

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Amendment No. 1

to

Form S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Outbrain Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

7370
(Primary Standard Industrial
Classification Code Number)

20-5391629
(I.R.S. Employer
Identification No.)

222 Broadway, 19th Floor
New York, NY 10038
(646) 859-8594

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Yaron Galai
David Kostman
Co-Chief Executive Officers
Outbrain Inc.
222 Broadway, 19th Floor
New York, NY 10038
(646) 859-8594

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Phyllis Korff, Esq.
Anna Pinedo, Esq.
Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 506-2500
Fax: (212) 262-1910

Veronica Gonzalez, Esq.
Outbrain Inc.
222 Broadway, 19th Floor
New York, NY 10038
Tel: (646) 859-8594
Fax (917) 210-2918

David Goldschmidt, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, NY 10001-8602
Tel: (212) 735-3000
Fax (212) 735-2000

Approximate date of commencement of proposed sale to the public: As soon as practicable after effectiveness of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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 type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

If an emerging growth company, indicate by check mark if the company has elected to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price ⁽¹⁾⁽²⁾	Amount of Registration Fee ⁽³⁾
Common stock, par value \$0.001 per share	\$100,000,000	\$10,910.00 ⁽³⁾

(1) Includes shares granted pursuant to the underwriters' option to purchase additional shares.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.

(3) The Registrant previously paid this amount in connection with a prior filing of this Registration Statement.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Subject to completion, dated July 6, 2021

Shares



Common Stock

This is the initial public offering of shares of common stock to be sold in the offering.

Prior to this offering, there has been no public market for the common stock. It is currently estimated that the initial public offering price per share will be between \$ and \$. We have applied to list our common stock on the Nasdaq Global Select Market, or the Nasdaq, subject to notice of official issuance, under the symbol “OB.”

We are an “emerging growth company” under applicable Securities and Exchange Commission rules and will be subject to reduced public company reporting requirements.

Investing in our common stock involves substantial risks. See “Risk Factors” beginning on page 12 to read about factors you should consider before buying shares of stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete.

Any representation to the contrary is a criminal offense.

	Per Share	Total
Public offering price	\$	\$
Underwriting discounts and commissions ⁽¹⁾	\$	\$
Proceeds to us (before expenses)	\$	\$

(1) See “Underwriting” for a description of compensation payable to the underwriters.

We have granted the underwriters a 30-day option to purchase up to an additional shares of common stock from us at the public offering price less the underwriting discount.

The underwriters expect to deliver the shares of common stock to purchasers on or about , 2021.

Citigroup

Jefferies

Barclays

Evercore ISI

JMP Securities

Needham & Company

LUMA Securities

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and we are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.



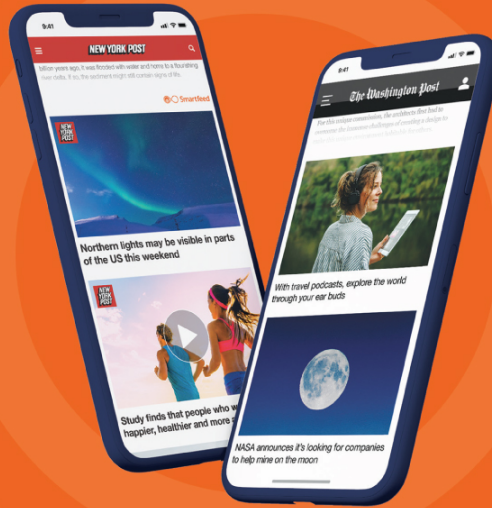
We Recommend™

We Recommend stories, videos and products that millions of users love, every day.

We partner with some of the world's most prestigious media owners.

We help tens of thousands of advertisers reach a global audience of ~1 billion engaged users.

We are the recommendation operating system for the open web.



Q1 2021

\$228M
Revenue

\$53M
Gross Profit

\$60M
Ex-TAC Gross Profit¹

\$11M
Net Income

\$21M
Adj. EBITDA¹

29%
YoY Revenue
Growth

64%
YoY Gross Profit
Growth

49%
YoY Ex-TAC Gross
Profit Growth¹

20%
Net Income % of
Gross Profit

34%
Adj. EBITDA % of
Ex-TAC Gross Profit¹

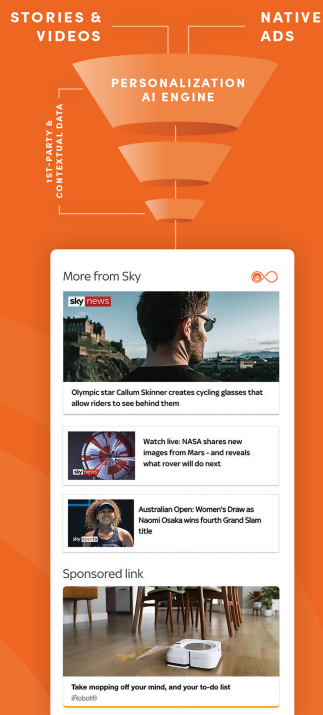
¹See "Selected Consolidated Financial and Other Data – Non-GAAP Financial Measures" for definitions of and explanations of our management's use and limitations of the non-GAAP financial measures used in this prospectus, and reconciliations to the corresponding GAAP financial measures.



