) \$100,000 at any time in the aggregate for all such accounts under this clause (e).

“Excluded Assets” has the meaning assigned to such term in the Security Agreement.

“Excluded Subsidiary” means (a) FM Canada, so long as FM Canada does not account for more than 5.00% of the Consolidated total assets of the Credit Parties or more than 5.00% of the Consolidated total revenues of the Credit Parties based on the most recently available financial statements; provided that, if FM Canada accounts for more than 5.00% of the Consolidated total assets of the Credit Parties or more than 5.00% of the Consolidated total revenues of the Credit Parties based on the most recently available financial statements, FM Canada shall cease to be an Excluded Subsidiary and shall comply with Sections 6.14 and 6.16 within the time periods set forth therein, (b) any Subsidiary to the extent the Administrative Agent and the Borrower mutually determine the cost and/or burden of obtaining a Guarantee from such Subsidiary outweigh the benefit to the Lenders and (c) until the thirtieth (30th) day following the Closing Date, the True North Loyalty Entities, provided that if the True North Loyalty Sale has not occurred by such date (unless such date shall be extended in writing by the Administrative Agent in its reasonable discretion), each of the True North Loyalty Entities shall cease to be an Excluded Subsidiary and shall immediately comply with Sections 6.14 and 6.16.

“Excess Availability” means, as of any date of determination, an amount equal to the lesser of (a) the amount of the Revolving Credit Commitments *less* the Total Revolving Credit Outstandings and (b) the Borrowing Base *less* Total Outstandings.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, excise Taxes or similar Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender or any other Recipient of a payment hereunder, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient on the date such Recipient becomes a party to this Agreement or of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by any Credit Party under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Extraordinary Receipts” means any cash received by or paid to any Credit Party not in the ordinary course of business (and not consisting of Net Cash Proceeds received as a result of any Casualty Event, asset disposition or so long as no Specified Event of Default shall have occurred and be continuing, insurance proceeds received by any Credit Party as an expense reimbursement), including tax refunds, pension plan reversions, proceeds of insurance, eminent domain or condemnation awards and similar proceedings (and payments in lieu thereof), indemnity payments (including, without limitation, in connection with any Acquisition) and any purchase price adjustments (including, without limitation, in connection with any Acquisition), in each case, except to the extent that such amounts (x) constitute reimbursement or compensation for amounts previously paid by Parent or any of its Subsidiaries to a third party that is not an Affiliate in respect of any such event or (y) so long as no Specified Event of Default shall have occurred and be continuing, are payable to a Person that is not an Affiliate of the Parent or any of its Subsidiaries.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“FM Canada” means Fluent Media Canada, Inc., a British Columbia corporation.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one one-hundredth (1/100) of one percent (1%)) charged to major financial institutions reasonably acceptable to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Financial Advisor” means a financial advisor reasonably acceptable to the Administrative Agent.

“Financial Advisor Engagement Letter” means that certain engagement letter, dated as of the First Amendment Effective Date, by and between Borrower and the Financial Advisor (as may be amended, restated, supplemented or otherwise modified from time to time as permitted by this Agreement).

“Financial Officer” means, with respect to any Person, its chief financial officer, treasurer, controller or assistant controller or other officer reasonably acceptable to the Administrative Agent.

“First Amendment” means that certain First Amendment to Credit Agreement, dated as of the First Amendment Effective Date, by and among the Credit Parties, the Lenders party thereto and the Administrative Agent.

“First Amendment Effective Date” means May 15, 2024.

“First Amendment Equity Raise” shall mean one or more Investments in cash in exchange for Capital Stock of the Borrower and the contribution of such Net Cash Proceeds to the Borrower occurring on or prior to the First Amendment Equity Raise Deadline, which, for the avoidance of doubt, shall not be subject to the mandatory repayment requirements set forth in Section 2.03(e); provided that no Default or Event of Default shall have occurred or be existing on a First Amendment Equity Raise Date.

“First Amendment Equity Raise Date” means a date that a First Amendment Equity Raise occurs, which shall be on or prior to the First Amendment Equity Raise Deadline.

“First Amendment Equity Raise Deadline” means May 20, 2024, or such later date as the Administrative Agent reasonably agrees to in writing.

“Fiscal Month” means any fiscal month of any Fiscal Year, which month shall generally end on the last day of each calendar month in accordance with the fiscal accounting calendar of the Parent and its Subsidiaries.

“Fiscal Quarter” means each period of three Fiscal Months, commencing on the first day of a Fiscal Year.

“Fiscal Year” means the fiscal year of the Parent and its Subsidiaries for accounting and tax purposes, ending on December 31st.

“Foreign Lender” means any Lender that is organized under the Laws of a jurisdiction other than that in which a Credit Party is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Plan” means any employee benefit plan or arrangement (a) maintained or contributed to by a Credit Party or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of a Credit Party or Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governing Documents” means, with respect to any Person, its certificate or articles of incorporation, certificate of change of name (if any), certificate of formation, or, as the case may be, certificate of limited partnership, its by-laws, memorandum and articles of association, operating agreement or, as the case may be, partnership agreement or other constitutive documents and all shareholder agreements, voting trusts and similar arrangements applicable to any of its Capital Stock.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, municipal or provincial, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Granting Lender” has the meaning specified in Section 10.06(g).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness payable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means the Borrower, each other Person party to the Guaranty as a guarantor thereunder and each other Person, if any, that executes a guaranty or other similar agreement in favor of the Administrative Agent in connection with the transactions contemplated by this Agreement and the other Loan Documents; provided that no Excluded Subsidiary shall be a Guarantor. As of the Closing Date, in addition to Borrower, the Guarantors are set forth in Schedule A to the Closing Date Perfection Certificate.

“Guaranty” means as the context may require that certain (a) Guaranty dated as of the Closing Date, entered into by the Guarantors and the Administrative Agent and/or (b) any other guarantee granted by a Credit Party as required by Section 6.12 which shall be in form and substance reasonably satisfactory to the Administrative Agent

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services, including, without limitation, purchase price adjustments, earn out obligations, and similar obligations, in each case, that are recognized as a liability on the balance sheet of such Person in accordance with GAAP;
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness;
- (g) all Disqualified Stock or obligations to purchase, redeem, retire or defease Disqualified Stock; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

Notwithstanding the foregoing, in no event shall the following constitute Indebtedness: (i) deferred revenues, liabilities associated with customer prepayments and deposits (including cash that is received from clients of AdParlor, LLC for media reimbursement and owing to third party media suppliers), trade payables and accrued expenses incurred in accordance with customary practices and other accrued obligations that constitute transfer pricing and accruals for payroll and other operating expenses accrued in the ordinary course of business, in each case incurred in the ordinary course of business, (ii) operating leases, (iii) customary obligations under employment agreements and deferred compensation or (iv) deferred tax liabilities.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person or unless such Person expressly does not have liability for such obligations of a joint venture or partnership. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capitalized Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payments hereunder or any other Loan Documents and (b) to the extent not otherwise described in clause (a) herein, Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Insolvency Proceeding” means, collectively, any corporate action, legal proceedings or other step taken or commenced by or against any Person under any provision of the Bankruptcy Code or under any Debtor Relief Law.

“Intellectual Property” has the meaning provided therefor in the Security Agreement.

“Intellectual Property License” has the meaning provided therefor in the Security Agreement.

“Inventory” means all goods held for sale in which a Credit Party now has or hereafter acquires title to.

“Intercompany Note” means a promissory note evidencing intercompany Indebtedness between and among the Credit Parties, subject to the terms of a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent.

“Interest Payment Date” means, as to any Loan, (a) the first Business Day of each calendar month, (b) on any date of prepayment, with respect to the principal amount of Loans being prepaid, and (c) the Maturity Date. For purposes of clarity, Interest Payment Date relates to payment of interest on account of the prior Interest Period ended immediately prior to (but excluding) such Interest Payment Date.

“Interest Period” means, as to each Loan, the period commencing on the first day of each calendar month and ending on the last day of such calendar month.

“Investment” means, all expenditures made and all liabilities incurred (contingently or otherwise) for the acquisition of Capital Stock, assets that constitute a business unit or Indebtedness of, or for loans, advances or capital contributions to, or in respect of any Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or interest in, another Person (but excluding any prepayments or deposits paid to customers in the ordinary course of business). In determining the aggregate amount of Investments outstanding at any particular time: (a) the amount of any Investment represented by a guaranty shall be taken at the principal amount of the obligations guaranteed and still outstanding; (b) there shall be deducted in respect of each such Investment any amount received as a return of capital thereon; and (c) there shall not be deducted from the aggregate amount of Investments any decrease in the value, write-downs or write-offs with respect thereof.

“Investment Grade Rating” shall mean, an Account Debtor on an Account so long as the long-term senior unsecured publicly held debt rating or corporate family rating of such Account Debtor is equal to or higher than Baa3 (or its equivalent) by Moody’s or BBB (or its equivalent) by S&P.

“IP Security Agreement” means collectively, (a) the Intellectual Property Security Agreement dated as of the Closing Date, made by each Credit Party thereto in favor of the Administrative Agent, on behalf of itself and the other Secured Parties and (b) each other intellectual property security agreement, patent security agreement, trademark security agreement and copyright security agreement required to be delivered pursuant to Section 6.12 in form and substance reasonably satisfactory to the Administrative Agent.

“IRS” means the United States Internal Revenue Service.

“Junior Promissory Note” means that certain Amended and Restated Junior Secured Promissory Note, dated as of March 17, 2023, by and between Fluent, LLC, a Delaware limited liability company, as Maker, and Freedom Debt Relief, LLC, a Delaware limited liability company, as Payee (as amended, restated, supplemented or otherwise modified from time to time in a manner not materially adverse to the interests of the Administrative Agent and the Lenders).

“Laws” means, collectively, all international, foreign, Federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” means (a) at any time on or prior to the Closing Date, any lender that has a Term Loan Commitment and/or a Revolving Credit Commitment at such time, and (b) at any time after the Closing Date, any lender that holds Term Loans, Revolving Credit Loans, and/or a Revolving Credit Commitment at such time.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Line Cap” means, as of any date of determination, the lesser of (a) the sum of the Revolving Credit Commitments plus the Total Term Loan Outstandings at such time and (b) the Borrowing Base as of such date of determination.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Credit Loan or Protective Advance.

“Loan Account” has the meaning specified in Section 2.16(a).

“Loan Documents” means this Agreement, each Note, each Security Document, the Guaranty, each Borrowing Base Certificate, each Compliance Certificate, each Second Amendment Subordination Agreement and each other agreement, document or instrument executed and delivered by any Credit Party in favor of any of the Secured Parties in connection with any Loan Document, whether or not specifically mentioned herein or therein.

“Material Adverse Effect” means a material adverse change in, or a material adverse effect on, (a) the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Credit Parties and their Subsidiaries; (b) the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of the Credit Parties to perform their obligations under any Loan Document; or (c) (i) the legality, validity, binding effect or enforceability against the Credit Parties of any Loan Document or (ii) the perfection or priority of the liens granted to the Administrative Agent under any Loan Document.

“Material Agreements” means (a) each document or agreement set forth on Schedule 20 to the Closing Date Perfection Certificate and (b) each other document or agreement to which a Credit Party is a party involving aggregate consideration payable to or by such Credit Party of \$7,500,000 or more during any Fiscal Year.

“Maturity Date” means April 2, 2029.

“Maximum Rate” has the meaning specified in Section 10.09.

“Measurement Period” means, at any date of determination, the most recently completed trailing twelve month period of the Credit Parties and their Subsidiaries for which financial statements have or should have been delivered in accordance with Section 6.04(a) or 6.04(b).

“Modified Consolidated EBITDA” means for the Credit Parties and their Subsidiaries for the applicable Measurement Period, Consolidated EBITDA for such trailing twelve month period *minus* capitalized software development costs for such period.

Notwithstanding the foregoing, for all purposes of this Agreement, Modified Consolidated EBITDA for the historical Fiscal Month periods set forth in the table below shall be deemed to be the amounts set forth in the table below opposite the relevant period:

<u>Fiscal Month</u>	<u>Modified Consolidated EBITDA</u>
March 2023	\$348,397
April 2023	\$2,699,533
May 2023	\$1,581,166
June 2023	\$77,767
July 2023	(\$1,151,973)
August 2023	(\$1,784,214)
September 2023	(\$527,476)
October 2023	(\$892,630)
November 2023	\$837,957
December 2023	\$804,062
January 2024	(\$59,731)
February 2024	(\$172,990)

“Mortgages” means each mortgage or deed of trust with respect to Real Estate executed and delivered to the Administrative Agent, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which a Credit Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including a Credit Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means, with respect to any event or transaction described in Sections 2.03(c) through (f), the cash proceeds received in respect of such event or transaction, including (a) any cash received in respect of any non-cash proceeds (including, without limitation, the monetization of notes receivables), but only as and when received or (b) in the case of a Casualty Event, insurance proceeds, proceeds of a condemnation award or other compensation payments, in each case, net of the sum of (w) all reasonable actual fees and out-of-pocket expenses (including underwriting discounts and commissions, appraisals, and brokerage, legal, advisory, banking, title and recording tax expenses and commissions) paid by any Credit Party or a Subsidiary to third parties (other than Affiliates) in connection with such event (but excluding amounts payable hereunder), (x) all taxes paid or reasonably estimated by the Borrower to be payable by Parent or any of its Subsidiaries as a result thereof or amounts distributed or expected to be distributed pursuant to Section 7.04(a) to pay taxes arising therefrom, (y) reserves for indemnities, until such reserves are no longer needed, and (z) in the case of a sale or other disposition of an asset described Sections 2.03(c) and (d), the amount of all payments required to be made by any Credit Party (or to establish an escrow for the repayment of) on any Indebtedness by the terms thereof (other than the Obligations) secured by such asset to the extent the lien in favor of the holder of such Indebtedness is permitted by Section 7.03(a)(viii); provided that such payments made shall not exceed the amount of cash proceed received by such Credit Party or the aggregate amount of such Indebtedness.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01, and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a Term Loan Note or a Revolving Credit Note.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Credit Party arising under any Loan Document or otherwise with respect to any Loan (including, without limitation, the Early Termination Premium), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees (including, without limitation, the Early Termination Premium) that accrue after the commencement by or against any Credit Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, or similar taxes, charges or levies that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such taxes, charges or levies that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 10.13).

“Outstanding Amount” means, with respect to the Term Loans, the Revolving Credit Loans and Protective Advances on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and any prepayments or repayments of the Term Loans, the Revolving Credit Loans or Protective Advances occurring on such date.

“Parent” means Fluent, Inc., a Delaware corporation.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Payment Recipient” has the meaning assigned to such term in Section 10.19.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Credit Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Perfection Certificates” means, collectively, (a) the Closing Date Perfection Certificate and (b) thereafter, the most recent Perfection Certificate delivered by the Credit Parties following the Closing Date to the Administrative Agent and in a form substantially consistent with the Closing Date Perfection Certificate or otherwise reasonably acceptable to the Administrative Agent in accordance with this Agreement.

“Permitted Acquisition” means any Acquisition by a Credit Party or any Subsidiary to the extent that such Acquisition has been consented to by the Administrative Agent and Required Lenders.

“Permitted Discretion” means a determination made in good faith and in the exercise of commercially reasonable (from the perspective of a secured asset-based lender) credit or business judgment and in accordance with customary business practices for comparable secured asset-based lending transactions. As it relates to the establishment or adjustment of Reserves (or the modification of eligibility standards and criteria), the exercise of Permitted Discretion shall require that (a) such establishment, adjustment or imposition after the Closing Date be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or are materially different from the facts or events occurring or known to the Administrative Agent on the Closing Date, unless the Borrower and the Administrative Agent otherwise agree in writing, (b) the contributing factors to the imposition of any Reserves shall not duplicate the exclusionary criteria set forth in the eligibility criteria for the assets in the Borrowing Base and vice versa and (c) the amount of any such Reserve so established or the effect of any adjustment shall be a reasonable quantification (as determined by the Administrative Agent in its Permitted Discretion) of the incremental impact of the Borrowing Base attributable to the event, condition or other matter that is the basis for such Reserve or adjustment.

“Permitted Liens” means those Liens permitted by Section 7.03.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of a Credit Party or any ERISA Affiliate or any such Plan to which a Credit Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Pledge Agreements” means, collectively, (a) the Pledge Agreement dated as of the Closing Date, by and among the Credit Parties and the Administrative Agent and (b) any other pledge agreement granted by any Credit Party as required by Section 6.12 which shall be in form and substance reasonably satisfactory to the Administrative Agent.

“Prepayment Notice” means the certificate in substantially the form of Exhibit F hereto, or in such other form reasonably acceptable to the Administrative Agent, to be signed by a Financial Officer of the Borrower and delivered to the Administrative Agent and the Lenders pursuant to Section 2.03 hereof.

“Protective Advances” has the meaning specified in Section 2.15.

“PTO” means the United States Patent and Trademark Office (or any successor office).

“RCRA” has the meaning specified in the definition of “Environmental Laws”.

“Real Estate” means all real property at any time owned by any Credit Party.

“Recipient” means the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder.

“Register” has the meaning specified in Section 10.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers and advisors of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

“Required Lenders” means, as of any date of determination, Lenders having or holding more than 50% of the Total Outstandings and Commitments. The Total Outstandings and Commitments of any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Reserved Cash” means cash held in the Reserved Cash Account.

“Reserved Cash Account” means a deposit account reasonably acceptable to the Administrative Agent in the name and sole dominion and control of the Administrative Agent for the deposit of Reserved Cash.

“Reserved Cash Release Notice” means a notice requesting release of Reserved Cash, which shall be substantially in the form of Exhibit J.

“Reserves” means, subject to adjustment from time to time as set forth in Section 2.17, the sum (without duplication) of (a) Dilution Reserves, and (b) such additional reserves, in amounts and with respect to such matters (whether or not constituting a Default or Event of Default), as the Administrative Agent in its Permitted Discretion deems necessary or appropriate to impose from time to time, in each case whether before or during the continuance of a Default or Event of Default. Without limiting the generality of the foregoing, the Administrative Agent may establish Reserves to ensure the payment of (i) accrued interest expense, (ii) insurance claims, including self-funded insurance claims and credit insurance, (iii) outstanding Taxes, and other charges imposed by any Governmental Authority, (iv) past-due payables of the Credit Parties and their Subsidiaries to the extent the Administrative Agent, in its Permitted Discretion, determines would have a negative impact on the business operations of the Credit Parties and their Subsidiaries or the collectability of Collateral, or (v) other liabilities, including, without limitation, ad valorem taxes, real estate, personal property, intellectual property, sales and other taxes, or reserves to reflect events, conditions, contingencies or risks which affect the Collateral, or the Administrative Agent’s access to such Collateral, or its value or the enforceability, perfection, or priority of the Administrative Agent’s security interest in the Collateral or the Administrative Agent’s judgment that any collateral report or financial information relating to the Credit Parties may be incomplete, inaccurate, or misleading in any material respect, in each case, subject to the Administrative Agent’s Permitted Discretion.

“Restricted Payment” means any (a) dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of any Credit Party or any Subsidiary, (b) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination by such Credit Party or Subsidiary of its Capital Stock, or on account of any return of capital to the stockholders, partners or members (or the equivalent Person thereof) of any Credit Party or any Subsidiary, (c) any management, advisory, consulting, or similar fees paid to any Affiliate of any Credit Party (other than (x) any such amounts payable to the Credit Parties and their Subsidiaries and (y) to the extent pursuant to any employment or similar services agreements with employees, directors or officers thereof entered into in the ordinary course of business), and (d) any payment on account of a Permitted Acquisition.

“Revolving Credit Loan” means an advance made by any Lender under the Revolving Credit Facility.

“Revolving Credit Availability Period” means, in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earlier of (a) the Maturity Date, (b) the date of termination of the Revolving Credit Facility pursuant to Section 2.04(b), and (c) the date of termination of the Revolving Credit Commitments of the respective Lenders to make Revolving Credit Loans pursuant to Section 8.02.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans made by each of the Lenders pursuant to Section 2.01(b).

“Revolving Credit Commitments” means, as to each Lender, its obligation to make Revolving Credit Loans to the Borrower during the Revolving Credit Availability Period pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 with respect to the Revolving Credit Loans. As of the Closing Date, the Revolving Credit Commitments are \$30,000,000.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate Outstanding Amount at such time of its Revolving Credit Loans.

“Revolving Credit Facility” means, at any time, (a) at any time during the Revolving Credit Availability Period in respect of such Revolving Credit Facility, the *sum of* (i) the aggregate amount of the Revolving Credit Commitments at such time, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of all Lenders outstanding at such time, and (b) thereafter, the aggregate Outstanding Amount of the Revolving Credit Loans of all Lenders outstanding at such time.

“Revolving Credit Note” means a promissory note made by the Borrower in favor of a Lender evidencing the Revolving Credit Loans made by such Lender, substantially in the form of Exhibit B-2.

“Same Day Request” has the meaning assigned to such term in Section 2.02(a).

“Sanction(s)” means any international economic sanction administered or enforced by OFAC, the United Nations Security Council, the European Union or any member state of the European Union, the governmental institutions and agencies of the United Kingdom (including, without limitation, His Majesty’s Treasury of the United Kingdom) or other relevant sanctions authority.

“Sanctioned Country” means a country subject to a sanctions program identified on the list maintained by OFAC and available at, or as otherwise published from time to time.

“Sanctioned Entity” means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means (a) a Person named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or as otherwise published from time to time, (b) a Person named on the lists maintained by the United Nations Security Council available at http://www.un.org/sc/committees/list_compend.shtml, or as otherwise published from time to time, (c) a Person named on the lists maintained by the European Union available at http://eeas.europa.eu/cfsp/sanctions/consolidated_en.htm, or as otherwise published from time to time, (d) a Person named on the lists maintained by His Majesty’s Treasury available at http://www.hm-treasury.gov.uk/fin_sanctions_index.htm, or as otherwise published from time to time, or (e) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

“SARA” has the meaning specified in the definition of “Environmental Laws”.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05 and the other Persons the Obligations owing to which are secured by the Collateral under the terms of the Security Documents.

“Security Agreements” means, collectively, (a) that certain the Security Agreement dated as of the Closing Date, entered into by the Credit Parties and the Administrative Agent, and (b) any other security agreement granted by any Credit Party as required by Section 6.12 which shall be in form and substance reasonably acceptable to the Administrative Agent.

“Security Documents” means the Guaranty, the Security Agreements, the IP Security Agreement, the Pledge Agreements, the Mortgages, the Agency Account Agreements, Uniform Commercial Code financing statements and other equivalent registrations in the U.S., and any other collateral document required to be executed or delivered pursuant to, or in connection with, this Agreement or any other Loan Document (including without limitation, account receivables notices or any other notice or documents with respect to Eligible Foreign Accounts), to secure the repayment of the Obligations or to ensure the validity, attachment, perfection or priority of the Administrative Agent’s lien in all of the Collateral, all in form and substance reasonably acceptable to the Administrative Agent.

“Second Amendment” means that certain Second Amendment to Credit Agreement, dated as of the Second Amendment Effective Date, by and among the Credit Parties, the Lenders party thereto and the Administrative Agent.

“Second Amendment Capital Raise” means (i) one or more Investments in cash in exchange for Capital Stock of the Parent and the contribution of such Net Cash Proceeds to the Borrower and/or (ii) the Borrower incurring Second Amendment Subordinated Indebtedness, in each case occurring on or prior to the Second Amendment Effective Date and which, for the avoidance of doubt, shall not be subject to the mandatory repayment requirements set forth in Sections 2.03(e) or (f), as applicable.

“Second Amendment Effective Date” means August 19, 2024.

“Second Amendment Follow-on Equity Raise” means one or more Investments in cash in exchange for Capital Stock of the Borrower and/or the Parent and the contribution of such Net Cash Proceeds to the Borrower, in each case made after ~~the Second Amendment Effective Date~~ November 29, 2024 and on or prior to June 30, 2025 (or such later date as the Administrative Agent reasonably agrees to in writing) which, for the avoidance of doubt, shall not be subject to the mandatory repayment requirements set forth in Sections 2.03(e); provided that with respect to the waiver of the requirement of Section 2.03(e), no Default or Event of Default shall have occurred or be existing on a Second Amendment Follow-on Equity Raise Date.

“Second Amendment Follow-on Equity Raise Date” means each date that a Second Amendment Follow-on Equity Raise occurs, which shall be after ~~the Second Amendment Effective Date~~ November 29, 2024 and prior to June 30, 2025 (or such later date as the Administrative Agent reasonably agrees to in writing).

“Second Amendment Subordinated Indebtedness” means unsecured Indebtedness incurred by the Credit Parties which is expressly subordinated in right of payment to the prior payment in full in cash of the Obligations pursuant to a Second Amendment Subordination Agreement and does not require the cash payment of interest prior to maturity and which is in form and on terms reasonably satisfactory to the Administrative Agent.

“Second Amendment Subordination Agreement” means, collectively, each Second Amendment Subordination Agreement, dated as of the Second Amendment Effective Date, executed by the Parent, the Administrative Agent and a Second Amendment Subordinated Lender, which expressly subordinates the right of payment of the Second Amendment Subordinated Indebtedness to the prior payment in full of the Obligations.

“Second Amendment Subordinated Indebtedness Restricted Payment” means any payment on account of Second Amendment Subordinated Indebtedness, including without limitation, any payment on account of interest, principal, fees or any other similar payment due in connection with, arising out of or relating to Second Amendment Subordinated Indebtedness, other than reasonable and documented out of pocket expenses of the Second Amendment Subordinated Lenders.

~~“Second Amendment Subordinated Indebtedness Payment Conditions” means with respect to a Second Amendment Subordinated Indebtedness Restricted Payment, the satisfaction of the conditions set forth either in clause (i) or clause (ii) below:~~

~~(i) (a) no Event of Default shall exist before or immediately after giving effect to such Second Amendment Subordinated Indebtedness Restricted Payment, (b) the Credit Parties shall be in compliance with Section 7.12(a), (c) Excess Availability determined on a pro forma basis after giving effect to such Second Amendment Subordinated Indebtedness Restricted Payment shall be equal to or greater than \$5,000,000, both for the thirty (30) consecutive calendar days prior to such Second Amendment Subordinated Indebtedness Restricted Payment and at the time of such payment, (d) the Consolidated Fixed Charge Coverage Ratio calculated on a pro forma basis as of the end of the most recently ended Measurement Period for which the Administrative Agent shall have received the financial statements described in Section 6.04(b), after giving effect to such Second Amendment Subordinated Indebtedness Restricted Payment, shall be no less than 1.10:1.00, and (e) the Administrative Agent’s receipt of the financial statements required to be delivered pursuant to Section 6.04(a) for the Fiscal Year ending December 31, 2024; or~~

~~(ii) (a) no Event of Default shall exist before or immediately after giving effect to such Second Amendment Subordinated Indebtedness Restricted Payment, (b) one or more Second Amendment Follow-on Equity Raises shall have occurred during the period described in the definition of Second Amendment Follow-on Equity Raise Date and the aggregate amount of Second Amendment Subordinated Indebtedness Restricted Payments made pursuant to this clause (ii) shall not exceed an amount that equals the positive difference of (I) the aggregate amount of any Second Amendment Follow-on Equity Raises consummated at or prior to such Second Amendment Subordinated Indebtedness Restricted Payment *minus* (II) \$7,000,000, (c) the Credit Parties shall be in compliance with Section 7.12(a) and (d) Excess Availability determined on a pro forma basis after giving effect to such Second Amendment Subordinated Indebtedness Restricted Payment shall be equal to or greater than \$5,000,000, at the time of such payment and on a projected basis for the thirteen week consecutive period following such Second Amendment Subordinated Indebtedness Restricted Payment.~~

~~In connection with a Second Amendment Subordinated Indebtedness Restricted Payment under either clause (i) or clause (ii) above, the Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer of the Borrower in the form attached hereto as Exhibit I as to the compliance of the Second Amendment Subordinated Indebtedness Payment Conditions with respect to such transaction at least three (3) Business Days prior to consummating such transaction (or such later date as the Administrative Agent may reasonably agree).~~

“Second Amendment Subordinated Lender” means each of (i) Matthew Conlin, (ii) Ryan Schulke, (iii) Frost Gamma Investments Trust, (iv) Donald Patrick and (v) Ryan Perfit, each in their respective capacity as a subordinated lender in respect of the Second Amendment Subordinated Indebtedness.

“Senior Management” means with respect to the any of the Credit Parties or any of its Subsidiaries, its chairman, president, Financial Officer, chief executive officer, chief operating officer, directors or general counsel.

“SLR” means Crystal Financial LLC d/b/a SLR and its successors and permitted assigns.

“SLR Entity” shall mean SLR or any of its Affiliates.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the Term SOFR Administrator.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“SPC” has the meaning specified in Section 10.06(g).

“Specified Event of Default” means (i) any Event of Default arising under Sections 8.01(a), (b) (solely relating to a failure to comply with Sections 6.04(a), 6.04(b), 6.04(c), 6.15, 6.16 or 7.12), (d)(ii), (e), or (m), (ii) acceleration of the Obligation pursuant to Section 8.02 as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise) or (iii) Excess Availability is a negative amount.

“Specified Existing Debt” means all Indebtedness owing under that certain Credit Agreement, dated as of March 31, 2021, by and among the Borrower, the guarantors thereto, lenders party thereto and Citizens Bank, N.A., as administrative agent (as amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date).

“Specified Holders” means (a) each of the Persons that are holders of Capital Stock of Parent listed on Schedule 1.01B and (b) in the case of any Person specified in clause (a) above, (i) his or her or its executor, administrator, testamentary trustee, legatee or beneficiaries or (ii) a trust, the beneficiaries of which, or a corporation or partnership, the equity holders or partners of which, include only such Persons.

“Subordinated Indebtedness” means the Second Amendment Subordinated Indebtedness and the Third Amendment Subordinated Indebtedness.

“Subordinated Indebtedness Payment Conditions” means with respect to a Subordinated Indebtedness Restricted Payment, as to a Second Amendment Subordinated Indebtedness Restricted Payment, the satisfaction of the conditions set forth either in clause (i) or clause (ii) below and as to a Subordinated Indebtedness Restricted Payment on account of Third Amendment Subordinated Indebtedness, the satisfaction of the conditions set forth in clause (i);

(i) (a) no Event of Default shall exist before or immediately after giving effect to such Subordinated Indebtedness Restricted Payment, (b) the Credit Parties shall be in compliance with Section 7.12(a), (c) Excess Availability determined on a pro forma basis after giving effect to such Subordinated Indebtedness Restricted Payment shall be equal to or greater than \$5,000,000, both for the thirty (30) consecutive calendar days prior to such Subordinated Indebtedness Restricted Payment and at the time of such payment, (d) the Consolidated Fixed Charge Coverage Ratio calculated on a pro forma basis as of the end of the most recently ended Measurement Period for which the Administrative Agent shall have received the financial statements described in Section 6.04(b), after giving effect to such Subordinated Indebtedness Restricted Payment, shall be no less than 1.10:1.00, and (e) the Administrative Agent's receipt of the financial statements required to be delivered pursuant to Section 6.04(a) for the Fiscal Year ending December 31, 2024; or

(ii) Solely with respect to Second Amendment Follow-on Equity Raises, (a) no Event of Default shall exist before or immediately after giving effect to such Second Amendment Subordinated Indebtedness Restricted Payment, (b) one or more Second Amendment Follow-on Equity Raises shall have occurred during the period described in the definition of Second Amendment Follow-on Equity Raise Date and the aggregate amount of Second Amendment Subordinated Indebtedness Restricted Payments made pursuant to this clause (ii) shall not exceed an amount that equals the positive difference of (I) the aggregate amount of any Second Amendment Follow-on Equity Raises consummated at or prior to such Second Amendment Subordinated Indebtedness Restricted Payment minus (II) \$7,000,000, (c) the Credit Parties shall be in compliance with Section 7.12(a) and (d) Excess Availability determined on a pro forma basis after giving effect to such Second Amendment Subordinated Indebtedness Restricted Payment shall be equal to or greater than \$5,000,000, at the time of such payment and on a projected basis for the thirteen week consecutive period following such Second Amendment Subordinated Indebtedness Restricted Payment. For avoidance of the doubt, no Third Amendment Capital Raise shall be included in the calculations required pursuant to this clause (ii).

In connection with a Subordinated Indebtedness Restricted Payment under either clause (i) or clause (ii) above, the Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer of the Borrower in the form attached hereto as Exhibit I as to the compliance of the Subordinated Indebtedness Payment Conditions with respect to such transaction at least three (3) Business Days prior to consummating such transaction (or such later date as the Administrative Agent may reasonably agree).

"Subordinated Indebtedness Restricted Payment" means any payment on account of Subordinated Indebtedness, including without limitation, any Second Amendment Subordinated Indebtedness, or Third Amendment Subordinated Indebtedness, and any payment on account of interest, principal, fees or any other similar payment due in connection with, arising out of or relating to any Subordinated Indebtedness, other than reasonable and documented out of pocket expenses of the Second Amendment Subordinated Lenders and the Third Amendment Subordinated Lenders.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person; provided that, notwithstanding anything else herein to the contrary, TAPP Market Influencers, LLC and TAPP Influencers Corp. shall be deemed not to be Subsidiaries so long as (x) such entities continue to constitute "variable interest entities" and (y) no Credit Party owns any Capital Stock in TAPP Market Influencers, LLC or TAPP Influencers Corp. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Parent.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans made by each of the Lenders pursuant to Section 2.01(a).

“Term Loan” means an advance made by any Lender under the Term Loan Facility.

“Term Loan Commitment” means, as to each Lender, its obligation to make Term Loans to the Borrower on the Closing Date pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 with respect to the Term Loans. As of the Closing Date, the Term Loan Commitments are \$20,000,000.

“Term Loan Facility” means (a) on the Closing Date, the aggregate amount of the Term Loan Commitments at such time and (b) thereafter, the aggregate principal amount of all Term Loans of all Lenders outstanding at such time.

“Term Loan Note” means a promissory note made by the Borrower in favor of a Lender evidencing the Term Loans made by such Lender, substantially in the form of Exhibit B-1.

“Term SOFR” means for any Determination Date, the Term SOFR Reference Rate for a tenor of three (3) months on the day (such day, the “Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Determination Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator.

“Term SOFR Adjustment” means 0.26161% per annum.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Third Amendment” means that certain Third Amendment to Credit Agreement, dated as of the Third Amendment Effective Date, by and among the Credit Parties, the Lenders party thereto and the Administrative Agent.

“Third Amendment Capital Raise” means (i) one or more Investments in cash in exchange for Capital Stock of the Borrower and/or the Parent and the contribution of such Net Cash Proceeds to the Borrower, and/or (ii) the Borrower incurring Third Amendment Subordinated Indebtedness, in each case made after the Third Amendment Effective Date and on or prior to November 29, 2024 (or such later date as the Administrative Agent reasonably agrees to in writing) which in each case, (x) shall result in no less than \$7,500,000 in Net Cash Proceeds contributed to the Borrower and (y) for the avoidance of doubt, shall not be subject to the mandatory repayment requirements set forth in Sections 2.03(e) or (f) as applicable; provided that, with respect to the waiver of the requirement of Section 2.03(e), no Default or Event of Default shall have occurred or be existing on a Third Amendment Capital Raise Date.

“Third Amendment Capital Raise Date” means each date that a Third Amendment Capital Raise occurs, which shall be after the Third Amendment Effective Date and prior to November 29, 2024 (or such later date as the Administrative Agent reasonably agrees to in writing).

“Third Amendment Effective Date” means November 14, 2024.

“Third Amendment Subordinated Indebtedness” means unsecured Indebtedness incurred by the Credit Parties constituting a Third Amendment Capital Raise which is expressly subordinated in right of payment to the prior payment in full in cash of the Obligations pursuant to a Third Amendment Subordination Agreement and does not require the cash payment of interest prior to maturity and which is otherwise in form and on terms reasonably satisfactory to the Administrative Agent.

“Third Amendment Subordination Agreement” means collectively, each Third Amendment Subordination Agreement, each dated as of the applicable Third Amendment Capital Raise Date on which Third Amendment Subordinated Indebtedness shall have been incurred, executed by the Parent, the Administrative Agent and a Third Amendment Subordinated Lender, which expressly subordinates the right of payment of the Third Amendment Subordinated Indebtedness to the prior payment in full of the Obligations.

“Third Amendment Subordinated Lender” means any lender party to Third Amendment Subordinated Indebtedness.

“Threshold Amount” means \$500,000.

“Total Outstandings” means, without duplication, the sum of (a) the Total Term Loan Outstandings and (b) the Total Revolving Credit Outstandings.

“Total Revolving Credit Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans.

“Total Term Loan Outstandings” means the aggregate Outstanding Amount of all Term Loans.

“Trade Date” has the meaning specified in Section 10.06(b)(i).

“True North Loyalty Entities” means (a) True North Loyalty, LLC, a Delaware limited liability company, (b) BXY Ventures LLC, a Nevada limited liability company, (c) Member Services, LLC, a Delaware limited liability company, (d) True Identity, LLC, a Delaware limited liability company, (e) ClickGen, LLC, a Delaware limited liability company, and (f) Project Peachtree, LLC, a Delaware limited liability company.

“True North Loyalty Sale” means the sale of the Capital Stock in (or all or substantially all of the assets of) the True North Loyalty Entities to an unaffiliated third-party purchaser.

“Two Day Request” has the meaning assigned to such term in Section 2.02(a).

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

“Unused Facility Fee” has the meaning specified in Section 2.07(a).

“Unused Revolving Credit Facility Amount” means the daily average amount by which (a) the Revolving Credit Commitments exceeds (b) the Total Revolving Credit Outstandings, subject to adjustment as provided in Section 2.14.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Governing Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Credit Parties and their Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio, negative covenant or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio, negative covenant or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio, covenant or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, any lease that is treated as an operating lease for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Leases in the financial statements.

1.04 Rounding. Any financial ratios required to be maintained by any of the Credit Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day (and such extension of time shall be reflected in computing interest or fees, as the case may be).

1.06 Rates. Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, Adjusted Term SOFR, Term SOFR, any component definition thereof or rates referred to in the definition thereof or any alternative, successor or replacement rate thereto, including whether the composition or characteristics of any such alternative, successor or replacement rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as the Base Rate, Adjusted Term SOFR or Term SOFR prior to its discontinuance or unavailability. Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower (provided that, for the avoidance of doubt, nothing in this sentence shall modify or supersede the express terms of this Agreement and the other Loan Documents). Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, Adjusted Term SOFR or Term SOFR, in each case pursuant to the terms of this Agreement, and shall have no liability to any Credit Party, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II THE COMMITMENTS AND LOANS

2.01 Loans.

(a) Term Loans. Subject to the terms and conditions set forth herein and in reliance upon the representations and warranties of the Credit Parties contained herein, each Lender, severally and not jointly, agrees to make a single loan to the Borrower on the Closing Date in an aggregate amount equal to the amount of such Lender's Term Loan Commitment. Amounts borrowed under this Section 2.01(a) and repaid may not be reborrowed.

(b) Revolving Credit Loans. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, each Lender having a Revolving Credit Commitment severally and not jointly agrees to make its Applicable Percentage of Revolving Credit Loans to the Borrower from time to time, on any Business Day during the Revolving Credit Availability Period, in an aggregate amount equal to the lesser of (i) the amount of such Lender's Revolving Credit Commitment less such Lender's Applicable Revolving Credit Percentage of Revolving Credit Exposure, or (ii) such Lender's Applicable Revolving Credit Percentage of (A) the Borrowing Base (based upon the Borrowing Base Certificate delivered by the Borrower to the Administrative Agent pursuant to clause (ii) below) less (B) the Total Outstandings. Amounts borrowed under this Section 2.01(b) and repaid may be reborrowed. No Revolving Credit Loan shall be funded unless the following terms and conditions are satisfied or waived in writing by the Administrative Agent in its sole discretion with each Revolving Credit Borrowing:

- (i) each of the conditions set forth in Section 4.02 shall have been satisfied as of, and on, the date of such Revolving Credit Borrowing; and
- (ii) the proceeds of the Revolving Credit Loans are used for the purposes described in Section 6.11.

The request by the Borrower and acceptance by the Borrower of the proceeds of a Revolving Credit Loan shall be deemed to constitute, as of the date of the funding of such Revolving Credit Loan, (i) a representation and warranty by the Borrower that the conditions in this Section 2.01(b) are satisfied and (ii) a reaffirmation by each Credit Party of the granting and continuance of the Administrative Agent's Liens, on behalf of itself and the Secured Parties, pursuant to the Loan Documents.

2.02 Borrowings of Committed Loans.

(a) Each Borrowing shall be made upon the Borrower's irrevocable notice to the Administrative Agent via a Borrowing Request Notice appropriately completed and signed by a member of Senior Management of the Borrower, which may be given by any Electronic Medium. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. Eastern time two (2) Business Days prior to the requested date of any Borrowing (each, a "Two Day Request"); provided, however, if the aggregate principal amount of a requested Borrowing for any day is less than or equal to the Daily Cash Sweep Repayment Amount for the immediately preceding day, such notice must only be received not later than 11:00 a.m. on the requested date of such Borrowing (each, a "Same Day Request"). Each Borrowing Request Notice shall specify (i) the Borrower requesting such Borrowing ~~and~~, (ii) the requested date of the Borrowing (which shall be a Business Day), (iii) whether such Borrowing is a Two Day Request or a Same Day Request and (iv) the principal amount of Committed Loans to be borrowed. Only the Borrowing Request Notice relating to Loans on the Closing Date shall request the making of the Term Loan. The Borrower may not submit more than two (2) Borrowing Request Notices for Loans during any week except with the consent of the Administrative Agent in its sole discretion. Each Borrowing of any Loans (other than a Borrowing pursuant to a Same Day Request) shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof.

(b) Following receipt of a Borrowing Request Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans. For each Borrowing, each Lender shall make the amount of its Committed Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. Eastern time (or such later time as may be agreed upon by a Lender and the Administrative Agent) on the Business Day specified in the applicable Borrowing Request Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Borrowing, Section 4.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent by transfer of such funds (such transfer to be initiated no later than 6:00 p.m. Eastern time) in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

2.03 Prepayments; Mandatory Repayments.

(a) Voluntary Prepayments of Loans.

(i) Revolving Loans may be borrowed, repaid and prepaid, and reborrowed, in each case without premium or penalty and otherwise on the terms and conditions set forth in this Agreement.

(ii) The Borrower may, upon notice to the Administrative Agent pursuant to a Prepayment Notice, at any time or from time to time voluntarily prepay Term Loans in whole or in part; provided that (i) the Borrower shall pay each Lender its Applicable Percentage of the Early Termination Premium, if applicable, on the amount prepaid concurrently with such prepayment, (ii) such notice must be received by the Administrative Agent not later than 2:00 p.m. Eastern time three (3) Business Days prior to any such date of prepayment, (iii) any prepayment of Term Loans shall be in a principal amount of \$500,000 or a whole multiple of \$500,000 in excess thereof; or, if less, the entire principal amount thereof then outstanding, and (iv) any prepayment of Term Loans shall be made with a commensurate pro rata reduction of the Revolving Credit Commitment in accordance with Section 2.04. Each such notice shall specify the date and amount of such prepayment of the Term Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term Loan shall be accompanied by the applicable Early Termination Premium, all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.04.

(b) Negative Excess Availability; Application of Reserved Cash; Release of Reserved Cash. Subject to Section 2.15, if for any reason at any time, Excess Availability is less than \$0, the Borrower shall immediately (but in any case no later than one (1) Business Day) repay all outstanding Revolving Credit Loans in an aggregate amount equal to such deficiency; provided, that if the principal amount of all Revolving Credit Loans have been reduced to zero following such repayment and a deficiency still exists, the Borrower shall immediately provide additional Reserved Cash to the Reserved Cash Account in such amount that would eliminate such deficiency completely.

Subject to the conditions listed herein, the Borrower may request that the Administrative Agent release Reserved Cash in the Reserved Cash Account to the Borrower in an amount not to exceed the lesser of (A) the amount of the then existing Reserved Cash Account, and (B) the difference between (1) an amount equal to one hundred percent (100%) of the then existing Borrowing Base (calculated on a *pro forma* basis after giving effect to such proposed release of Reserved Cash), less (2) the Total Outstandings (to the extent such difference under this clause (B) is a positive number). Each request to release Reserved Cash shall be made upon the Borrower's irrevocable notice to the Administrative Agent via a Reserved Cash Release Notice appropriately completed and signed by a member of Senior Management of the Borrower, which may be given by any Electronic Medium. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. Eastern time two (2) Business Days prior to the requested date of such release of Reserved Cash. Any such request to release Reserved Cash shall be subject to the following conditions precedent (the "Cash Release Conditions"): (I) no Default or Event of Default shall have occurred or be existing on the date of and after giving effect to the release of any Reserved Cash; (II) concurrently with such request, the Borrower shall deliver to the Administrative Agent an updated Borrowing Base Certificate, which shall set forth the Borrowing Base based on the balances as of the close of business on the prior Saturday and calculated on a *pro forma* basis after giving effect to such proposed release of Reserved Cash, and (III) such request shall specify the amount of Reserved Cash that the Borrower is requesting be released, and shall be accompanied by the calculations and such other information that Administrative Agent shall reasonably request to confirm compliance with the terms of this paragraph. Upon satisfaction of the Cash Release Conditions, the Administrative Agent shall arrange for the release of the requested Reserved Cash to the Borrower's operating account. The provisions of this Section 2.03(b) shall not be deemed a waiver in any respect of any Event of Default relating to a breach of Section 7.12(a).

(c) Asset Dispositions. Within two (2) Business Days of receipt by any Credit Party of Net Cash Proceeds (so long as no Event of Default shall have occurred and be continuing, in an amount in excess of \$150,000), from any asset disposition of Collateral (excluding dispositions of Inventory in the ordinary course of business), the Borrower shall prepay the Obligations in an aggregate amount equal to the sum of (i) 100% of such Net Cash Proceeds so received plus (ii) the applicable Early Termination Premium (such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 2.05(b)(i)) and shall result in a pro rata repayment of the Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause); provided, that (A) (1) any Net Cash Proceeds received by any Credit Party as a result of the AdParlor Sale ("AdParlor Sale Proceeds") may, at the option of the Borrower, be applied on or prior to the first anniversary of the Closing Date to (x) make a repayment of outstanding Revolving Credit Loans (without any reduction of the Revolving Credit Commitments) or (y) make a pro rata repayment of the Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause (y)) (in the case of clauses (x), without any Early Termination Premium being payable in connection therewith and in the case of clause (y), with an Early Termination Premium being payable on AdParlor Sale Proceeds in excess of \$10,000,000), (2) if no Revolving Credit Loans are outstanding at such time (including after giving effect to any prepayment made pursuant to the foregoing clauses (A)(1)(x) or (y)), then any such excess AdParlor Sale Proceeds may be retained by such Credit Party and (3) if an Event of Default has occurred and is continuing at the time of such prepayment, then the amount of AdParlor Sale Proceeds that may be applied or otherwise retained pursuant to this clause (A) shall not exceed \$10,000,000 (with any amount of AdParlor Sale Proceeds in excess of \$10,000,000 being required to be applied pursuant to this Section 2.03(c)) without giving effect to this clause (A)) and (B) Net Cash Proceeds received by any Credit Party as a result of the True North Loyalty Sale after the Closing Date shall be used by the Borrower to repay the Total Revolving Credit Outstandings (without a permanent reduction of the Revolving Credit Commitment); provided, further, that so long as no Event of Default shall have occurred and is continuing, at the election of the Borrower, any Credit Party may reinvest any Net Cash Proceeds that are subject to this Section 2.03(c) (other than Net Cash Proceeds received from the sale of (i) the Capital Stock of the Borrower or its Subsidiaries or (ii) all or substantially all or a material portion of the assets of any Credit Party or any business line, unit or division of a Credit Party or its Subsidiaries) in assets used or useful in the business of any other Credit Party within six (6) months after the date of such asset disposition (or, if within such six-month period, Parent or any of its Subsidiaries enters into a binding commitment to so reinvest such Net Cash Proceeds, then such amounts shall be required to be reinvested within three (3) months following the initial six-month period during which Parent or any of its Subsidiaries so committed to such plan of reinvestment), or, in each case, such longer period of time as agreed in writing by the Administrative Agent's in its sole discretion, the consummation of such reinvestment to be certified by the Borrower in writing to the Administrative Agent within such period, as extended hereunder; provided, further, that any Net Cash Proceeds not so reinvested within such six-month period (or, to the extent applicable, such nine-month period) shall be immediately applied (together with the Early Termination Premium) to the prepayment of the Obligations as set forth in Section 2.05(c).

(d) Casualty Events and Extraordinary Receipts. Within two (2) Business Days of receipt by any Credit Party of Net Cash Proceeds from any Casualty Event with respect to Collateral or any Extraordinary Receipts (in each case of such Net Cash Proceeds or Extraordinary Receipts, so long as no Event of Default shall have occurred and be continuing, in an amount in excess of \$50,000), the Borrower shall prepay the Obligations in an amount equal to the sum of (i) 100% of (A) Net Cash Proceeds received by any Credit Party from Casualty Events with respect to Collateral and (B) all Extraordinary Receipts plus (ii) the applicable Early Termination Premium (in each case, such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 2.05(c)(i), and shall result in a pro rata repayment of Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause); provided that so long as no Event of Default shall have occurred and is continuing, at the election of the Borrower, any Credit Party may reinvest all or any portion of such Net Cash Proceeds and/or Extraordinary Receipts, as applicable, in assets used or useful in the business of any other Credit Party within six (6) months after the date of such Casualty Event or receipt of such Extraordinary Receipt (or, if within such six-month period, Parent or any of its Subsidiaries enters into a binding commitment to so reinvest such Net Cash Proceeds and/or Extraordinary Receipts, as applicable, then such amounts shall be required to be reinvested within three (3) months following the initial six-month period during which Parent or any of its Subsidiaries so committed to such plan of reinvestment), or, in each case, such longer period of time as agreed in writing by the Administrative Agent's in its sole discretion and the consummation of such reinvestment to be certified by the Borrower in writing to the Administrative Agent within such period; provided, however, that any Net Cash Proceeds not so reinvested within such six-month period (or, to the extent applicable, such 12-month period) shall be immediately applied (together with the Early Termination Premium) to the prepayment of the Obligations as set forth in Section 2.05(c)(i).

(e) Issuance of Equity. Other than in connection with the First Amendment Equity Raise, the Second Amendment Capital Raise ~~or~~, any Second Amendment Follow-on Equity Raise, or Third Amendment Capital Raise (provided that no Default or Event of Default shall have occurred or be existing on a First Amendment Equity Raise Date ~~or~~, a Second Amendment Follow-on Equity Raise Date, or a Third Amendment Capital Raise Date), within two (2) Business Days of the sale or issuance by any Credit Party or any Subsidiaries (other than any sale or issuance to a Credit Party) of any its Capital Stock, the Borrower shall prepay the Obligations in an amount equal to the sum of (i) 100% of such Net Cash Proceeds so received plus (ii) the applicable Early Termination Premium (such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 2.05(c)(i), and shall result in a pro rata repayment of Total Term Loan Outstandings and the Total Revolving Credit Outstandings (together with a permanent reduction of the Revolving Credit Commitment in an amount commensurate with the amount of Revolving Credit Loans repaid as a result of this clause).

(f) Incurrence of Indebtedness. Immediately upon the incurrence or issuance by any Credit Party or any of its Subsidiaries of any Indebtedness (other than Indebtedness permitted pursuant to Section 7.02), the Borrower shall prepay the Obligations in an amount equal to the sum of (i) 100% of such Net Cash Proceeds so received plus (ii) the applicable Early Termination Premium (such prepayments shall be directed to the Collection Account and applied in accordance with the application of payments specified in Section 8.03).

(g) Mandatory Prepayment of Revolving Loans. If for any reason, Total Revolving Credit Outstandings exceeds the Revolving Credit Commitments, including without limitation, as a result of Section 2.04(b), then the Borrower shall immediately prepay Revolving Credit Loans in an aggregate amount equal to such excess.

(h) Mandatory Prepayments Related to Cash Dominion Trigger Period Event. Upon the occurrence ~~and during the continuance~~ of a Cash Dominion Trigger Period Event, the Borrower shall prepay the ~~principal amount of Revolving Credit Loans outstanding, if any~~ Obligations, to the extent required by Section 6.16(b) hereof.

2.04 Termination or Reduction of Commitments.

(a) Term Loan Facility. The aggregate Term Loan Commitments of the Lenders on the Closing Date shall be automatically and permanently reduced to zero upon the making of the Term Loans on the Closing Date.

(b) Revolving Credit Facility. The Borrower may, upon notice to the Administrative Agent from the Borrower, terminate the Revolving Credit Commitments, or from time to time permanently reduce the Revolving Credit Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrower shall pay the applicable Early Termination Premium in connection with such termination or reduction as set forth in Section 2.07(d), (iv) the Borrower shall not terminate or reduce the Revolving Credit Commitments if, after giving effect to any concurrent prepayment or repayment of the Revolving Credit Loans in accordance with Section 2.03, the sum of the Total Revolving Credit Outstandings exceeds the Revolving Credit Commitments, and (v) any reduction or termination of Revolving Credit Commitment shall be accompanied by a pro rata repayment of the Term Loan in accordance with Section 2.03(a)(ii). The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Revolving Credit Commitments. Any reduction of the Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Lender according to its Applicable Revolving Credit Percentage. All fees accrued until the effective date of any termination of the Revolving Credit Commitments, together with the applicable Early Termination Premium, shall be paid on the effective date of such termination.

2.05 Repayment of Loans; Application of Payments.

(a) Maturity. In addition to the repayment of the Loans pursuant to Section 2.03, the Borrower shall repay to the Lenders on the Maturity Date, (i) the aggregate principal amount of the Term Loans on such date, together with all other Obligations in respect thereof, (ii) the aggregate principal amount of Revolving Credit Loans outstanding on such date, together with all other Obligations in respect thereof, and (iii) all other Obligations. The Borrower hereby unconditionally promises to pay to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent.

(b) Application of Payments.

(i) ~~(b)~~ Application of Payments; Mandatory Prepayments Generally. Subject to clause (c) below, repayments required pursuant to Sections 2.03(b) through (f) shall be applied to the Obligations as follows:

(A) ~~(i)~~ First, to pay outstanding Protective Advances funded by the Administrative Agent;

(B) ~~(ii)~~ Second, to pay Obligations owing to the Administrative Agent and Lenders constituting (a) indemnities and expenses then due and payable under this Agreement and the other Loan Documents and (b) the fees then due and payable under Section 2.07(b), ratably among such Persons in proportion to the respective amounts described in this clause payable to them;

(C) ~~(iii)~~ Third, to pay Obligations constituting accrued and unpaid interest and fees (including without limitation, the Early Termination Premium) due and payable to, the Lenders by the Borrower under this Agreement and the other Loan Documents ratably among them in proportion to the respective amounts described in this clause Third payable to them;

(D) ~~(iv)~~ Fourth, to repay principal on the Term Loans and Revolving Credit Loans ratably among the holders thereof in proportion to the respective amounts described in this clause Fourth payable to them; and

(E) ~~(v)~~ Fifth, thereafter to the Borrower's operating account.

(ii) Application of Payments Related to Cash Dominion Trigger Event. Subject to clause (c) below, repayments required pursuant to Section 2.03(h) shall be applied to the Obligations as follows:

(A) First, to pay outstanding Protective Advances funded by the Administrative Agent;

(B) Second, to pay Obligations owing to the Administrative Agent and Lenders constituting (a) indemnities and expenses then due and payable under this Agreement and the other Loan Documents and (b) the fees then due and payable under Section 2.07(b), ratably among such Persons in proportion to the respective amounts described in this clause payable to them;

(C) Third, to pay Obligations constituting accrued and unpaid interest and fees (including without limitation, the Early Termination Premium) due and payable to, the Lenders by the Borrowers under this Agreement and the other Loan Documents ratably among them in proportion to the respective amounts described in this clause Third payable to them;

(D) Fourth, to repay principal on the Revolving Credit Loans ratably among the holders thereof in proportion to the respective amounts described in this clause Fourth payable to them;

(E) Fifth, subject to Section 2.03(b), to the Reserved Cash Account; and

(F) Sixth, thereafter to the Borrowers' operating account.

All payments applied to the Loans pursuant to this Section 2.05 shall (x) be applied to the Loans owing to the Lenders in accordance with their respective Applicable Percentages, (y) be subject to any applicable Early Termination Premium, and (z) be accompanied by accrued interest to the extent required by Section 2.06 and Breakage Costs to the extent required by Section 3.04.

The Administrative Agent reserves the right in its Permitted Discretion at any time to repay the outstanding Obligations with any or all of the Reserved Cash or funds held in the Reserved Cash Account and in such event, Reserved Cash or funds held in the Reserved Cash Account shall be applied as follows: First, to repay the principal balance of the Revolving Credit Loans (but so long as no Default or Event of Default shall have occurred and be continuing at such time, without any permanent reduction of Revolving Credit Commitments); and Second, to repay the principal balance of the Term Loans, subject to any applicable Early Termination Premium and, in each case, shall be applied to the principal balance of the Loans based on the pro rata share of each Lender (for the avoidance of doubt, the remittance of additional Reserved Cash pursuant to Section 2.03(b) above shall not be deemed a prepayment for the purposes of Section 2.03(b) and any applicable Early Termination Premium unless and until such Reserved Cash is applied to prepay the Term Loans or results in a Revolving Credit Commitment reduction). The Administrative Agent shall provide notice of such application of Reserved Cash (which notice may be same day) in writing to the Borrower, unless the Administrative Agent determines in its Permitted Discretion that the provision of such notice would impair the collectability or repayment of the Obligations.

(c) Application of Payments; Events of Default. Following the occurrence and during the continuance of an Event of Default, ~~or during the continuance of a Cash Dominion Trigger Event,~~ the Administrative Agent may (and at the direction of the Required Lenders, shall) apply all funds transferred and credited to the Collection Account (or otherwise on account of the payment of the Obligations) to the Obligations in accordance with Section 8.03.

2.06 Interest.

(a) Subject to the provisions of subsection (b) below, each Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted Term SOFR for such Interest Period plus the Applicable Rate.

(b) Following the occurrence and during the continuance of an Event of Default, the Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws unless otherwise agreed to in writing by the Administrative Agent.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest accruing at the Default Rate shall be due and payable on demand by the Administrative Agent. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.07 Fees.

(a) The Borrower shall pay to the Administrative Agent, for the ratable benefit of the Lenders (including SLR and its Affiliates), a one-time closing fee (the “Closing Fee”) in an aggregate amount equal to \$750,000. The Closing Fee shall be fully earned and due and payable in full upon the Closing Date.

(b) The Borrower shall pay an aggregate annual agency fee (the “Agency Fee”) of \$50,000 to the Administrative Agent, for the ratable benefit of the Administrative Agent and its Affiliates, in advance on the Closing Date and on each anniversary thereof, until the Obligations have been paid and satisfied in full. The Agency Fee shall be fully earned upon becoming due and payable.

(c) The Borrower shall pay to the Administrative Agent for the account of the Lenders in accordance with their Applicable Revolving Credit Percentages, an unused facility fee (the “Unused Facility Fee”) equal to 0.50% times the Unused Revolving Credit Facility Amount for the applicable calendar month for which such Unused Facility Fee is due. The Unused Facility Fee shall accrue at all times on and following the Closing Date so long as the Revolving Credit Commitments are outstanding, including at any time during which one or more of the conditions in Section 4.02 is not met, and shall be due and payable monthly in arrears on the first day of each calendar month, commencing with the first such date to occur after the Closing Date, and on the Maturity Date. The Unused Facility Fee shall be calculated monthly in arrears and shall be fully earned upon becoming due and payable.

(d) Upon the occurrence of an Early Termination Premium Trigger Event, the Borrower agrees to pay to the Administrative Agent, for the ratable benefit of the Lenders, the Early Termination Premium. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, it is understood and agreed that if the Obligations are accelerated as a result of the occurrence and continuance of any Event of Default (including by operation of law or otherwise), the Early Termination Premium, if any, determined as of the date of acceleration, will also be due and payable and will be treated and deemed as though the Term Loans were prepaid and the Revolving Credit Commitments were terminated as of such date and shall constitute part of the Obligations for all purposes herein. Any Early Termination Premium payable in accordance with this Section 2.07(d) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Early Termination Premium Trigger Event, and each of the Credit Parties agree that it is reasonable under the circumstances currently existing. The Early Termination Premium shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH OF THE CREDIT PARTIES EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE FEE IN CONNECTION WITH ANY SUCH ACCELERATION. Each of Credit Party expressly agrees that (A) the Early Termination Premium is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel, (B) the Early Termination Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (C) there has been a course of conduct between the Lenders and the Credit Parties giving specific consideration in this transaction for such agreement to pay the Early Termination Premium, (D) the Credit Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.07(d), (E) the agreement of the Credit Parties to pay the Early Termination Premium is a material inducement to the Lenders to provide the Commitments and make the Loans, and (F) the Early Termination Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of any such Early Termination Premium Trigger Event.

(e) Each Borrower's obligation to pay the foregoing fees described in this Section 2.07 will not be subject to counterclaim or setoff for, or be otherwise affected by, any claim or dispute such Borrower may have. All of the fees described above in this Section 2.07 shall be nonrefundable for any reason whatsoever and shall be in addition to any other fees, costs and expenses payable pursuant to this Agreement and the other Loan Documents.

2.08 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.09 Evidence of Debt. The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

2.10 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 1:00 p.m. Eastern time on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 1:00 p.m. Eastern time shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of Adjusted Term SOFR and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to such Loans made. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(i) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of Adjusted Term SOFR and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Loans set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds promptly (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of each of the Lenders hereunder to make Term Loans and Revolving Credit Loans, and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.11 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans to any assignee or participant, other than to the Borrower or any Subsidiary of the Borrower (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.12 Collateral and Guarantees.

(a) Collateral. The Loans and the other Obligations shall be secured by valid, first priority (subject to Permitted Liens), perfected and enforceable Liens in favor of the Administrative Agent, for the benefit of the holders of the Obligations, in all of the Collateral subject to the terms of this Agreement and the Security Documents.

(b) Guarantees. Payment of the Loans and the other Obligations shall be unconditionally guaranteed by each Guarantor subject to the terms of the Guaranty.

(c) Further Assurances. Each Credit Party covenants and agrees that it shall comply with all terms and conditions of each of the Security Documents and that such Credit Party shall at any time and from time to time at the request of the Administrative Agent or the Required Lenders, execute and deliver such instruments and documents and do such acts and things as the Administrative Agent may reasonably request in order to provide for, perfect or protect the Lien of the Administrative Agent in the Collateral.

2.13 [Reserved].

2.14 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Committed Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.15 Protective Advances.

(a) The Administrative Agent shall be authorized, in its discretion, at any time, whether or not a Default or Event of Default exists or any of the conditions in Section 4.02 are not satisfied, to make loans, disbursements and advances ("Protective Advances") to the Borrower, on behalf of all Lenders, that the Administrative Agent, in its Permitted Discretion, deems are necessary or desirable (i) to preserve or protect any Collateral or the Credit Parties' business operations, (ii) to enhance the collectability or repayment of the Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Credit Parties pursuant to the terms of this Agreement, including payments of principal, interest, fees, premiums (including, without limitation, any Early Termination Premium), reimbursable expenses (including costs, fees and expenses as described in Section 10.04) and other sums payable under the Loan Documents; provided that prior to an Event of Default and absent exigent circumstances, the Administrative Agent shall use reasonable efforts to notify the Borrower after paying any such amount or taking any such action. All Protective Advances shall bear interest at the Base Rate (or, during such time as an Event of Default has occurred and is continuing, the Default Rate). All Protective Advances shall be Obligations secured by the Collateral, shall constitute Loans and shall be payable by the Borrower on demand by the Administrative Agent. Any funding of Protective Advances shall not constitute a waiver by the Administrative Agent or the Lenders of any Event of Default. Other than with respect to the notice and consultation rights expressly provided above, in no event shall the Borrower or any other Credit Party be deemed to be a beneficiary of this Section nor authorized to enforce any of its terms.

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. Each Lender shall transfer (a “Transfer”) the amount of such Lender’s Applicable Percentage of the outstanding principal amount of the applicable Protective Advance with respect to such purchased interest and participation promptly when requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, but in any case not later than 1:00 p.m., Eastern time, on the Business Day notified (if notice is provided by the Administrative Agent prior to 12:00 p.m. Eastern time), and otherwise on the immediately following Business Day (the “Transfer Date”). Transfers may occur during the existence of a Default or Event of Default. If any such amount is not transferred to the Administrative Agent by any Lender on such Transfer Date, the Administrative Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon, for each day from and including the Transfer Date to but excluding the date of payment to the Administrative Agent, at Adjusted Term SOFR. From and after the date, if any, on which any Lender is required to fund, and funds, its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender’s Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

2.16 Loan Account.

(a) The Administrative Agent shall maintain in accordance with its usual and customary practices an account or accounts (“Loan Account”) evidencing the Indebtedness of the Borrower resulting from each Loan from time to time. Any failure of the Administrative Agent to record anything in the Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of the Borrower to pay any amount owing hereunder.

(b) Entries made in the Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in the Loan Account is provided to or inspected by any Person, then such information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies the Administrative Agent in writing within thirty (30) days after receipt or inspection that specific information is subject to dispute.

(c) The Administrative Agent is authorized to, and at its sole election may, charge to the Loan Account on behalf of the Borrower and cause to be paid all fees, expenses, charges, costs and interest and principal, other than principal of the Committed Loans, then due and payable by the Borrower under this Agreement or any of the other Loan Documents, even if the amount of such charges would cause Excess Availability to be less than \$0. At the Administrative Agent's option and to the extent permitted by law, any charges so made shall constitute part of the Obligations hereunder. The Administrative Agent shall provide reasonable notice to the Borrower of any such charges.

2.17 Reserves and Eligibility Criteria. The Administrative Agent may, from time to time in the exercise of its Permitted Discretion, (a) establish, modify or eliminate Reserves and (b) adjust the eligibility criteria or establish new eligibility criteria with respect to components of the Borrowing Base; provided that, notwithstanding the foregoing or anything contrary in this Agreement, no Reserves shall be established or changed and no modifications to eligibility criteria or standards made, in each case, except upon not less than three (3) Business Days' prior written notice to the Borrower, which notice shall include a reasonably detailed description of such Reserve being established or the modification to eligibility criteria or standards being made (during which period (i) the Administrative Agent shall, if requested, discuss any such Reserve, change or modification with the Borrower and (ii) the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve, change or modification thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change or modification thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent); provided, further, that such notice period shall not apply (x) in such circumstances where the Administrative Agent determines in its Permitted Discretion that the provision of such notice would impair the collectability or repayment of the Obligations (in which case the Administrative Agent shall notify the Borrower as promptly as such circumstances permit) and (y) to changes to Reserves solely for purposes of correcting mathematical or clerical errors, it being understood that no Default or Event of Default shall be deemed to result therefrom, if applicable, for a period of one (1) Business Day.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Credit Party, then the Administrative Agent or such Credit Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Credit Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment to a Recipient, then (A) the Credit Party or Administrative Agent shall withhold or make such deductions as are determined by the Credit Party or Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Credit Party or Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Credit Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment to a Recipient, then (A) such Credit Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Credit Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Credit Parties. Without limiting the provisions of subsection (a) above, the Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse the Administrative Agent for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Credit Parties shall, and do hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Credit Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (y) the Administrative Agent and the Credit Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Credit Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Credit Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Credit Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Credit Parties shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders: Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Credit Party is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax (or any substantively comparable subsequent versions thereof or successors thereto);

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(II) executed copies of IRS Form W-8ECI (or any substantively comparable subsequent versions thereof or successors thereto);

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code a certificate substantially in the form of Exhibit G (a “U.S. Tax Compliance Certificate”), as applicable and duly executed copies of IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto); or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or any substantively comparable subsequent versions thereof or successors thereto), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or any substantively comparable subsequent versions thereof or successors thereto), a U.S. Tax Compliance Certificate in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C) (i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(E) On or prior to the date it becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower either (i) a PDF copy of IRS Form W-9, or (ii) if the Administrative Agent is not a U.S. Person (a) two duly completed originals of IRS Form W-8ECI with respect to payments to be received under the Loan Documents for its own account and (b) with respect to payments received on account of any Lender, a PDF copy of IRS Form W-8IMY evidencing its agreement with the Borrower to be treated as a U.S. Person for U.S. federal withholding purposes and assuming primary responsibility for U.S. federal income tax withholding. Notwithstanding anything to the contrary in this Section 3.01(e)(ii)(E), the Administrative Agent shall not be required to deliver any documentation pursuant to this Section 3.01(e)(ii)(E) that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Credit Party or with respect to which any Credit Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Credit Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Credit Party, upon the request of the Recipient, agrees to repay the amount paid over to the Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Credit Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Credit Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Inability to Determine Rates; Illegality

(a) If the Administrative Agent determines (which determination shall be conclusive absent manifest error) in connection with any request for a Loan that (a) adequate and reasonable means do not exist for determining Adjusted Term SOFR or (b) Adjusted Term SOFR (or such replacement convention) with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Loans at an interest rate based on Adjusted Term SOFR (or such replacement convention) shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice and during such time, all such outstanding Loans shall bear interest at the Base Rate plus the Applicable Rate (or at the Default Rate if an Event of Default has occurred that is continuing). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of Loans bearing interest at Adjusted Term SOFR (or such replacement convention) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Loans bearing interest at the Base Rate plus the Applicable Rate (or at the Default Rate if an Event of Default has occurred that is continuing) in the amount specified therein.

(b) If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted in writing that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain, fund or charge interest with respect to any Loan, or to determine or charge interest rates, in each case, based upon Adjusted Term SOFR, or to give effect to its obligations as contemplated hereby with respect to such Loan, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or continue Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Until such circumstances giving rise to the determination no longer exist, as set forth in a written notice provided by such Lender to the Administrative Agent and the Borrower, all outstanding Loans of such Lender and Loans thereafter made by such Lender shall bear interest at the Base Rate plus Applicable Rate plus 2.00% per annum (or at the Default Rate if an Event of Default has occurred that is continuing) in the amount specified therein.

3.03 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition (other than any condition related to Taxes), cost or expense affecting this Agreement or Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, by an amount that such Lender deems to be material, of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, by an amount that such Lender deems to be material, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), by an amount that such Lender deems to be material, then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.04 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of (a) any continuation, payment or prepayment of any Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, or automatic, by reason of acceleration or otherwise); (b) any failure by a Credit Party (for a reason other than the failure of such Lender to make a Loan) to prepay or borrow any Loan on the date or in the amount notified by the Borrower or (c) any assignment of a Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13, including any loss of anticipated profits but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained (all of such losses, costs or expenses, together with any administrative fees referred to in the following sentence, are referred to herein collectively as the "Breakage Costs"). The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.04, each Lender shall be deemed to have funded each Loan made by such Lender through a matching deposit for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

3.05 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.03, or requires a Credit Party to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.03, then at the request of the Borrower such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.03, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.03, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender as the case may be (it being understood that the Borrower shall be given a reasonable opportunity to reimburse such costs or expenses). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.03, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.05(a), the Borrower may replace such Lender in accordance with Section 10.13.

3.06 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder and resignation of the Administrative Agent.

ARTICLE IV CONDITIONS PRECEDENT TO LOANS

4.01 Conditions to the Closing Date. The obligation of each Lender to make its initial Loans hereunder is subject to satisfaction of the following conditions precedent to the Administrative Agent satisfaction:

(a) The Administrative Agent receipt of the following, each of which shall be originals or facsimile or other electronic image transmission (e.g., "PDF" or "TIF" via electronic mail) (followed promptly by originals) unless otherwise specified, each properly executed by a member of the Senior Management of the signing Credit Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) (A) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Credit Parties, and (B) executed counterparts of each Security Document sufficient in number for distribution to the Administrative Agent and the Credit Parties, and an executed Note for each Lender who requests a Note;

(ii) an officer's certificate of each Credit Party executing a Loan Document, (A) certifying and attaching true, correct and complete copies of: (1) the certificate of formation, certificate of incorporation, articles of incorporation (or such equivalent thereof) of such Credit Party, and, where applicable, certified as of a recent date from the Secretary of State (or applicable Governmental Authority) of the jurisdiction in which such Credit Party is incorporated or formed, (2) the by-laws, limited liability company agreement, articles of association, partnership agreement or other applicable Governing Document of such Credit Party, and (3) the resolutions or votes of the board of directors or board of managers or partners (or equivalent thereof) of such Credit Party, authorizing such Credit Party's entry into the Loan Documents to which it is a party; and (B) certifying the incumbency of members of the Senior Management of such Credit Party authorized to act in connection with this Agreement and the other Loan Documents to which such Credit Party is a party and providing a specimen signature of such members of the Senior Management of such Credit Party who will be signing Loan Documents on the Closing Date and thereafter;

(iii) such documents and certifications as the Administrative Agent may require to evidence that each Credit Party executing a Loan Document is validly existing and in good standing (where applicable) in its jurisdiction of incorporation or formation, as applicable;

(iv) a favorable legal opinion of Willkie Farr & Gallagher LLP, special New York counsel to the Credit Parties, addressed to the Administrative Agent and each Lender, as to matters concerning the Credit Parties and the Loan Documents as the Administrative Agent may reasonably request; and

(v) a certificate of a member of the Senior Management of the Borrower certifying that (1) the condition specified in Sections 4.02(b), has been satisfied, (2) there has been no event or circumstance since December 31, 2023 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (3) all consents, licenses, and approvals required in connection with the execution, delivery and performance by each Credit Party and the validity against each Credit Party of the Loan Documents to which such Credit Party is a party have been obtained.

(b) The Administrative Agent shall have received duly executed Agency Account Agreements, signed by each of the applicable parties thereto, for each deposit account or securities account required to be subject to an Agency Account Agreement pursuant to the terms of Section 6.16 hereof.

(c) The Administrative Agent shall have received a duly completed Borrowing Base Certificate together with such supporting materials as requested by the Administrative Agent, dated as of the Closing Date, demonstrating that Excess Availability is equal to or greater than \$3,500,000 more than the greater of (i) \$3,000,000 and (ii) 7.5% of the Line Cap as of the Closing Date after giving effect to (A) the funding of the Term Loan hereunder and (B) the consummation of the transactions and payment of all fees and expenses in connection therewith, with a certification that all accounts payable, lease payments, payments due under Indebtedness (other than the Obligations) and taxes, in each case which are due and payable at such time have been paid current and excluding good faith disputes and any other items disclosed to the Administrative Agent in writing prior to the Closing Date and approved by the Administrative Agent.

(d) The Administrative Agent shall have received certificates of insurance from an independent insurance broker naming the Administrative Agent as additional insured or lender's loss payee thereunder, identifying insurers, types of insurance, insurance limits, and policy terms, and otherwise describing the insurance obtained in accordance with the provisions of this Agreement and the other Loan Documents, which shall be in amounts, types and terms and conditions reasonably satisfactory to the Administrative Agent.

(e) The Security Documents shall be effective to create in favor of the Administrative Agent a legal, valid and enforceable first priority security interest in and Lien upon the Collateral.

(f) The Administrative Agent shall have received from each Credit Party executing a Loan Document, a completed and executed Closing Date Perfection Certificate and the results of UCC and intellectual property searches with respect to the Collateral, indicating no Liens other than Permitted Liens and otherwise in form and substance reasonably satisfactory to the Administrative Agent.

(g) The Administrative Agent shall have received a payoff letter in form and substance satisfactory to the Administrative Agent evidencing that the Specified Existing Debt has been or concurrently with the Closing Date shall be repaid in full, together with such other financing statement terminations, notices of termination and releases, requested by the Administrative Agent.

(h) The Administrative Agent shall have received an officer's certificate of the Borrower dated as of the Closing Date and signed by a Financial Officer as to the Solvency of the Credit Parties and their Subsidiaries, on a consolidated basis, immediately after giving effect to the Loans hereunder and the other transactions contemplated hereby occurring on the Closing Date.

(i) The Administrative Agent shall have received a business plan and integrated multi-year projections of the Parent and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Parent and the other Credit Parties, in form and substance acceptable to the Administrative Agent, of (i) Excess Availability and (ii) consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries through the Fiscal Year ending December 31, 2023 and 2024 on a month-by-month basis and quarterly for each Fiscal Year thereafter through and including the Fiscal Year ending December 31, 2028.

(j) The Administrative Agent shall have been satisfied with results of all business and legal due diligence, including, without limitation:

- (i) the capital structure of the Credit Parties and their Affiliates;
- (ii) the results of commercial finance examinations (including a "bring down" commercial field exam);
- (iii) the financial statements and projections referred to in [Section 5.02](#);

(iv) all background checks on Senior Management, documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation, in each case, to the Administrative Agent’s reasonable satisfaction; and

(v) to the extent a Credit Party constitutes a “legal entity customer” under the Beneficial Ownership Regulation and to the extent requested by any Lender, a completed Beneficial Ownership Certification in relation to each such Credit Party.

(k) The Administrative Agent shall have received evidence to its satisfaction of the closure of all of the Credit Parties’ bank accounts other than those listed on Schedule 10 to the Closing Date Perfection Certificate.

(l) [Reserved].

(m) The Administrative Agent shall have received (i) an initial Borrowing Request Notice and disbursement instructions from the Borrower, indicating how the proceeds of the Term Loans are to be disbursed and (ii) a sources and uses and funds flow memorandum, in each case, in form, scope and substance reasonably satisfactory to the Administrative Agent.

(n) Any fees required to be paid under the Loan Documents on or before the Closing Date shall have been paid.

(o) The Borrower shall have paid out of the proceeds of the initial funding of the Term Loans all fees, charges and disbursements of counsel to the Administrative Agent, the Lenders and the Arranger to the extent invoiced prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent, the Lenders and the Arranger).

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or reasonably acceptable or satisfactory to such Person unless the Administrative Agent shall have received notice from such Person prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Loans. The obligation of each Lender to honor any Borrowing Request Notice is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Credit Party contained in Article V and any other Loan Document, shall be true and correct in all material respects (but without any duplication of any materiality qualifications) on and as of the date of such Loans, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (but without any duplication of any materiality qualifications) as of such earlier date, and except that for purposes of Section 4.02, the representations and warranties contained in Section 5.02 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively of Section 6.04.

(b) No Default or Event of Default shall exist or would result from such proposed Borrowing or from the application of the proceeds thereof (including, without limitation, as to Section 7.12).

(c) The Borrower shall have delivered to the Administrative Agent a Borrowing Request Notice in accordance with the requirements hereof and a Borrowing Base Certificate (such Borrowing Base Certificate to be the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.04(c) modified to reflect Total Outstandings on such date).

Each Borrowing Request Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a), (b), and (c) have been satisfied on and as of the date of the applicable Loan.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each Credit Party signatory hereto represents and warrants to the Lenders and the Administrative Agent for itself and on behalf of its Subsidiaries as follows:

5.01 Corporate Authority, Etc.

(a) **Existence, Qualification and Power.** Each Credit Party and each Subsidiary thereof (i) is duly organized, incorporated or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (ii) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (iii) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (a)(ii) and (iii) of this Section 5.01, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) **Authorization; No Contravention.** The execution, delivery and performance by each Credit Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (i) contravene the terms of any of such Person's Governing Documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (other than a Permitted Lien) under, or require any payment to be made under (A) any Material Agreement to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Law; except in each case referred to in clauses (b)(ii) and (iii) of this Section 5.01, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) **Governmental Authorization; Other Consents.** Except as could not reasonably be expected to result in a Material Adverse Effect, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Loan Document, (ii) the grant by any Credit Party of the Liens granted by it pursuant to the Security Documents, (iii) the perfection or maintenance by any Credit Party of the Liens created under the Security Documents (including the first priority nature thereof), or (iv) the exercise of the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents, except, in each case, for (x) approvals, consents, exemptions, authorizations, actions, notice and filing which have been duly obtained, taken, given or made and are in full force and effect and (y) filings which are necessary to perfect the security interests created under the Security Documents.

(d) **Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Credit Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Credit Party, enforceable against each Credit Party that is party thereto in accordance with its terms, subject to applicable Debtor Relief Laws and general principles of equity relating to enforceability (whether considered in a proceeding at law or in equity) but such principles do not make the remedies afforded by the Loan Documents inadequate for the practical realization of the principal benefits intended to be provided thereby.

5.02 Financial Statements; Projections.

(a) There has been furnished to the Administrative Agent (for distribution to each of the Lenders) a consolidated balance sheet of the Parent and its Subsidiaries as of December 31, 2023 in draft form, which is in form and substance satisfactory to the Administrative Agent, and a consolidated statements of income or operations, cash flows and shareholders' equity of the Parent and its Subsidiaries for the Fiscal Year then ended, which financial statements (i) have been prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and the results of operations for the Fiscal Year then ended and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as expressly noted therein, and (iii) show all material Indebtedness and other liabilities, direct or contingent, of the Parent and its Subsidiaries as of the date thereof, including liabilities for all federal and other material Taxes, material commitments and Indebtedness.

(b) There has been furnished to the Administrative Agent (for distribution to each of the Lenders) an unaudited consolidated balance sheet of the Parent and its Subsidiaries as of the close of the Fiscal Month ending January 31, 2024, and unaudited consolidated statements of income or operations and cash flow of the Parent and its Subsidiaries as of the close of such Fiscal Month, in each case, certified by a Financial Officer of the Parent. Such balance sheet and statement of income or operations and cash flows have been prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and the results of operations, cash flows and changes in shareholders' equity for the period covered thereby, subject to the absence of foot notes and to normal year-end audit adjustments. There are no contingent liabilities of the Parent or any Subsidiary as of such date involving material amounts, known to the officers of the Parent or any Subsidiary, required to be disclosed in such balance sheet and the notes related thereto in accordance with GAAP which were not disclosed in such balance sheet and the notes related thereto.

(c) There has been furnished to the Administrative Agent (for distribution to each of the Lenders) integrated multi-year projections of (x) Excess Availability and (y) the consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries for each Fiscal Month following the Closing Date through and including the Fiscal Year ending December 31, 2024 and for each Fiscal Quarter thereafter. Such projections have been prepared on a *pro forma* basis after giving effect to the transactions contemplated hereby. Such projections were prepared in good faith and based on assumptions that are believed in good faith to be reasonable in light of the facts and circumstances known on and as of the Closing Date (it being understood and agreed that such projections are as to future events and are not to be viewed as facts, subject to significant uncertainties and contingencies, many of which are beyond control, no assurance can be given that the projections will be realized, and actual results may materially differ from the projections).

5.03 Solvency. After giving effect to the Loans hereunder, the other transactions contemplated hereby, the Credit Parties and their Subsidiaries, on a consolidated basis, are Solvent.

5.04 No Material Adverse Change. Since December 31, 2023, there has occurred no Material Adverse Effect.

5.05 Ownership of Property; Liens. Each of the Credit Parties and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for any defects in such title in fee simple as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Credit Parties and their Subsidiaries is subject to no Liens, other than Permitted Liens.

5.06 Franchises, Patents, Copyrights, etc. Each Credit Party possesses or has a license or other right to use all Intellectual Property reasonably necessary for the conduct of its business without known material infringement or misappropriation of any rights of others, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Closing Date Perfection Certificate sets forth a true, correct and complete list of all U.S. Intellectual Property registrations and applications owned by each Credit Party as of the Closing Date. As of the Closing Date, the Credit Parties do not possess any Intellectual Property registered in a jurisdiction other than the United States. When delivered as required pursuant to Section 6.04(j), the most recently delivered Perfection Certificate sets forth a true, correct and complete list of the Intellectual Property registration and applications owned by each Credit Party as of such date.

5.07 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Credit Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Credit Parties, any of its Subsidiaries or any member of the Senior Management of any Credit Party or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or (b) could reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect, except as specifically disclosed in Schedule 17 to the Closing Date Perfection Certificate.

5.08 No Default. Except as set forth on Schedule 5.08, neither any Credit Party nor any Subsidiary thereof is in default under or with respect to any Material Agreement that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.09 Compliance with Laws. Each Credit Party and each Subsidiary thereof is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, in each case, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.10 Tax Status. The Credit Parties (i) have filed or caused to be filed all federal state, foreign, provincial and income and all other tax returns, reports and declarations required by any jurisdiction to which any of them is subject and (ii) have paid all federal and all other material Taxes (including withholdings) required to have been paid including in their capacity as tax withholding agents, except those being contested in good faith and by appropriate proceedings and for which the Credit Parties have set aside on their books reasonably adequate provisions therefor in accordance with GAAP (unless foreclosure or other similar enforcement action has been commenced in respect thereof or any Lien has been filed or otherwise perfected therefor, in which case such exception does not apply). There is no proposed tax assessment or other claim against and no tax audit with respect to any Credit Party or any Subsidiary except (i) those being actively contested by a Credit Party or any Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. Proper and accurate amounts have been withheld by each Credit Party from its respective employees for all periods in compliance with all applicable and federal, state and material local and foreign laws and such withholdings have been timely paid to the respective Governmental Authorities.

5.11 Insurance. The properties of the Credit Parties are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Credit Parties operate, including without limitation and for the avoidance of doubt, business interruption insurance.

5.12 Investment Company Acts. None of any Credit Party, any Person controlling any Credit Party, or any Subsidiary of any Credit Party is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.13 ERISA Compliance.

(a) Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code, along with its corresponding trust, either has received a favorable determination letter or is subject to an applicable opinion or advisory letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the best knowledge of each Credit Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status that would reasonably be expected to result in a Material Adverse Effect.

(b) There are no pending or, to the best knowledge of each Credit Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) no ERISA Event has occurred, and neither any Credit Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Credit Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither any Credit Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such Pension Plan to drop below 60% as of the most recent valuation date; (iv) neither any Credit Party nor any ERISA Affiliate has incurred any liability with respect to any Pension Plan to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither any Credit Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither any Credit Party nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan.

5.14 Regulations U and X. The proceeds of the Loans shall be used solely for the purposes specified in Section 6.11. No portion of any Loan is to be used for the purpose of purchasing or carrying any “margin security” or “margin stock” as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.

5.15 Jurisdiction of Organization; Chief Executive Office. Subject to any notices provided by the Credit Parties pursuant to Section 6.02, Schedule A to the Closing Date Perfection Certificate lists each Credit Party’s jurisdiction of organization, legal name and the location of such Credit Party’s chief executive office.

5.16 Fiscal Year. The Credit Parties have a fiscal year ending as set forth in the definition of “Fiscal Year”.

5.17 Subsidiaries, etc. As of the Closing Date, the Credit Parties do not have any Subsidiaries except as set forth on Schedule 8(a) to the Closing Date Perfection Certificate and, as of the Closing Date, all of the outstanding Capital Stock in such Subsidiaries have been validly issued, fully paid and with respect to Subsidiaries that are corporations, nonassessable (except to the extent of such rights that may exist pursuant to non-waivable provisions of applicable Laws) in the amounts specified on Schedule 8(a) to the Closing Date Perfection Certificate, free and clear of all Liens (other than Permitted Liens).

5.18 Environmental Compliance. Except as specifically disclosed in Schedule 5.17, each Credit Party and each Subsidiary thereof is, and within the period of all applicable statutes of limitation have been, in compliance with the requirements of all Environmental Laws applicable to the business, operations and properties of such Credit Party and its Subsidiaries except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Credit Parties and their Subsidiaries hold all Environmental Permits (each of which is in full force and effect) required for any of their current operations or for any property owned, leased or otherwise operated by any of them, and are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits, in each case, except for such failures to hold or comply with such Environmental Permits could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.19 Labor Contracts. Except as set forth on Schedule 5.20, as of the Closing Date, none of the Credit Parties is party to any collective bargaining agreement. There are no material grievances, disputes or controversies with any union or other organization of any Credit Party’s employees, or threats of strikes or work stoppages that would reasonably be expected to result in a Material Adverse Effect.

5.20 Disclosure. Each Credit Party has disclosed to the Administrative Agent all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, in each case, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other written information (other than projections, forecasts and other forward-looking information and information of an economic or industry-wide nature) furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading.

5.21 Anti-Corruption Laws; Sanctions Laws; Beneficial Ownership Certification.

(a) Each Credit Party, its Subsidiaries and their respective Related Parties are in compliance with applicable Anti-Corruption Laws in all material respects. Each Credit Party and each of its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Credit Party, its Subsidiaries and their respective Related Parties with applicable Anti-Corruption Laws. No Loan, use of the proceeds of any Loan or other transactions contemplated hereby, in each case, made or taken by a Credit Party or its Subsidiaries will violate Anti-Corruption Laws.

(b) No Credit Party, nor, to the knowledge of the Credit Parties, any director, officer, employee or agent thereof, is entity Person that is, or is owned or controlled by any Person that is (i) currently the subject of any applicable Sanctions, (ii) located, organized or residing in any Designated Jurisdiction, (iii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List or any similar list enforced by any other relevant sanctions authority, or (iv) or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of applicable Sanctions or who is located, organized or residing in any Designated Jurisdiction. Neither any Credit Party, nor any Subsidiary nor, to the knowledge of any Credit Party, any Affiliate of any Credit Party (x) is a Sanctioned Person, or (y) has any of its assets in Sanctioned Countries. No Loan, nor the proceeds from any Loan, has been used to lend, contribute, provide or has otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any applicable Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, the Arranger, or the Administrative Agent) of applicable Sanctions.

(c) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.22 Borrowing Base Certificates. Each Borrowing Base Certificate is true, complete and correct in all material respects.

5.23. Eligible Accounts. As to each Account that is identified by Borrower as an Eligible Account in a Borrowing Base Certificate submitted to the Administrative Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by rendition of services to such Account Debtor in the ordinary course of a Credit Party's business, (b) owed to a Credit Party without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Administrative Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

5.24. Bank Accounts. The Closing Date Perfection Certificate sets forth the true, correct and complete account numbers and location of all bank accounts of the Credit Parties as of the Closing Date.

ARTICLE VI AFFIRMATIVE COVENANTS

Each Credit Party signatory hereto covenants and agrees for itself and on behalf of its Subsidiaries that, so long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation remains outstanding:

6.01 Punctual Payment. Each Credit Party will duly and punctually pay or cause to be paid when due all principal and interest on the Loans, the fees and all other Obligations and amounts provided for in this Agreement and the other Loan Documents to which it is a party and will cause to be paid any amounts owing by any Credit Party, all in accordance with the terms of this Agreement and such other Loan Documents.

6.02 Maintenance of Office; Certain Changes. Each Credit Party shall furnish to the Administrative Agent prior written notice of any change in (i) any Credit Party's legal name and (ii) any Credit Party's organizational structure or jurisdiction of incorporation or formation, no later than ten (10) days (or such shorter period as the Administrative Agent may agree to in its sole discretion) prior to, and the acknowledgement of the Administrative Agent that all actions required by the Administrative Agent to continue the perfection of its Liens, shall have been completed, before any change in its name, or the type of its organization or jurisdiction of organization. Each Credit Party agrees not to effect or permit any change referred to in the preceding sentence until the Administrative Agent has confirmed in writing that all filings, publications and registrations have been made under the UCC or other applicable Law that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral (subject only to Permitted Liens) for its own benefit and the benefit of the other Secured Parties. Each Credit Party will furnish to the Administrative Agent written notice of any change in (i) the location of any Grantor's chief executive office, its principal place of business, any office in which it maintains books or records relating to any Collateral included in the Borrowing Base owned by it or any office or facility at which any Collateral included in the Borrowing Base owned by it is located (including the establishment of any such new office or facility) or location from which Accounts are invoiced or paid and (ii) any Credit Party's Federal Taxpayer Identification Number or organizational identification number, if any required on the financing statement to be filed against such Credit Party, in each case, not less than ten (10) calendar days (or such shorter period as the Administrative Agent may agree to in its sole discretion) after the occurrence of clauses (i) and (ii) of this sentence. Each Credit Party shall take any other action required to continue the perfection of the Administrative Agent's Liens on the Collateral.

6.03 Records and Accounts. Each Credit Party will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with, and all financial statements provided for herein shall be prepared in accordance with GAAP consistently applied; (b) maintain adequate accounts and reserves for all federal and all other material taxes (including income taxes, depreciation, depletion, obsolescence and amortization of its properties, contingencies and other reserves); and (c) at all times, maintain independent certified public accountants as the Credit Parties' accountants which shall be reasonably satisfactory to the Administrative Agent (provided that Grant Thornton, BDO, EisnerAmper, RMP Accounting and any of the "Big Four" accounting firms are deemed to be satisfactory to the Administrative Agent).

6.04 Financial Statements, Certificates and Information. The Credit Parties will deliver to the Administrative Agent (for distribution to the Lenders):

(a) as soon as available, and in any event within one hundred (100) days after the close of each Fiscal Year, (i) balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders' equity for such Fiscal Year, on a consolidated basis for the Parent and its Subsidiaries, which consolidated statements shall be audited and certified without qualification by the Credit Parties' independent certified public accountants (except for any such qualification (x) relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Parent's independent certified public accountants or (y) as to the audit for the Fiscal Year ended December 31, 2023, any potential inability to satisfy a financial covenant set forth in Section 7.12 on a future date or in a future period) and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and other information reasonably acceptable to the Administrative Agent (provided that any such financial statements containing information of the type and scope consistent with the financial statements for the Fiscal Year ended December 31, 2022 shall be deemed to be reasonably acceptable to the Administrative Agent) and (ii) a Compliance Certificate duly executed by a Financial Officer of the Parent, which (A) attaches and certifies to the foregoing consolidated financial statements, (B) certifies that the information contained in such consolidated financial statements fairly presents in all material respects the financial condition of the Parent and its Subsidiaries on the dates indicated therein, (C) setting forth a calculation of Consolidated EBITDA and Modified Consolidated EBITDA on a trailing twelve month basis at the end of such Fiscal Year, (D) appends computations evidencing the Consolidated Fixed Charge Coverage Ratio for the Measurement Period ended as of the last day of such Fiscal Year, to the extent such computations differ from those provided pursuant to Section 6.04(b), (E) appends computations relative to Section 7.12 and specifying whether the Parent and its Subsidiaries have complied with Section 7.12, to the extent such computations differ from those provided pursuant to Section 6.04(b), (F) includes a management discussion and analysis (with reasonable detail and specificity) of the results of operations for such Fiscal Year and (G) states that such Financial Officer has reviewed this Agreement and the other Loan Documents and has no knowledge of any Default or Event of Default during such Fiscal Year, or if such Financial Officer has such knowledge, specifying each Default or Event of Default and the nature thereof;

(b) as soon as available, and in any event within thirty (30) days after the end of each Fiscal Month, including for the last Fiscal Month of the Fiscal Year (subject to subsequent audit adjustments and, in the case of the last Fiscal Month of each Fiscal Quarter, any subsequent adjustments delivered within forty-five (45) days after the end of such Fiscal Month) (i) unaudited balance sheets as of the end of such month and the related statements of income and cash flow for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Parent and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year (for such month and for the portion of the Fiscal Year then elapsed) and certified by a Financial Officer of the Parent as prepared in accordance with GAAP and fairly presenting the financial position and results of operations for such month and period, subject to normal year-end adjustments and the absence of footnotes, and (ii) a Compliance Certificate duly executed by a Financial Officer of the Parent, which, (A) attaches and certifies to the foregoing financial statements, (B) certifies that the information contained in such financial statements fairly presents in all material respects the financial condition of the Parent and its Subsidiaries on the date thereof (subject to year-end adjustments and the absence of footnotes), (C) sets forth in comparative form the results for and through such Fiscal Month (and for the portion of the Fiscal Year then elapsed) with the most recent projections delivered to the Administrative Agent pursuant to Section 6.04(d), (D) appends computations evidencing the Modified Consolidated EBITDA and Consolidated Fixed Charge Coverage Ratio for the Measurement Period ended as of the last day of such Fiscal Month, (E) appends computations relative to Section 7.12(a) and specifying whether the Parent and its Subsidiaries have complied with Section 7.12(a) as of the end of such Fiscal Month, and (F) states that such Financial Officer has reviewed this Agreement and the other Loan Documents and has no knowledge of any Default or Event of Default during such Fiscal Month, or if such Financial Officer has such knowledge, specifying each Default or Event of Default and the nature thereof to the Administrative Agent's reasonable satisfaction;

(c) not later than the fifteenth (15th) day following the end of each Fiscal Month, (i) a Borrowing Base Certificate with respect to the Collateral of the Credit Parties as of the close of business of the last day of such previous Fiscal Month, accompanied by such supporting detail, documentation and information related thereto as the Administrative Agent shall reasonably request, and (ii) an accounts receivable aging report, and an accounts payable aging report, in each case, as of the close of business on the last day of such previous Fiscal Month, in each case, accompanied by such supporting detail, documentation and information as the Administrative Agent shall reasonably request, and such other data or information as the Administrative Agent may request; provided that during an Enhanced Collateral Reporting Period, the Borrower shall furnish such information on a weekly basis no later than on the Wednesday following the close of business of the immediately preceding week, with such information as of the Saturday of such preceding week;

(d) (i) not later than thirty (30) days after the end of each Fiscal Year, the annual budget for the following Fiscal Year, in form reasonably satisfactory to the Administrative Agent, of consolidated balance sheets and results of operations and cash flows of the Parent and its Subsidiaries on a monthly basis for such Fiscal Year (including the Fiscal Year in which the Maturity Date occurs), and (ii) promptly upon availability, any material revisions to such forecast with respect to such Fiscal Year, projections of Excess Availability and the Consolidated Fixed Charge Coverage Ratio for the next Fiscal Year on a month by month basis and on a quarterly basis, respectively;

(e) on a bi-weekly basis, not later than the Wednesday of every other week commencing on August 21, 2024 and until March 31, 2025, a rolling thirteen-week cash flow forecast for the Credit Parties and its Subsidiaries, in scope, form and substance reasonably satisfactory to the Administrative Agent;

(f) promptly following any Lender's request therefor, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering or terrorist financing rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation;

(g) promptly upon receipt thereof, copies of any detailed audit reports, financial control reports, management letters or recommendations submitted to the board of directors or other governing body (or the audit committee of the board of directors or other governing body) of the Credit Parties by independent accountants or internal auditors in connection with any audit of any of them;

(h) promptly, and in any event within three (3) Business Days after receipt by a member of Senior Management thereof by any Credit Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority concerning any material investigation or possible material investigation or other material inquiry by such agency regarding financial or other operational results of any Credit Party or any Subsidiary;

(i) (i) promptly following the reasonable request of the Administrative Agent, a report summarizing the insurance coverage in effect for each Credit Party (which may be in a form that is substantially consistent with Schedule 18 to the Closing Date Perfection Certificate) and (ii) within 30 days following the modification, renewal, replacement of any insurance policy of any Credit Party, updated insurance certificates and endorsements evidencing such coverage; and

(j) no later than thirty (30) days following the end of the Fiscal Year (or more frequently at the election of the Credit Parties), an updated Perfection Certificate as to each Credit Party in substantially the same form as the Perfection Certificate most recently delivered to the Administrative Agent (with such scope and detail as the Administrative Agent's may reasonably require) or a certificate confirming that there has been no change in such information since the Perfection Certificate delivered on the Closing Date or the most recent Perfection Certificate delivered pursuant to this Section 6.04;

(k) unless the Administrative Agent has "viewer access" with respect to each and all deposit accounts (including the Concentration Account), all securities accounts and all commodities accounts (other than Excluded Accounts) pursuant to Section 6.16 hereof, on Wednesday of each week, the Credit Parties shall provide the Administrative Agent a report with respect to all cash and Cash Equivalents held by the Credit Parties as of the immediately preceding Saturday or any more recent date (including, without limitation, all amounts thereof, and where such cash and Cash Equivalents are held); and

(l) (i) as and when required under the terms of any credit risk insurance policy maintained with respect to Eligible Foreign Accounts or Eligible Unbilled Foreign Accounts, a copy of any reporting required to be delivered to the insurance provider under such credit risk insurance policy, and (ii) proof of payment of each quarterly premium payment required to be made under such credit risk insurance policy by the due date for such payment.

6.05 Notices.

(a) **Defaults.** The Credit Parties will notify the Administrative Agent and each Lender in writing of the occurrence of any Default or Event of Default promptly after the occurrence thereof (but in any event within three (3) Business Days of the occurrence thereof (or, in the case of a Default under Section 8.01(c), within three (3) Business Days of Senior Management obtaining actual knowledge of the occurrence of such Default).

(b) **Material Adverse Effect.** The Credit Parties shall promptly (but in any event within three (3) Business Days) disclose in writing to the Administrative Agent (for distribution to each Lender) of any matter (including matters relating to litigation against the Credit Parties or violations of Environmental Law) that has resulted or would reasonably be expected to result in a Material Adverse Effect.

(c) **ERISA Events and Plans.** The Credit Parties shall promptly disclose in writing to the Administrative Agent the occurrence of any ERISA Event that could reasonably be expected to result in a Material Adverse Effect and, promptly after the sending or filing thereof, upon request, shall provide the Administrative Agent with copies of any annual report filed in connection with each Plan or Foreign Plan;

(d) **Change in Accounting Policies or Financial Reporting.** The Credit Parties shall promptly disclose in writing to the Administrative Agent notice of (i) any material change in accounting policies or financial reporting practices by the Credit Parties or any Subsidiary of a Credit Party; provided, that no such change shall alter the accounting methodology for Accounts (including the aging of Accounts) without prior written consent of the Administrative Agent or (ii) discharge by any Credit Party of its independent accountants or any withdrawal or resignation by such independent accountants.

(e) **Notice of Tax Claims, Litigation and Judgments.** The Credit Parties will give notice to the Administrative Agent in writing within three (3) Business Days of any written notice of proposed assessment or written notice of the commencement of any material audit by any Governmental Authority for unpaid Taxes of any Credit Party or any Subsidiary that are due and payable, any commencement of any investigation, litigation or proceedings affecting any Credit Party or any Subsidiary to which any Credit Party or any Subsidiary of any Credit Party is or becomes a party involving any claim against any Credit Party that has resulted in or would reasonably be expected to result in (i) liabilities of more than the Threshold Amount that are not covered by insurance policies maintained in accordance with Section 6.07 against any Credit Party or any Subsidiary or (ii) a Material Adverse Effect. The Credit Parties will promptly give notice to the Administrative Agent and each Lender, in writing, in form and detail reasonably satisfactory to the Administrative Agent, of any judgment not covered by insurance, final or otherwise, against any Credit Party (x) affecting or with respect to this Agreement, any other Loan Document or any security interest or Lien created thereunder or (y) that would reasonably be expected to have a Material Adverse Effect.

(f) **Notification of Claim against Collateral.** The Credit Parties will, promptly notify the Administrative Agent in writing of any (a) Lien made or asserted against any of the Collateral (other than Permitted Liens), or (b) setoff, written demand, claims, withholdings or other defenses in amounts greater than the Threshold Amount to the extent not covered by insurance policies maintained in accordance with Section 6.07, or defenses to the Administrative Agent's rights with respect to the Collateral.

(g) **Notification of Additional Intellectual Property Rights.** Concurrently with the delivery of financial statements with respect to the last Fiscal Month of any Fiscal Quarter, the Credit Parties will notify the Administrative Agent in writing of any patents, or patent applications filed with the PTO during such Fiscal Quarter, registered copyrights or mask works registered with the United States Copyright Office (or any successor agency thereto) during such Fiscal Quarter, applications for registration of copyrights or mask works filed with the United States Copyright Office (or any successor agency thereto) during such Fiscal Quarter and trademark and service mark registrations with the PTO during such Fiscal Quarter, and trademark and service mark registration applications filed with the PTO during such Fiscal Quarter, in each case owned by a Credit Party and which qualify as Collateral and in each case to the extent not listed on the Perfection Certificate most recently delivered to the Administrative Agent in accordance with this Agreement.

(h) **Environmental Events.** The Credit Parties will promptly give notice to the Administrative Agent and each Lender (a) of any violation of any Environmental Law that any Credit Party reports in writing or is reportable by such Person in writing (or for which any written report supplemental to any oral report is made) to any Governmental Authority and (b) upon any member of Senior Management of any Credit Party becoming aware thereof, of any inquiry, proceeding, investigation, or other action, including a notice from any agency of potential Environmental Liability, of any Governmental Authority that, in the case of clauses (a) or (b) above, would reasonably be expected to result in a Material Adverse Effect.

(i) **Prepayment Events.** Promptly following the occurrence of any event for which the Borrower is required to make a prepayment under Sections 2.03(c) through (f), together with all supporting information reasonably requested by the Administrative Agent.

(j) **Change in CEO or CFO.** The Credit Parties shall provide to the Administrative Agent prompt written notice of any change in any Credit Party's chief executive officer or chief financial officer and such change in chief executive officer or chief financial officer shall be reasonably satisfactory to the Administrative Agent.

(k) **Fundamental Changes.** The Credit Parties shall provide to the Administrative Agent promptly written notice of the occurrence of any event described in Section 7.05(a).

Delivery by the Credit Parties to the Administrative Agent of any and all notices required to be delivered to the Lenders as herein required shall be deemed made upon receipt of such notices by the Administrative Agent.

6.06 Legal Existence; Maintenance of Properties.

(a) Except as permitted by Section 7.05, each Credit Party will do all things necessary to (i) maintain in full force and effect its legal existence and good standing under the laws of its jurisdiction of organization or incorporation, (ii) maintain its qualification to do business in each state or other jurisdiction in which the failure to do so would result in a Material Adverse Effect, and (iii) maintain all of its rights and franchises, except where the failure to maintain such right or franchise would not result in a Material Adverse Effect.

(b) Each Credit Party (i) will cause all of its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment, subject to ordinary wear and tear or except where the failure to do so would not reasonably be expected to have a Material Adverse Effect and (ii) will cause to be made all necessary repairs, renewals and replacement thereof, all as in the judgment of the Credit Parties may be necessary so that the business carried on in connection therewith may be properly conducted at all times; provided that nothing in this Section 6.06(b) shall prevent any Credit Party from discontinuing the operation and maintenance of any of its properties if such discontinuance is permitted by Section 7.05(b).

6.07 Insurance. Each Credit Party will maintain with financially sound and reputable insurers insurance (a) with respect to its properties and business against such casualties and contingencies as shall be in accordance with the general practices of businesses engaged in similar activities in similar geographic areas and in amounts, containing such terms, in such forms and for such periods as may be reasonable and prudent and in accordance with the terms of the Security Documents, (b) business interruption insurance, and (c) so long as required to maintain the eligibility of Eligible Foreign Accounts or Eligible Unbilled Foreign Accounts included in the Borrowing Base unless otherwise agreed in writing by the Administrative Agent in its Permitted Discretion, credit insurance in form, substance, amounts, periods, and by an insurer, as reasonably satisfactory to the Administrative Agent; provided that the Administrative Agent agrees that the insurance in place on the Closing Date with respect to clauses (a) and (b) above is with financially sound and reputable insurers. Such policies of insurance in respect of the preceding clause (a) and (c) shall name the Administrative Agent as an additional insured or lender's loss payee, as applicable and each Credit Party shall use commercially reasonable efforts to cause such policies of insurance to provide for not less than 30 days' prior notice (or not less than 10 days' in the case of the non-payment of premium) to the Administrative Agent of termination, lapse or cancellation of such insurance.

6.08 Taxes. Each Credit Party will duly pay and discharge, or cause to be paid and discharged, before the same shall become overdue, all federal and all other material Taxes, assessments and other governmental charges imposed upon it and its real properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all material claims for labor, materials, or supplies that if unpaid might by law become a Lien or charge upon any of its property; provided that any such Taxes, assessment, charge, levy or claim need not be paid if the validity or amount thereof shall be contested in good faith by appropriate proceedings and such Credit Party shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto; and provided further that the Credit Parties will (a) pay all such Taxes, assessments, charges, levies or claims forthwith upon the commencement of any proceedings to foreclose or otherwise enforce any Lien that may have attached as security therefor, (b) will withhold from each payment to be made to any of its past or present employees, officers or directors, and to any non-resident of the country in which it is a resident, the amount of all Taxes and all other deductions or withholdings required to be withheld therefrom and pay the same to the proper taxing authority within the time required under any applicable Law, and (c) collect from all Persons the amount of all Taxes required by applicable Law to be collected from them and remit the same to the proper taxing authority within the time required under any applicable Law, except in each case to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that (i) the Administrative Agent may, without limiting the generality of its discretionary rights with respect to Reserves, impose Reserves with respect to such Lien and (ii) the Credit Parties shall promptly provide the Administrative Agent written notice of the commencement of any such proceeding to foreclose or enforce such Lien. Each Credit Party shall file or cause to be filed all federal, state and all material local and foreign income tax returns, and all other tax returns, reports, and declarations required by any jurisdiction to which it is subject as required by applicable Law.

6.09 Compliance with Laws, Contracts, Licenses, Permits. Each of the Credit Parties will comply with (a) the applicable Laws wherever its business is conducted, including, without limitation, all Environmental Laws, (b) the provisions of its Governing Documents, (c) all agreements and instruments (including, without limitation, any lease agreements) by which it or any of its properties may be bound, and (d) all applicable decrees, orders, and judgments, provided, that in each case, such compliance shall be required by this Agreement only where noncompliance with this Section 6.09(a), (c) or (d) would result in a Material Adverse Effect. If any authorization, consent, approval, permit or license from any Governmental Authority or any central bank or other fiscal or monetary authority shall become necessary or required in order that any Credit Party may fulfill any of its obligations hereunder or any of the other Loan Documents to which such Credit Party is a party or to conduct its business in any jurisdiction in which it operates, each Credit Party will promptly take or cause to be taken all reasonable steps within the power of such Credit Party to obtain such authorization, consent, approval, permit or license, and upon the reasonable request of the Administrative Agent, to furnish the Administrative Agent and the Lenders with evidence thereof. In the event a Credit Party is unsuccessful in obtaining such authorization, consent, approval, permit or license, the Administrative Agent may without limiting the generality of its discretionary rights with respect to Reserves, impose Reserves in its Permitted Discretion with respect to any Collateral held by such Person which the Administrative Agent reasonably determines is affected by such failure to obtain such authorization, consent, approval, permit or license.

6.10 Third Amendment Capital Raise. The Credit Parties shall cause the aggregate Third Amendment Capital Raise(\$) to occur no later than November 29, 2024.

~~6.10 [Reserved].~~

6.11 Use of Proceeds. The proceeds of the Loans shall be used solely for (a) working capital and general corporate purposes, in each case subject to the restrictions set forth in this Agreement, (b) the payment of fees and expenses incurred in connection with the negotiation, execution and delivery of this Agreement and the other Loan Documents and (c) to repay the Specified Existing Debt in full.

6.12 Covenant to Guarantee Obligations and Give Security.

(a) Upon the formation or acquisition of any new direct or indirect Subsidiary (other than any Excluded Subsidiary) after the Closing Date by any Credit Party (or upon any Subsidiary ceasing to constitute an Excluded Subsidiary), then the Credit Parties shall, at the Credit Parties' expense, within thirty (30) days after such formation or acquisition (or such longer period acceptable to the Administrative Agent in its sole discretion):

(i) cause such Subsidiary to duly execute and deliver to the Administrative Agent a Guarantee guaranteeing the other Credit Parties' obligations under the Loan Documents,

(ii) furnish to the Administrative Agent a description of the real and personal properties of such Subsidiary, in detail reasonably satisfactory to the Administrative Agent;

(iii) cause such Subsidiary to duly execute and deliver to the Administrative Agent the Security Documents required to be so executed and delivered pursuant to the terms of the Loan Documents to secure payment of all the Obligations of such Subsidiary under the Loan Documents by granting Liens on all such real and personal properties of such Subsidiary that constitute Collateral,

(iv) cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to take whatever action (including the filing of Uniform Commercial Code financing statements or similar filing in any applicable jurisdiction or such other actions as are necessary or desirable under any applicable Law) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent valid and subsisting Liens on the Collateral, enforceable against all third parties in accordance with their terms, and

(v) deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Credit Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request.

(b) Upon the acquisition of any property constituting Collateral (excluding any Excluded Assets) by any Credit Party following the Closing Date and upon the acquisition of any material assets located in any jurisdiction outside of the United States, if such property, in the judgment of the Administrative Agent, shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties (unless such property is specifically excluded as Collateral by the terms of the Security Documents), then the Credit Parties shall, at the Credit Parties' expense, within thirty (30) days after such acquisition (or such longer period acceptable to the Administrative Agent in its sole discretion):

(i) furnish to the Administrative Agent a description of the property so acquired in detail reasonably satisfactory to the Administrative Agent,

(ii) cause the applicable Credit Party to duly execute and deliver to the Administrative Agent the Security Documents (to the extent not already delivered) required to be so executed and delivered pursuant to the terms of the Loan Documents to secure payment of all the Obligations of the applicable Credit Party under the Loan Documents and constituting Liens on all such properties, and

(iii) deliver to the Administrative Agent, upon the request of the Administrative Agent in its reasonable discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Credit Parties reasonably acceptable to the Administrative Agent as to the matters contained in clause (ii) above, and as to such other matters as the Administrative Agent may reasonably request.

(c) within sixty (60) days after such acquisition (or such longer period acceptable to the Administrative Agent in its sole discretion) of any Real Estate (other than Excluded Assets) not subject to the Administrative Agent's first priority lien, cause the applicable Credit Party to take whatever action (including the recording of Mortgages in respect of fee owned real property, the delivery of title insurance, surveys and environmental reports, the filing of Uniform Commercial Code financing statements or similar filing in any applicable jurisdiction, the giving of notices and the endorsement of notices on title documents or such action necessary or desirable under applicable Law) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent valid and subsisting Liens on such Real Estate, enforceable against all third parties, and deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Credit Parties reasonably acceptable to the Administrative Agent as to the matters contained herein and as to such other matters as the Administrative Agent may reasonably request.

(d) At any time upon request of the Administrative Agent, promptly (i) execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such Security Documents, and (ii) execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable with respect to any interests of the Credit Parties (as of the Closing Date or thereafter) in any Accounts owed by Account Debtors headquartered outside the United States.

6.13 Conduct of Business. Except as permitted by Section 7.05, each Credit Party will not engage in any business materially different than the businesses engaged in by such Credit Party on the Closing Date, or such businesses as are reasonably related to the businesses engaged in by such Credit Party on the Closing Date.

6.14 Further Assurances. Each Credit Party will cooperate with the Administrative Agent and the Lenders execute such further instruments and documents as the Administrative Agent or the Lenders shall reasonably request to carry out to their reasonable satisfaction the transactions contemplated by this Agreement and the other Loan Documents.

6.15 Inspections; Collateral Reports, etc.

(a) **General.** No more than on one occasion in any 12-month period (or any number of occasions to the extent an Event of Default has occurred and is continuing), each Credit Party shall permit the Administrative Agent, at the Credit Parties' expense, to visit and inspect any of the properties of any Credit Party, to examine the books of account of such Credit Party's files and records regarding the Accounts, and other Collateral (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of such Credit Party with, and to be advised as to the same by, its and their officers, in each case, at such reasonable times and with prior notice as the Administrative Agent may reasonably request.

(b) **Commercial Field Exams.** From time to time upon the request of the Administrative Agent or the Required Lenders, at the Credit Parties' expense, the Credit Parties will cooperate with the Administrative Agent in the Administrative Agent's obtaining, a commercial field examination of an independent collateral auditor reasonably satisfactory to the Administrative Agent with respect to Accounts and other Collateral, which report shall indicate whether or not the information set forth in the Borrowing Base Certificates delivered to the Administrative Agent and Lenders are accurate and complete in all material respects based upon a review by such auditors of the Accounts (including verification with respect to the amount, aging, identity and credit of the respective account debtors and the billing practices of the applicable Credit Parties), Reserves, and other Collateral, and which shall indicate the adequacy of the Credit Parties' systems, processes and procedures with respect to the Collateral; provided that the Credit Parties shall not be required to incur, in any twelve (12) month period, the costs and expenses of more than two (2) such commercial field examinations unless an Event of Default has occurred and is continuing, in which case, there shall be no limit on the number of commercial field examinations made at the expense of the Credit Parties. For purposes of this Section 6.15(b), it is understood and agreed that a single field examination may consist of examinations conducted at multiple relevant sites, both domestic and international, and involve one or more relevant Credit Parties and their assets.

(c) **[Reserved]**.

(d) **Communications with Accountants.** Each Credit Party authorizes the Administrative Agent and the Lenders to communicate directly with such Credit Party's independent certified public accountants and authorizes such accountants to disclose to the Administrative Agent and the Lenders any and all financial statements and other supporting financial documents and schedules including copies of any management letter with respect to the business, financial condition and other affairs of such Credit Party. At the request of the Administrative Agent or any Lender, each Credit Party shall deliver a letter addressed to such accountants authorizing them to communicate directly with the Administrative Agent and the Lenders in accordance with the foregoing. It is understood that notwithstanding such authorization from the Credit Parties, such accountants may decline to communicate directly with the Administrative Agent and the Credit Parties shall only be required to use commercially reasonable efforts to cause such accountants to do so.

(e) **Accounts.** The Administrative Agent shall have the right to analyze and verify the Accounts in any manner and through any medium that it reasonably considers necessary in its Permitted Discretion, and the Credit Parties shall furnish all such assistance and information as the Administrative Agent may reasonably require in connection therewith. At any time a Specified Event of Default (or, in the case of any Account Debtors located outside of the United States or Canada, an Event of Default) has occurred and is continuing, the Administrative Agent may in its own name or in the name of others (including a Credit Party) communicate with Account Debtors on the Accounts to inform such Account Debtors of the Administrative Agent's payment instructions, in each case to the extent in compliance with all applicable Laws.

6.16 Cash Management.

(a) **General.** The Credit Parties shall, in each case, subject to Section 6.16(b) below, (i) instruct all account debtors of the Credit Parties to remit all cash proceeds of Accounts, check and other items of payment directly to depository accounts with financial institutions which have entered into Agency Account Agreements in form and substance reasonably satisfactory to the Administrative Agent ("Concentration Accounts"), and (ii) at all times ensure that all other cash, cash proceeds, checks and other items of payment of the Credit Parties not contained in Excluded Accounts, including (A) proceeds of any Collateral or any Net Cash Proceeds required to be applied to prepay the Loans pursuant to Sections 2.03(b) through (f) and (B) and amounts received by the Credit Parties in respect of the Accounts, in each case, be immediately deposited directly into a Concentration Account. The Credit Parties shall use commercially reasonable efforts to ensure that the Administrative Agent shall at all times have "viewer access" with respect to each and all Concentration Accounts (other than Excluded Accounts) to view in real time the balances and transactions relating to each such account via the relevant depository bank's online systems and internet banking platforms, and the Credit Parties agree to use commercially reasonable efforts to take all such actions as may be required or reasonably requested by the Administrative Agent to effect the foregoing.

(b) **Agency Account Agreements.** Each Agency Account Agreement shall require that, ~~during~~following the occurrence ~~and continuation~~ of a Cash Dominion Trigger ~~Period~~Event and upon instruction of the Administrative Agent, each depository bank party to such Agency Account Agreement transfer all cash receipts and other collections by ACH or wire transfer no less frequently than daily to an account in the name of the Administrative Agent designated by the Administrative Agent (the “Collection Account”); provided that so long as any Obligations are then outstanding, for the purposes of calculating interest, one Business Day shall be deemed added to the date such transfer is received. The Credit Parties hereby acknowledge and agree that (i) the Credit Parties have no right of withdrawal from the Collection Account, (ii) the funds on deposit in the Collection Account shall at all times be collateral security for all of the Obligations and (iii) ~~during the continuance of such~~following the occurrence of a Cash Dominion Trigger ~~Period~~Event, the funds on deposit in the Collection Account may be applied as provided in Section 2.05 (b)(i) and (c); ~~provided that, if a Cash Dominion Trigger Period is no longer in effect, upon the request of the Borrower, the Administrative Agent shall promptly transfer any funds held in the Collection Account to a Concentration Account and/or the Reserved Cash Account, in each case as designated by the Borrower.~~ In the event that, notwithstanding the provisions of this Section 6.16(a) or (b), any Credit Party receives or otherwise has dominion and control of any such proceeds or collections described above, such proceeds and collections shall be held in trust by such Credit Party for the Administrative Agent, and shall, not later than the Business Day after such Credit Party’s knowledge of receipt thereof, be deposited into a Concentration Account, or during~~following~~ the occurrence ~~and continuation~~ of a Cash Dominion Trigger ~~Period~~Event, the Collection Account, or dealt with in such other fashion as such Credit Party may be reasonably instructed by the Administrative Agent.

(c) **Other Accounts.** The Credit Parties shall cause all deposit accounts, all securities accounts and all commodities accounts (other than Excluded Accounts) of the Credit Parties to be subject to Agency Account Agreements as of the Closing Date (or, in the case of any such accounts opened after the Closing Date or that no longer constitute Excluded Accounts, within 30 days of the date such account has been opened or no longer constitutes an Excluded Account, as applicable (or such longer period acceptable to the Administrative Agent in its sole discretion) and, in any case, prior to depositing any funds or other assets therein).

6.17 Post-Closing Obligations. Each Credit Party agrees that it will complete each of the actions described on Schedule 6.17 as promptly as practicable, and in any event within the time periods set forth therein with respect to such action (or, in each case, such later date as the Administrative Agent reasonably agrees to in writing).

6.18 Financial Advisor.

(a) The Credit Parties shall engage the Financial Advisor on or prior to the First Amendment Effective Date and shall continue to retain the Financial Advisor until the Second Amendment Effective Date. The retention of the Financial Advisor shall be on terms and conditions (including as to scope of engagement) reasonably satisfactory to the Administrative Agent (provided that the terms and conditions set forth in the Financial Advisor Engagement Letter as of the First Amendment Effective Date are satisfactory to the Administrative Agent). The Financial Advisor shall be retained by and at the sole cost and expense of the Credit Parties and solely on behalf of the Credit Parties at all times. The Financial Advisor Engagement Letter shall not be amended, restated, replaced, supplemented or otherwise modified without the consent of the Administrative Agent.

(b) The Credit Parties shall use commercially reasonable efforts to cooperate with the Financial Advisor in all material respects. The Credit Parties hereby (i) authorize the Administrative Agent (or its respective agents or advisors) to communicate directly with the Financial Advisor regarding any and all matters related to the Credit Parties and their Affiliates, including, without limitation, all financial reports and projections developed, reviewed or verified by the Financial Advisor and all additional information, reports and statements reasonably requested by the Administrative Agent, and (ii) authorize and direct the Financial Advisor to provide the Administrative Agent (or its respective agents or advisors) with copies of reports and other information or materials prepared or reviewed by such Financial Advisor as the Administrative Agent may reasonably request; provided that (A) any such materials or information provided to the Administrative Agent by the Financial Advisor shall be substantially concurrently provided to the Borrower (to the extent not already in its possession) and (B) the Financial Advisor shall not be required to disclose materials or information (or any portion thereof) to the Administrative Agent if such disclosure would compromise any good faith attorney-client privilege afforded to attorney work product; provided further that such information may be redacted, solely to the extent that the Financial Advisor or any Credit Party, as applicable, determines in good faith that such exclusion or redaction, as the case may be, is required to preserve the attorney-client privilege.

(c) From time to time upon the reasonable request of the Administrative Agent, the Credit Parties shall conduct, and financial officers of the Credit Parties shall participate in (and the Credit Parties shall use commercially reasonable efforts to cause the Financial Advisor to participate in), status calls with the Administrative Agent to discuss (i) the financial operations and performance of the Credit Parties' business or (ii) such other matters relating to the Credit Parties as the Administrative Agent (or their respective agents or advisors) shall reasonably request (in each case, subject to protection consistent with clause (B) of the proviso to Section 6.18(b)).

ARTICLE VII NEGATIVE COVENANTS

Each Credit Party signatory hereto covenants and agrees for itself and on behalf of its Subsidiaries that, so long as any Lender shall have any Commitment hereunder or any Loan or other Obligation remains outstanding:

7.01 Investments. None of the Credit Parties nor any of its Subsidiaries will make any Investment in any Person, except for Investments which consist of:

(a) Investments (i) comprised of notes payable, or stock or other securities issued by account debtors (that is not an Affiliate) to such Credit Parties with respect to settlement of such account debtor's accounts in the ordinary course of business or (ii) receivables owing to the Credit Parties or any of their Subsidiaries or any receivables and advances to suppliers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(b) Capital Stock (i) issued and outstanding on the Closing Date in its Subsidiaries in existence on the Closing Date, or (ii) issued to a Credit Party following the Closing Date by another Person that will become a Credit Party promptly following such issuance or capital contribution between such Persons;

(c) Investments (i) by and among Credit Parties, or by any Subsidiary that is not a Credit Party in any Credit Party, in each case, so long as, to the extent consisting of intercompany loans, the Administrative Agent has a first priority, perfected Lien in such intercompany loans and has received an Intercompany Note evidencing such intercompany loans, together with transfer powers executed in blank in connection therewith, (ii) by and among Subsidiaries that are not Credit Parties and (iii) so long as no Specified Event of Default exists, by the Credit Parties in Subsidiaries that are not Credit Parties in an aggregate amount not exceeding \$1,500,000 in any Fiscal Quarter and in an aggregate amount not exceeding \$6,000,000 in any Fiscal Year;

(d) Investments consisting of any Credit Party Guaranteeing (i) the Obligations of the Credit Parties and (ii) other Indebtedness if such Credit Party would be permitted to directly incur such Indebtedness under Section 7.02;

(e) Investments in cash or Cash Equivalents;

(f) Investments consisting of loans or advances to its respective employees on an arm's-length basis in the ordinary course of business for travel expenses, relocation costs and similar purposes (or such other purposes as would be consistent with past practices) up to a maximum of \$50,000 per employee at any one time outstanding and \$250,000 in the aggregate at any one time outstanding;

(g) Investments existing as of the Closing Date and set forth on Schedule 7.01;

(h) Permitted Acquisitions;

(i) Investments consisting of non-cash loans made by the Borrower to officers, directors and employees of the Borrower or any of its Subsidiaries which are used by such Persons to simultaneously purchase equity interests of the Parent in an amount not exceeding \$1,000,000 in the aggregate at any one time outstanding;

(j) Investments of the Borrower or any of its Subsidiaries in connection with the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Parent held by any employee, director, consultant or officer (or any spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees, estates, wealth management vehicles, or distributees of any of the foregoing) of the Borrower, any Credit Party or any Subsidiary of any Credit Party pursuant to any employee equity subscription agreement, stock option agreement or stock ownership arrangement approved by the board of directors of the Parent (including any treasury buybacks upon the vesting of any restricted stock units) or upon the death, disability, retirement or termination of employment of such employee, director, consultant or officer in an amount not exceeding \$1,000,000 in the aggregate per Fiscal Year.

(k) other Investments in an aggregate outstanding amount not exceeding \$500,000 at any time outstanding during the term of this Agreement.

Notwithstanding anything to the contrary set forth herein, (1) no Intellectual Property (or the identifiable products or the proceeds of any of the foregoing) shall be the subject of any Investment permitted pursuant to this Section 7.01 from any Credit Party in any non-Credit Party and (2) no other assets included in the determination of the Borrowing Base (for the avoidance of doubt, excluding any cash and Cash Equivalents that do not constitute Reserved Cash) shall be the subject of any Investment in or to any non-Credit Party as provided in this Section 7.01.

7.02 Restrictions on Indebtedness. None of the Credit Parties nor any of its Subsidiaries will incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(a) Indebtedness of the Credit Parties consisting of the Obligations under the Loan Documents;

(b) Indebtedness of any Credit Party outstanding as of the Closing Date and reflected on Schedule 7.02 hereto and any refinancing thereof or amendments or modifications thereof that do not have the effect of increasing the principal amount thereof, changing the amortization thereof (other than to extend the same), decreasing the weighted average life thereof, accelerating the maturity date thereof or increasing the cash pay interest thereof and that are otherwise on terms and conditions no less favorable as a whole to such Credit Party, the Administrative Agent or any other Secured Party, as determined by the Administrative Agent than the terms of the Indebtedness being refinanced, amended or modified;

(c) Indebtedness in respect of Swap Contracts entered into not for speculative purposes;

(d) Indebtedness consisting of intercompany loans and advances permitted by Section 7.01(c);

(e) Guarantees by any Credit Party of Indebtedness of any other Credit Party permitted by this Section 7.02;

(f) Indebtedness consisting of (i) contingent liabilities under surety bonds and similar instruments incurred in the ordinary course of business or (ii) letters of credit that are consistent with past practice in an aggregate amount not exceeding \$1,600,000 at any time outstanding;

(g) Indebtedness in the ordinary course of business in respect of (i) services provided from time to time to any Credit Party or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including netting services, automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, foreign currency conversion, information reporting, lockbox, stop payment, overdraft and/or wire transfer services and all other treasury and cash management services, (ii) commercial credit card, purchase card and merchant card services and (iii) other similar banking products or services as may be requested by any Credit Party or Subsidiary from time to time;

(h) to the extent constituting Indebtedness, obligations in respect of agreements for the deferred payment of premiums or to finance the deferred payment of premiums owing by any Credit Party under any insurance policies entered into in the ordinary course of business that are either (i) unsecured or (ii) secured by a Lien permitted under Section 7.03(a)(x);

(i) Indebtedness of the Credit Parties and their Subsidiaries consisting of Capitalized Leases or Indebtedness incurred to provide all or a portion of the purchase price or cost of construction of an asset; provided that (i) such Indebtedness when incurred shall not exceed the purchase price or cost of construction of such asset; (ii) no such Indebtedness shall be renewed, refinanced or extended for a principal amount in excess of the principal balance outstanding thereon at the time of such renewal, refinancing or extension (other than by an amount equal to all accrued and unpaid interest thereon, any premium required to be paid in connection therein and all reasonable expenses incurred in connection therewith); and (iii) the total amount of all such Indebtedness shall not exceed \$1,500,000 at any time outstanding;

(j) Second Amendment Subordinated Indebtedness subject to a Second Amendment Subordination Agreement; ~~and~~

(k) Third Amendment Subordinated Indebtedness subject to a Third Amendment Subordination Agreement; and

(l) ~~(k)~~ other unsecured Indebtedness in an aggregate principal amount not to exceed \$500,000 at any time outstanding during the term of this Agreement.

7.03 Restrictions on Liens.

(a) **Permitted Liens.** None of the Credit Parties nor any of its Subsidiaries will create or incur or suffer to be created or incurred or to exist any Lien upon any of their respective property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom other than:

(i) Liens of landlords, carriers, warehousemen, repairmen, mechanics and materialmen and other like Liens created in the ordinary course of business, for amounts overdue by not more than thirty (30) days or which are being contested in good faith by appropriate proceedings and as to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP (it being understood that the Administrative Agent may impose Reserves in its Permitted Discretion with respect to such Liens);

(ii) Liens, pledges or deposits made or incurred in connection with worker's compensation, employee benefit plans, unemployment or other insurance, old age pensions, or other Social Security benefits, in connection with statutory obligations or leases to which it is a party or to secure, or in lieu of, surety, penalty or appeal bonds, performance bonds, letters of credit and other similar obligations or arising as a result of progress payments under government contracts or contracts with public utilities, in each case, in the ordinary course of business;

(iii) minor defects, irregularities, encumbrances, easements, zoning restrictions, rights of way, and clouds on title as normally exist with respect to similar properties which do not materially interfere with the present or proposed use or value of the applicable Credit Party's real property;

(iv) Liens in favor of the Administrative Agent and the other Secured Parties securing the Obligations, including, to the extent constituting a Lien, Liens on the Administrative Agent's interest in Reserved Cash;

(v) Liens in existence on the Closing Date and listed on Schedule 7.03; provided that (i) the Lien does not extend to any additional property and (ii) to the extent such amount secured constitutes Indebtedness, such Indebtedness is permitted by Section 7.02(b), and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(vi) Liens securing judgments for the payment of money not constituting an Event of Default so long as the enforcement of such Lien has been effectively stayed and so long as such Lien is junior to the Lien in favor of the Administrative Agent granted under the Security Documents;

(vii) Liens in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry to secure usual and customary fees, returned items and other like exposure with respect to such account relating to deposit or securities accounts maintained by any Credit Party with such banking institution;

(viii) Liens for Taxes not yet due and payable or which are being contested in accordance with Section 6.08;

(ix) Liens on unearned insurance premiums securing the payment of financed insurance premiums; provided that such Liens extend only to such insurance premiums or loss payment or similar payment from any insurance provider in an amount not in excess of any unpaid financed premiums;

(x) to the extent constituting a Lien, non-exclusive licenses of Intellectual Property (other than to the extent such licenses would restrict the ability of any Credit Party or the Administrative Agent to sell or license the subject Intellectual Property or impair the security interests granted to the Administrative Agent) in the ordinary course of business not interfering with the business of any Credit Party;

(xi) Liens securing purchase money Indebtedness or Capitalized Lease obligations (and refinancings thereof) to the extent permitted under Section 7.01(i); provided that (i) such Lien attaches to such property concurrently with or within ninety (90) days after the acquisition thereof and (ii) such Lien attaches solely to the property so acquired in such transaction;

(xii) Liens arising from precautionary uniform commercial code financing statements (or equivalent filings or registrations in foreign jurisdictions) filed under any real property or equipment lease permitted by this Agreement;

(xiii) Liens consisting of cash collateral securing Indebtedness permitted under Section 7.02(f)(ii); and

(xiv) other Liens so long as the amount of Indebtedness secured by such Liens does not exceed \$250,000 in the aggregate at any time outstanding.

(b) **Restrictions on Negative Pledges and Upstream Limitations.** No Credit Party shall nor shall it permit any Subsidiary to (i) enter into or permit to exist any arrangement or agreement (excluding this Agreement and the other Loan Documents) which directly or indirectly effectively prohibits any Credit Party or any Subsidiary from creating, assuming or incurring any Lien upon its properties, revenues or assets whether now owned or hereafter acquired, as security for the Obligations, or from making Guarantees of the Obligations or (ii) enter into any agreement, contract or arrangement (excluding this Agreement and the other Loan Documents) restricting the ability of any Subsidiary of any Credit Party to pay or make dividends or distributions in cash or kind to any Credit Party, to make loans, advances or other payments of whatsoever nature to any Credit Party, or to make transfers or distributions of all or any part of its assets to any Credit Party in each case other than customary anti-assignment provisions contained in leases, licensing agreement and other agreements restricting the assignment thereof entered into by any Credit Party or any Subsidiary in the ordinary course of its business.

7.04 Restricted Payments; Payments on Other Debt.

(a) **Restricted Payments.** No Credit Party nor any Subsidiary shall make any Restricted Payment, other than:

(i) Restricted Payments to the Parent or any other Credit Party from any direct or indirect Subsidiary of the Parent or such other Credit Party, or, in the case of any Subsidiary that is not a wholly-owned Subsidiary of the Borrower, such Subsidiary may make dividends and distributions ratably to any other holders of such Subsidiary's Capital Stock with respect to their Capital Stock;

(ii) Restricted Payments payable solely in common Capital Stock of such Person;

(iii) the repurchase or redemption of Capital Stock of the Parent from the holders of restricted stock units of the Parent granted through stock incentive plans approved by the Parent's board of directors, in amounts necessary to satisfy the tax obligations of such holders pursuant to the vesting of such restricted stock units; and

(iv) to the extent constituting a Restricted Payment, any transaction that is otherwise permitted pursuant to Section 7.01.

Notwithstanding anything to the contrary set forth herein, no Intellectual Property or any asset included in the determination of any Borrowing Base (other than cash and Cash Equivalents) shall be the subject of any Restricted Payment to any non-Credit Party without the prior written consent of the Administrative Agent.

(b) **Repayments; Prepayments.** No Credit Party nor any Subsidiary shall pay, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, other than (i) the Obligations to the extent permitted hereunder, (ii) regularly scheduled payments of principal and interest due on the Junior Promissory Note pursuant to the terms thereof (but not any voluntary prepayments of the Junior Promissory Note), (iii) Indebtedness permitted pursuant to Sections 7.02(c), (d) (solely with respect to Indebtedness due to a Credit Party or due to a non-Credit Party by a non-Credit Party, in each case subject to the terms of any Intercompany Note) or (i) and (iv) payments of principal that are ~~Second Amendment~~ Subordinated Indebtedness Restricted Payments if the ~~Second Amendment~~ Subordinated Indebtedness Payment Conditions are satisfied.

7.05 Merger, Consolidation and Disposition of Assets.

(a) **Mergers and Acquisitions.** None of the Credit Parties nor any Subsidiary will become a party to any merger, dissolution, liquidation or consolidation, except for the merger and/or consolidation of (i) one or more of the Credit Parties (other than the Borrower) with and into a Credit Party and (ii) one or more non-Credit Parties with and into (x) a Credit Party, so long as such Credit Party is the surviving entity, or (y) any other non-Credit Party.

(b) **Disposition of Assets.** No Credit Party nor any Subsidiary shall dissolve, liquidate or sell, transfer, convey, license, lease, assign, factor or otherwise dispose of any of its properties or other assets, any Capital Stock of any of its Subsidiaries (whether in a public or a private offering or otherwise), any of its Accounts or any of its other Investments, or cease to own and control legally and beneficially Capital Stock of the Subsidiaries owned on the Closing Date representing 100% of the combined voting power of all of Capital Stock entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such Capital Stock that such Person has the right to acquire pursuant to any option right), other than:

(i) the sale of Inventory in the ordinary course of business;

(ii) dispositions of obsolete or worn out equipment or fixtures no longer useful in the business, whether now owned or hereafter acquired, in the ordinary course of business;

(iii) so long as no Event of Default has occurred which is continuing or would result therefrom, sales of equipment now owned or hereafter acquired by any Credit Party in an aggregate amount not in excess of \$250,000 during the term of this Agreement;

(iv) (A) non-exclusive licenses of Intellectual Property in the ordinary course of business (other than to the extent such licenses would materially impair the security interests granted to the Administrative Agent, taken as a whole), or (B) the abandonment, cancellation, allowance to lapse or be dedicated to the public domain, any Intellectual Property (1) which are no longer material to the business of any Credit Party as determined in the good faith reasonable business judgment of the Credit Parties, or (2) as otherwise determined in such Credit Party's good faith reasonable business judgment;

(v) the AdParlor Sale;

(vi) the True North Loyalty Sale;

(vii) dispositions or transfers constituting (x) a Restricted Payment permitted by Section 7.04(a) and (y) an Investment permitted by Section 7.01;

(viii) Notwithstanding anything to the contrary contained in this Section 7.05, the sale, lease, transfer or other disposition of property or assets not to exceed \$250,000 in the aggregate in any Fiscal Year of Parent; provided that (A) such sale, lease, transfer or other disposition shall be for fair market value (as determined by the management of the Borrower), (B) at least 75% of the consideration received therefor by the Credit Parties or any such Subsidiary shall be in the form of cash or Cash Equivalents and (C) no Event of Default shall exist or shall result therefrom; and

(ix) other such dispositions (i) from a Credit Party or any Subsidiary to a Credit Party (so long as any such disposition from a non-Credit Party to a Credit Party is for no greater than fair market value), (ii) among non-Credit Parties or (iii) from a Credit Party to a non-Credit Party so long as the aggregate value thereof does not exceed \$100,000 in the aggregate in any Fiscal Year of Parent.

Notwithstanding anything to the contrary set forth herein, (A) except between Credit Parties, no Intellectual Property shall be the subject of any dissolutions, liquidations, sales, transfers, conveyances, licenses, leases, assignments or other dispositions permitted pursuant to this Section 7.05 (other than as set forth in clause (iv) above) and (B) no other asset included in the determination of the Borrowing Base shall be the subject of any dissolutions, liquidations, sales, transfers, conveyances, licenses, leases, assignments or other dispositions to any non-Credit Party as provided in this Section 7.05.

7.06 Sale and Leaseback. No Credit Party nor any Subsidiary shall engage in any sale-leaseback or similar transaction or incur any Synthetic Lease obligations involving any of its assets.

7.07 Accounting Changes; Change of Fiscal Year. No Credit Party nor any Subsidiary will make any change in (a) accounting policies or reporting practices, except as permitted by GAAP or (b) their Fiscal Year.

7.08 Transactions with Affiliates. No Credit Party nor any Subsidiary will engage in any transaction with any Affiliate, whether or not in the ordinary course of business, including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such Affiliate, on terms less favorable to such Credit Party or Subsidiary or Affiliate than would have been obtainable on an arm's-length basis with a non-Affiliate; provided that the foregoing restriction shall not apply to (i) transactions solely among the Credit Parties otherwise permitted hereunder, (ii) any Restricted Payment permitted under Section 7.04, (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.08 or any amendment thereto that is not materially adverse to any Lender, (iv) payment of the fees of members of any board of directors, board of managers or advisory board of the Credit Parties or any Subsidiary in an amount not to exceed \$750,000 in the aggregate in any Fiscal Year of Parent, and reimbursement of actual out-of-pocket expenses incurred in connection with attending meetings of the board of directors, board of managers or advisory board and (v) the transactions in respect of the First Amendment Equity Raise, the Second Amendment Capital Raise ~~and~~, the Second Amendment Follow-on Equity Raise, and, to the extent applicable, the Third Amendment Capital Raise.

7.09 Change in Terms of Governing Documents. No Credit Party nor any Subsidiary shall change or amend, modify, supplement or waive the terms of any of its Governing Documents, except amendments, modifications, supplements or waivers that do not adversely affect the rights or interests of the Administrative Agent or the Lenders.

7.10 Change in Nature of Business. No Credit Party nor any Subsidiary shall engage in any line of business substantially different from those lines of business conducted by such Credit Party on the Closing Date.

7.11 Margin Regulations. No Credit Party shall use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.12 Financial Covenants.

(a) Minimum Excess Availability. The Credit Parties and their Subsidiaries shall maintain Excess Availability at all times equal or greater than the greater of (i) \$3,000,000 and (ii) 7.5% of the Line Cap. Notwithstanding the foregoing, on and after the First Amendment Effective Date, the Credit Parties and their Subsidiaries shall maintain Excess Availability (i) at all times equal or greater than (A) the greater of (i) \$3,000,000 and (ii) 7.5% of the Line Cap, plus (B) \$3,000,000.

(b) Minimum Modified Consolidated EBITDA/Consolidated Fixed Charge Coverage Ratio.

(i) The Credit Parties and their Subsidiaries shall maintain Modified Consolidated EBITDA calculated as of the last day of each Fiscal Quarter set forth below for the Measurement Period ending on such date of not less than the amount set forth opposite such Fiscal Quarter under the column “Minimum Modified Consolidated EBITDA” (provided that, for the avoidance of doubt, compliance with this clause (b)(i) shall not be required commencing with the Fiscal Quarter ending March 31, 2026):

Fiscal Quarter ending	Minimum Modified Consolidated EBITDA
March 31, 2024	(\$1,500,000)
June 30, 2024	(\$10,900,000)
September 30, 2024	(\$8,200,000) <u>9,600,000</u>
December 31, 2024	(\$6,700,000) <u>11,550,000</u>
March 31, 2025	(\$7,000,000) <u>12,200,000</u>
June 30, 2025	(\$500,000) <u>8,000,000</u>
September 30, 2025	(\$400,000) <u>5,800,000</u>
December 31, 2025	\$225,000 <u>505,000</u>

(ii) Commencing with the Fiscal Quarter ending March 31, 2026, calculated as of the last day of such Fiscal Quarter and each Fiscal Quarter thereafter, the Credit Parties and their Subsidiaries shall maintain a Consolidated Fixed Charge Coverage Ratio for the Measurement Period ending on such date of no less than 1.10:1.00.

7.13 Sanctions. The Credit Parties shall not permit any Loan or the proceeds of any Loan, directly or indirectly, to be lent, contributed or otherwise made available to any Subsidiary, joint venture partner, or other individual or entity, to fund any activities of or business with any individual or entity in any Designated Jurisdiction that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as a Lender, Arranger, or the Administrative Agent) of any Sanctions.

7.14 Holding Company. The Parent will not engage to any extent in any business whatsoever other than the business of owning and managing, directly, beneficially and of record, 100% of the issued and outstanding Capital Stock of the Borrower and activities directly related thereto and, in furtherance and without limitation thereof, will not create or acquire any Subsidiary (other than the Borrower or any Subsidiary of the Borrower).

7.15 ~~Second Amendment Subordinated Indebtedness.~~ Neither the Second Amendment Subordinated Indebtedness ~~and~~ nor the Third Amendment Subordinated Indebtedness nor any documents evidencing the same 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.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any one or more of the following events shall constitute an event of default (each, an “Event of Default”) under this Agreement:

(a) Non-Payment. Any Credit Party shall fail to (i) pay any principal of the Loans when the same shall become due and payable, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment (including, without limitation, Section 2.03(b)) or (ii) pay any interest on the Loans, the fees or other sums due hereunder or under any of the other Loan Documents, when the same shall become due and payable, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment, and, in the case of this clause (ii), such failure to pay any interest on the Loans shall continue unremedied for two (2) Business Days or such failure to pay any other amounts under this clause (ii) shall continue unremedied for three (3) Business Days; or

(b) Specific Covenants. Any Credit Party shall fail to comply with any of its covenants contained in Section 2.03(b), Sections 6.04(a), (b) or (c), 6.05(a) or 6.06 (solely with respect to maintenance of existence), 6.10, 6.15, 6.16, 6.17, 6.18 or Article 7; or

(c) Other Defaults. Any Credit Party shall fail (or, to the extent applicable, fail to cause its Subsidiaries) to perform any term, covenant or agreement contained herein or in any of the other Loan Documents (other than those specified elsewhere in this Section 8.01), and such failure continues for thirty (30) days; or

(d) Representations and Warranties.

(i) Generally. Any representation or warranty of any Credit Party in this Agreement or any of the other Loan Documents or in any other document or instrument delivered pursuant to or in connection with this Agreement shall prove to have been false in any material respect (but without any duplication of any materiality qualifications) upon the date when made or deemed to have been made or repeated; or

(ii) Borrowing Base Certificates. Without duplication of the foregoing contained in clause (i) above, any information contained in any Borrowing Base Certificate is untrue, incorrect or misleading (other than (i) inadvertent errors not exceeding \$50,000 in the aggregate so long as the Administrative Agent receives a corrected Borrowing Base Certificate no later than one (1) Business Day after (x) the receipt of such Borrowing Base Certificates containing such errors if such error(s) would have caused an Event of Default under Section 7.12 or (y) actual knowledge of the Senior Management of any Credit Party to the extent such error would not have caused an Event of Default under Section 7.12 or (ii) errors understating the Borrowing Base); or

(e) Inability to Pay Debt; Insolvency Proceedings; Etc. Any Credit Party or any of its Subsidiaries shall make an assignment for the benefit of creditors, or shall petition or apply for the appointment of a trustee or other custodian, liquidator or receiver of such Credit Party or such Subsidiary or of any substantial part of the assets of any Credit Party or such Subsidiary or shall commence any case or other proceeding relating to any Credit Party or such Subsidiary under any Debtor Relief Law, now or hereafter in effect, or shall take any action to authorize or in furtherance of the foregoing, or if any such petition or application (including a bankruptcy application) shall be filed or any such case or other proceeding shall be commenced against any Credit Party or such Subsidiary and such Credit Party or such Subsidiary shall indicate its approval thereof, consent thereto or acquiescence therein or such petition or application shall not have been dismissed or stayed within sixty (60) days following the filing thereof; a decree or order (including a bankruptcy order) is entered appointing any such trustee, custodian, liquidator or receiver or adjudicating any Credit Party or any Subsidiary bankrupt or insolvent, or approving a petition or a bankruptcy application in any such case or other proceeding, or a decree or order (including a bankruptcy order) for relief is entered in respect of any Credit Party or any Subsidiary in an involuntary case under any Debtor Relief Laws; or

(f) Judgments. There shall remain in force for more than thirty (30) days any final, non-appealable judgment against any Credit Party (considered collectively) that exceeds in the aggregate the Threshold Amount which is not covered by insurance policies as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage, unless such judgment has been discharged, satisfied, bonded or stayed pending appeal; or

(g) ERISA Event. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Credit Parties under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC, (ii) a Credit Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan or (iii) with respect to any Foreign Plan a termination, wind-up, withdrawal or non-compliance with applicable Law or plan terms, or a Credit Party amends any Foreign Plan, or incurs or assumes any liabilities under any Foreign Plan, which, in each case of clauses (i) through (iii) above, could either individually or in the aggregate reasonably be expected to result in a Material Adverse Effect; or

(h) Indebtedness. Any Credit Party shall fail to pay at maturity, or within any applicable period of grace, any obligation for Indebtedness in excess of the Threshold Amount, or fail to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound evidencing or securing Indebtedness in excess of the Threshold Amount for such period of time as would permit (assuming the lapse of time and/or giving of appropriate notice if required and assuming such breach has not been cured within the applicable grace period thereunder) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof; or

(i) Invalidity of Loan Documents; Etc. If any of the Loan Documents shall be cancelled, terminated, revoked, rescinded or otherwise ceases to be in full force and effect other than in accordance with their terms; or the Administrative Agent's security interests, mortgages or Liens in the Collateral shall cease to be valid and perfected, or shall cease to have the priority contemplated by the Security Documents, other than in accordance with the terms thereof or with a consent or approval obtained in accordance with Section 10.01; or any action at law, suit or in equity or other legal proceeding to cancel, revoke, rescind or declare void any of the Loan Documents shall be commenced by or on behalf of any Credit Party, any Subsidiary or any of their respective equity holders; or any court or any other Governmental Authority shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof; or

(j) Change of Control. A Change of Control shall occur; or

(k) Labor Matters; Force Majeure; Etc. There shall occur any strike, lockout, labor dispute, embargo, condemnation, expropriation, act of God or public enemy, or other casualty, which in any such case causes the cessation or substantial curtailment of revenue producing activities at any facility of any Credit Party for more than ten (10) consecutive days if such event or circumstance is not covered by business interruption insurance and would have a Material Adverse Effect; or

(l) Conduct of Business. Except as otherwise expressly permitted hereunder, any Credit Party shall (i) take any action, or shall make a determination, whether or not yet formally approved by any Credit Party's management or board of directors (or equivalent governing body), to (i) suspend the operation of all or a material portion of the business of the Credit Parties taken as a whole or (ii) be enjoined, restrained or in any way prevented by the order of any Governmental Authority from conducting any part of their business, unless such order would not have a Material Adverse Effect; or

(m) Criminal Actions. Any Credit Party, any of its Subsidiaries shall be indicted or convicted for a state or federal crime or any other criminal action having the force of law for a felony that would reasonably be expected to materially impair any rights or remedies of the Administrative Agent or any Lender under any Loan Document.

(n) Subordination Provisions. The Second Amendment Subordination Agreement, Third Amendment Subordination Agreement or any subordination provision thereof shall, in whole or in part, terminate (other than in accordance with its terms) or otherwise fail or cease to be valid and binding on, or enforceable against, any Credit Party ~~or~~, the Second Amendment Subordinated Lenders or the Third Amendment Subordinated Lenders (or any Credit Party or the Second Amendment Subordinated Lenders or the Third Amendment Subordinated Lenders shall so state in writing).

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, or at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, including, without limitation, the Revolving Credit Commitments, whereupon such commitments and obligation shall be terminated and any applicable Early Termination Premium shall be immediately due and payable;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable (including, without limitation, any applicable Early Termination Premium), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Credit Parties; and

(c) exercise on behalf of itself and the other Secured Parties all rights and remedies available to it and the other Secured Parties under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default under Section 8.01(e), the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Administrative Agent or any Lender. No termination of the commitments hereunder shall relieve any Credit Party of any of the Obligations.

8.03 Event of Default Application of Funds. In the event that, following the occurrence and during the continuance of any Event of Default, the Administrative Agent or any Lender, as the case may be, receives any monies in connection with the enforcement of any of the Loan Documents, or otherwise with respect to the realization upon any of the Collateral (including, without limitation, Reserved Cash), the Administrative Agent may apply (and shall apply at (a) the request of the Required Lenders or (b) following the exercise of remedies pursuant to Section 8.02, including without limitation, pursuant to the proviso thereof) such monies as follows (and each Lender shall comply with the instructions of the Administrative Agent in the case of any such monies received by any Lender):

- (i) First, to payment of outstanding Protective Advances funded by the Administrative Agent;
- (ii) Second, to payment of Obligations owing to the Administrative Agent constituting (A) indemnities and expenses due and payable under this Agreement and the other Loan Documents (including fees, charges and disbursements of counsel to the Administrative Agent) and (B) the fees due and payable under Section 2.07(b);
- (iii) Third, to payment of Obligations constituting indemnities and expenses (including fees, charges and disbursements of counsel to Lenders and amounts payable under Article III) due and payable to the Lenders under this Agreement and the other Loan Documents, ratably among such Persons in proportion to the respective amounts described in this clause Third payable to them;
- (iv) Fourth, to payment of that portion of the Obligations constituting accrued and unpaid interest and fees (including, without limitation, any applicable Early Termination Premium) due and payable to the Lenders under this Agreement and the other Loan Documents ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;
- (v) Fifth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans ratably among them in proportion to the respective amounts described in this clause Fifth;
- (vi) Sixth, to the payment of all other Obligations ratably among the holders thereof in proportion to the respective amounts described in this clause Sixth; and
- (vii) Seventh, the balance, if any, after all of the Obligations have been indefeasible paid in full, to the Borrower or as otherwise required by Law.

All payments applied to the Loans pursuant to this Section 8.03 shall be applied to the Loans owing to the Lenders in accordance with their respective Applicable Percentages.

Any prepayment of the principal balance of the Term Loan as a result of the application of Reserved Cash shall be subject to any applicable Early Termination Premium and shall be applied to the principal balance of the Term Loans based on the Applicable Percentage of each Lender. Any reduction of the Revolving Credit Commitments as a result of the application of Reserved Cash to repay Revolving Credit Loans shall be subject to any applicable Early Termination Premium and shall be applied to the principal balance of the Revolving Credit Loans based on the Applicable Percentage of each Lender.

ARTICLE IX ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints SLR to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Sections 9.06 and 9.10) are solely for the benefit of the Administrative Agent and the Lenders and neither the Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the collateral agent and security trustee (as applicable) of such Lender for purposes of acquiring, holding directly or on trust (as applicable) and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Credit Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties (whether implied by contract or by law), regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable Law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Laws; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Credit Parties or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable order. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by a Credit Party or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower, to appoint a successor, which shall be an Affiliate of any Lender or other bank or financial institution with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders appoint a successor meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor as provided for above in this Section. Upon the acceptance of a successor's appointment hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent its sub agents and its respective Related Parties in respect of any actions taken or omitted to be taken by any of them prior to such resignation.

9.07 Non-Reliance. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, neither the Arranger hereof shall have no powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 Collateral and Guarantee Matters. Each of the Lenders irrevocably authorize the Administrative Agent to and upon the request of the Borrower (and at its sole cost and expense) with reasonable advance notice, the Administrative Agent hereby agrees,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full in cash of all Obligations (other than contingent indemnification obligations for which no claim has then been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder (other than sales among Credit Parties), or (iii) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders; and

(b) to release any Guarantor from its obligations under the Security Documents and release any related Collateral if such Person ceases to be a Subsidiary as a result of a transaction permitted by Section 7.05 or is or becomes an Excluded Subsidiary.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guarantees pursuant to this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Second Amendment Subordination Agreement. Each Lender irrevocably appoints, designates and authorizes the Administrative Agent to enter into the Second Amendment Subordination Agreement on its behalf and to take such action on its behalf pursuant to the provisions of the Second Amendment Subordination Agreement. Each Lender agrees to be bound by the terms of the Second Amendment Subordination Agreement. In the event of any conflict between the terms of this Agreement and the terms of the Second Amendment Subordination Agreement, the terms of the Second Amendment Subordination Agreement shall govern.

9.12 Third Amendment Subordination Agreement. Each Lender irrevocably appoints, designates and authorizes the Administrative Agent to enter into the Third Amendment Subordination Agreement on its behalf and to take such action on its behalf pursuant to the provisions of the Third Amendment Subordination Agreement. Each Lender agrees to be bound by the terms of the Third Amendment Subordination Agreement. In the event of any conflict between the terms of this Agreement and the terms of the Third Amendment Subordination Agreement, the terms of the Third Amendment Subordination Agreement shall govern.

ARTICLE X MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Credit Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Credit Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest (other than default interest), fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided that for the avoidance of doubt, mandatory prepayments pursuant to Section 2.03 may be postponed, delayed, reduced, waived or modified with the consent of the Required Lenders;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (v) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document relating to the Loans, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" (so long as such amendment does not result in the Default Rate being lower than the interest then applicable) or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) (i) change Section 2.11 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby or the order of the application of payments thereunder, in each case, without the written consent of each Lender directly affected thereby or (ii) change the order of application of any reduction in the Commitments or any prepayment of Loans set forth in the applicable provisions of Section 2.03, in any manner that materially and adversely affects a Lender without the written consent of the Required Lenders;

(e) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) below) without the written consent of each Lender;

(f) (i) release all or substantially all of the Collateral in any transaction or series of related transactions, (ii) release all or substantially all of the Guarantors party to the Guarantees or release the Borrower, (iii) subordinate the Obligations hereunder to any other Indebtedness or (iv) except as provided by operation of applicable Law, subordinate the Liens on all or substantially all of the Collateral granted in favor of the Administrative Agent for itself and the other Secured Parties under the Security Documents to any other Lien, in each case, without the written consent of each Lender;

(g) (i) increase the advance rates set forth in or otherwise amend the definition of “Borrowing Base” (including component definitions therein) without the written consent of each Lender, (ii) amend the definition of “Reserves” (including component definition thereof) without the written consent of each Lender, (iii) make less restrictive the eligibility criteria contained in the definitions of “Eligible Domestic Accounts”, “Eligible Domestic Investment Grade Accounts”, “Eligible Domestic Non-Investment Grade Accounts”, “Eligible Unbilled Domestic Accounts”, “Eligible Unbilled Foreign Accounts”, “Eligible Foreign Accounts” or “Protective Advance” without the written consent of each Lender, or (iv) amend Section 2.15 without the consent of each Lender in each case, in a manner which would result in a greater amount of credit being made available to the Borrower (it being understood and agreed that nothing in this clause (g) shall limit, restrict or impair the rights of the Administrative Agent to impose or establish any and all Reserves, and thereafter to reduce or eliminate such Reserves or to determine the eligibility of Collateral for inclusion in the calculation of the Borrowing Base); or

(h) without the prior written consent of each Lender, impose any materially greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder;

provided further, however, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (ii) Section 10.06(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; (iii) Section 2.07(b) may be amended, or rights or privileges thereunder waived, in a writing executed only by the Borrower and the Administrative Agent; (iv) typographical or scrivener’s errors may be corrected solely with the consent of the Borrower or any other applicable Credit Party and the Administrative Agent, and (v) no amendment, waiver or consent which has the effect of enabling the Borrower to satisfy any condition to a Borrowing contained in Section 4.02 hereof which, but for such amendment, waiver or consent would not be satisfied, shall be effective to require the Lenders to make any additional Revolving Credit Loans, unless and until the Required Lenders (or, if applicable, all Lenders) shall have approved such amendment, waiver or consent.

10.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, any other Credit Party, or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications sent delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including through any Electronic Medium) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by return e-mail or other written acknowledgement, but expressly excluding use of "return receipt requested" functions or features), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Request Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.11), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arranger, and their respective Affiliates (limited, in the case of legal expenses, to the legal reasonable fees, charges and disbursements of one primary counsel to all such Persons and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions)), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Arranger, and the Lenders (limited, in the case of legal expenses, to one primary counsel to the Administrative Agent, Arrangers and Lenders to be retained by the Administrative Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions) and, in the case of an actual or perceived conflict of interest where any such Person affected by such conflict informs the Borrower of such conflict, of a single additional firm of counsel in each relevant jurisdiction for all similarly situated affected Persons) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Credit Parties. The Credit Parties shall indemnify the Administrative Agent (and any sub-agent thereof), the Arranger, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (limited, in the case of legal expenses, to one primary counsel to the Administrative Agent, Arrangers and Lenders and their Related Parties to be retained by the Administrative Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions) and, in the case of an actual or perceived conflict of interest where any Indemnitee affected by such conflict informs the Borrower of such conflict, of a single additional firm of counsel in each relevant jurisdiction for all similarly situated affected Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Credit Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any other Credit Party, or any Environmental Liability related in any way to the Borrower or any other Credit Party, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Credit Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of any Indemnitee or any of its Related Parties or by reason of any material breach of the obligations of such Indemnitee under this Agreement or the other Loan Documents, (y) result from a claim brought by the Borrower or any other Credit Parties against an Indemnitee for breach in bad faith of such Indemnitee’s or any of its Related Parties obligations hereunder or under any other Loan Document, if the Borrower or such other Credit Parties has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) that is brought by an Indemnitee against another Indemnitee (other than claims against the Administrative Agent solely in its capacity as such or in its fulfilling such role). Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that any Credit Party for any reason fails to pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (and any sub-agent thereof) or any Related Party of the Administrative Agent, each Lender severally agrees to pay to the Administrative Agent (and any sub-agent thereof) or such Related Party, as the case may be, such Lender’s pro rata share of the Aggregate Commitments (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (and any sub-agent thereof) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (and any sub-agent thereof) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.10(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no party hereto (and no Indemnitee or any Subsidiary or Affiliate of Parent) shall assert, and each party hereto hereby waives, any claim against any other party hereto (and any Indemnitee and any Subsidiary or Affiliate of Parent) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of any Credit Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and each other Loan Document shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Credit Party (except to the extent permitted by Section 7.05(a) to the extent a transaction permitted thereby would constitute an assignment) may assign or otherwise transfer any of its rights or obligations hereunder or thereunder, as applicable, without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except, subject to subsection (h): (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (g) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignee all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amount. Except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$2,000,000 in the case of any assignment, unless the Administrative Agent otherwise consents; provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Partial Assignment. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitments assigned.

(iii) Required Consents.

(A) Unless an Event of Default has occurred that is continuing, the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required (1) for assignments in respect of any Commitment if such assignment is to a Person that is not an existing Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender and (2) to the extent required by subsection (b)(i) of this Section; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof.

(B) The consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required (1) for assignments in respect of any Commitment if such assignment is to a Person that is not an existing Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender and (2) to the extent required by subsection (b)(i) of this Section.

(iv) Assignment Fee. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500 payable to the Administrative Agent; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignments to Affiliates, Defaulting Lenders, or Natural Persons. No such assignment shall be made (A) to any Credit Party or any Affiliate or Subsidiary of any Credit Party, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the benefit of a natural person).

(vi) Maintenance of Pro Rata Shares. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits and obligations of Sections 3.01, 3.05, 3.06, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or any Credit Party or any Affiliate or Subsidiary of any Credit Party) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c), without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.05 and 3.06 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.05 and 10.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.05, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.05 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower (solely for tax purposes), maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as such) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(g) Special Purpose Funding Vehicles. Notwithstanding any provision to the contrary, any Lender (a “Granting Lender”) may assign to one or more special purpose funding vehicles (each, an “SPC”) all or any portion of its funded Loans (without, in the case of Revolving Credit Loans, the corresponding Revolving Credit Commitment), without the consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Granting Lender and such SPC, and may grant any such SPC the option, in such SPC’s sole discretion, to provide the Borrower all or any part of any Loans that such Lender would otherwise be obligated to make pursuant to this Agreement. Such SPCs shall have all the rights which a Lender making or holding such Loans would have under this Agreement, but no obligations. The Granting Lender making such assignment shall remain liable for all its original obligations under this Agreement, including its Commitment (although the unused portion thereof shall be reduced by the principal amount of any Loans held by an SPC). Notwithstanding such assignment, the Administrative Agent and Borrower may deliver notices to the Granting Lender making such assignment (as agent for the SPC) and not separately to the SPC unless the Administrative Agent and Borrower are requested in writing by the SPC (or its agent) to deliver such notices separately to it. The Borrower shall, at the request of any such Granting Lender, execute and deliver to such Person as such Lender may designate, a Note in the amount of such Granting Lender’s original Note to evidence the Loans of such Granting Lender and related SPC.

(h) Assignment by SLR Entities. Notwithstanding anything in this Agreement or the other Loan Documents, (x) no SLR Entity shall be required to comply with Section 10.06(b) in connection with any transaction involving any other SLR Entity or any of its or their lenders or funding or financing sources, none of the foregoing shall be considered an assignee hereunder and no SLR Entity shall have any obligation to disclose any such transaction to any Person, and (y) there shall be no limitation or restriction on (I) the ability of any SLR Entity to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, or any Obligation to any other SLR Entity or any lender or financing or funding source of a SLR Entity or (II) any such lender’s or funding or financing source’s ability to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, or any Obligation; provided, however, that with respect to any assignment by SLR pursuant to clauses (x) and (y) hereof, SLR shall continue to be liable as a “Lender” under this Agreement and the other Loan Documents unless such other Person complies with the provisions of this Agreement to become a “Lender.”

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (g) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, “Information” means all information received from the Borrower, any other Credit Party or the Financial Advisor relating to the Borrower or any Credit Party or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Credit Party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Credit Party, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

Notwithstanding anything to the contrary contained in this Section 10.07, each Credit Party consents to the publication by the Administrative Agent of any press releases, tombstones, advertising or other promotional materials (including, without limitation, via any Electronic Medium) relating to the financing transactions contemplated by this Agreement using such Credit Party’s name, product photographs, logo or trademark. No party hereto shall or shall permit any of its Affiliates to, issue any press release or other public disclosure relating to the closing of the credit facilities provided for herein using the name, logo or otherwise referring to SLR or of any of its Affiliates or the Loan Documents to which SLR or any of its affiliates are a party to without the prior written consent (including via e-mail) of such Person (not to be unreasonably withheld, delayed or conditioned) except to the extent required to do so under applicable Law and then, only after consulting with such Persons unless prohibited from doing so under applicable Law.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, or any such Affiliate to or for the credit or the account of any Credit Party against any and all of the obligations of any Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness, provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.10 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent, promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.05, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then (x) the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent and (y) the Administrative Agent may upon notice to such Lender, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.03) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid (or caused to be paid) to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees (other than any Early Termination Premium) and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.03 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the Administrative Agent shall have consented to such assignment and the applicable assignee shall have consented to the applicable amendment, waiver or consent.

provided that the failure by any Lender to execute and deliver an Assignment and Assumption in connection with any of the foregoing assignments shall not impair the validity of the removal of such Lender and the mandatory assignment of such Lender's Commitments and outstanding Loans pursuant to this Section 10.13 shall nevertheless be effective without the execution by such Lender of an Assignment and Assumption.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling = to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (EXCLUDING THE LAWS APPLICABLE TO CONFLICTS OR CHOICE OF LAW (OTHER THAN THE NEW YORK GENERAL OBLIGATIONS LAW §5-1401)).

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER, THE OTHER CREDIT PARTIES SIGNATORY HERETO OR THEIR RESPECTIVE PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined), the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Credit Parties and their Subsidiaries, which information includes the name and address of the Credit Parties and their Subsidiaries and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties and their Subsidiaries in accordance with the Act. The Credit Parties shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Act.

10.16 ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES. IN THE EVENT OF ANY EXPRESS CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THIS AGREEMENT AND THE TERMS OF ANY OTHER LOAN DOCUMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN. IT BEING UNDERSTOOD THAT PROVISIONS OF OTHER LOAN DOCUMENTS THAT SUPPLEMENT THE TERMS OF THIS AGREEMENT SHALL NOT BE DEEMED TO BE INCONSISTENT BECAUSE OF THEIR NATURE AS SUPPLEMENTARY PROVISIONS.

10.17 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Credit Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger and the Lenders are arm's-length commercial transactions between the Credit Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders, on the other hand, (B) each Credit Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Credit Party or any of its Affiliates, or any other Person and (B) none of the Administrative Agent, any Arranger or any Lender has any obligation to any Credit Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arranger, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Credit Parties and their Affiliates, and none of the Administrative Agent, the Arranger nor any Lender have any obligation to disclose any of such interests to the Credit Parties or any of their Affiliates. To the fullest extent permitted by law, the Credit Parties hereby waive and release any claims that they may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.18 Joint and Several Liability of the Credit Parties. The obligations of the Credit Parties hereunder and under the other Loan Documents are joint and several. The obligations of the Credit Parties under the Loan Documents may be enforced by the Administrative Agent and the other Secured Parties against any Credit Party or all Credit Parties in any manner or order selected by the Administrative Agent in its sole discretion. Each Credit Party hereby irrevocably waives (i) any rights of subrogation and (ii) any rights of contribution, indemnity or reimbursement, in each case, that it may acquire or that may arise against any other Credit Party due to any payment or performance made under this Agreement, in each case until all Obligations (other than unasserted contingent obligations) shall have been fully satisfied. Without limiting the foregoing provisions of this Section 10.18, each Credit Party acknowledges and agrees that:

- (a) its obligations under this Agreement shall remain enforceable against it even though such obligations may be unenforceable or not allowable against any other Credit Party due to the existence of any proceeding under any Debtor Relief Laws involving any other Credit Party;
- (b) its obligations under this Agreement are independent of the obligations of any other Credit Party, and a separate action or actions may be brought and prosecuted against it in respect of such obligations irrespective of whether any action is brought against any other Credit Party or any other Credit Party is joined in any such action or actions;
- (c) it hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:
- (d) any lack of validity or enforceability of this Agreement or any agreement or instrument relating thereto in respect of any other Credit Party;
- (e) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of any other Credit Party under or in respect of this Agreement, or any other amendment or waiver of or any consent to departure from this Agreement, in respect of any other Credit Party;

(f) any change, restructuring or termination of the structure or existence of any other Credit Party;

(g) the failure of any other Person to execute or deliver any other agreement or the release or reduction of liability of any other Person with respect to any obligations of the Credit Parties under this Agreement; or

(h) any other circumstance (including any statute of limitations but other than the Obligations having been fully satisfied) or any existence of or reliance on any representation by any other Person that might otherwise constitute a defense available to, or a discharge of, any other Credit Party;

(i) its obligations under this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any such obligations is rescinded or must otherwise be returned by any Person upon the institution of any proceeding under any Debtor Relief Laws of any other Credit Party, all as though such payment had not been made; and

(j) it hereby unconditionally and irrevocably waives any right to revoke its joint and several liability under the Loan Documents and acknowledges that such liability is continuing in nature and applies to all obligations of the Credit Party under the Loan Documents, whether existing now or in the future.

10.19 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender or Secured Party, or any person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be held in trust for the benefit of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error. If a Payment Recipient receives any payment, prepayment or repayment of principal, interest, fees, distribution or otherwise and does not receive a corresponding payment notice or payment advice, such payment, prepayment or repayment shall be presumed to be in error absent written confirmation from the Administrative Agent to the contrary.

(b) Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(c) For so long as an Erroneous Payment (or portion thereof) has not been returned by any Payment Recipient who received such Erroneous Payment (or portion thereof) (such unrecovered amount, an “Erroneous Payment Return Deficiency”) to the Administrative Agent after demand therefor in accordance with immediately preceding clause (a), (i) the Administrative Agent may elect, in its sole discretion on written notice to such Lender or Secured Party, that all rights and claims of such Lender or Secured Party with respect to the Loans or other Obligations owed to such person up to the amount of the corresponding Erroneous Payment Return Deficiency in respect of such Erroneous Payment (the “Corresponding Loan Amount”) shall immediately vest in the Administrative Agent upon such election; after such election, the Administrative Agent (x) may reflect its ownership interest in Loans in a principal amount equal to the Corresponding Loan Amount in the Register, and (y) upon five business days’ written notice to such Lender or Secured Party, may sell such Loan (or portion thereof) in respect of the Corresponding Loan Amount in accordance with Section 10.06 of this Agreement, and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by such Lender or Secured Party shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender or Secured Party (and/or against any Payment Recipient that receives funds on its behalf), and (ii) each party hereto agrees that, except to the extent that the Administrative Agent has sold such Loan, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of such Lender or Secured Party with respect to the Erroneous Payment Return Deficiency. For the avoidance of doubt, no vesting or sale pursuant to the foregoing clause (i) will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(d) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Credit Party.

(e) No Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(f) Each party’s obligations, agreements and waivers under this Section 10.19 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

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**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.

November 15, 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.

November 15, 2024

By: /s/ Ryan Perfit
Ryan Perfit
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 September 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.

November 15, 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 September 30, 2024 (the "Report"), the undersigned hereby certifies in his capacity as 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.

November 15, 2024

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