The Operating System Powering Recommendations for the World's Leading Media Owners

Digital media owners on the open web use Outbrain as the operating system enabling their recommendation feed. Outbrain's Smartfeed™ technology intelligently combines editorial recommendations with native advertising. Using billions of 1st-party data signals and contextual data, Outbrain's AI technology delivers a personalized user experience to ~1B monthly unique users.

Always-On | Typically Exclusive | Powering 100% of the Feed



>7,000
Digital Media Properties¹

Over \$3B
of Direct Revenue Generated for Digital Media Owners¹

~1B
Unique Monthly Users²

1B+
Data Events Per-Minute¹

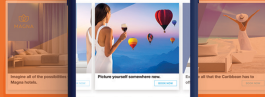
¹Source: Outbrain Internal Systems ²Source: Comscore, Jan 2020



User-Engagement and ROAS-Driven Native Advertising



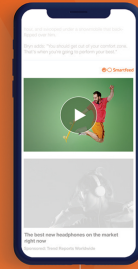
Highlight Reel



Carousel



App Install



Video

Advertisers looking to engage their target audiences outside of the “walled gardens” use Outbrain’s Amplify™ product to reach their desired audiences. We provide advertisers advanced targeting technologies and a variety of engaging native ad formats, such as video, carousels, app install ads, and more. Outbrain aggregates exclusive access to thousands of the world’s most prestigious media owners for over 20,000 advertisers.

>20,000

Direct Advertisers¹ in 2020

¹Source: Outbrain Internal Systems

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Neither we nor the underwriters have authorized anyone to provide information different from that contained in this prospectus, any amendment or supplement to this prospectus or in any free writing prospectus prepared by us or on our behalf. Neither we nor the underwriters take any responsibility for, and can provide no assurance as to the reliability of, any information other than the information in this prospectus and any free writing prospectus prepared by us or on our behalf. Neither the delivery of this prospectus nor the sale of our common stock means that information contained in this prospectus is correct after the date of this prospectus. This prospectus is not an offer to sell or the solicitation of an offer to buy these shares of common stock in any circumstances under which such offer or solicitation is unlawful.

Through and including _____, 2021 (the 25th day after the date of this prospectus) all dealers that effect transactions in our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This requirement is in addition to the dealer's obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Summary

This summary highlights selected information contained elsewhere in this prospectus. This summary does not contain all the information that you should consider before deciding to invest in our common stock. You should read the entire prospectus carefully, including the sections entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and the related notes included elsewhere in this prospectus, before making an investment decision. Unless the context otherwise requires, the terms “Outbrain,” “we,” “us,” “our” and “the company” in this prospectus refer to Outbrain Inc. and its consolidated subsidiaries.

Our mission is to help digital media owners thrive by recommending content, products and services that their users love.

Outbrain is a leading recommendation platform powering the open web. Founded in 2006, we pioneered the online content recommendation category. Today our platform enables over 7,000 online properties, including many of the world’s most prestigious publications, helping them engage their users and monetize their visits. Fueled by over 1 billion data events gathered each minute, our platform matches audiences with personalized content and ads, driving quality engagement while delivering efficient, sustainable monetization.

Over the past decade, consumers have become increasingly accustomed to seeing highly curated digital content and ads that align with their unique interests. Similar to the way in which social media and search have simplified discovery by synthesizing billions of consumer data points to offer personalized feeds, we provide media partners with a platform that encompasses data scale as well as prediction and recommendation capabilities, helping them deliver a personalized feed of recommendations tailored to their users, based on user interests, preferences, and context. We are a mobile-first company and our Smartfeed™ technology and recommendations are highly effective on mobile devices. We generated over 66% of our revenue on mobile platforms in 2020.

Since inception, we have been guided by the same core principles pertaining to our three constituents: media partners, users, and advertisers.

Media Partners. We are committed to the long-term success of our media partners. Consistent with this philosophy, we focus on developing trusted, transparent, typically exclusive, multi-year partnerships with media partners, both traditional and in new and rapidly evolving categories.

Users. We believe that by focusing on improving the user experience we are able to cultivate user behavior patterns that compound engagement over time, delivering superior long-term monetization for ourselves and for our media partners.

Advertisers. We strive to grow our advertising business by increasing overall user engagement, rather than price per engagement. Our emphasis on user engagement helps us improve advertisers’ return on ad spend (“ROAS”) thus unlocking more advertising spend and attracting additional advertisers. In turn this enables us to better match ads to users and further grow user engagement and overall monetization.

We have delivered over \$3 billion in direct revenue to our media partners, since inception. We partner with thousands of the world’s most trusted digital media owners for which we believe we are an important technology partner. Some key media partners with which we have longstanding relationships across our various regions include Asahi Shimbun, CNN, Der Spiegel, Le Monde, MSN, and Sky News and Sky Sports. The average tenure of our top 20 media partners, based on our 2020 revenue, is approximately seven years.

Through our relationships with media partners, we have become one of the largest online recommendation and advertising platforms on the open web. In 2020, we provided personalized content feeds and ads to approximately 1 billion monthly unique users, delivering on average over 10 billion recommendations per day, with over 20,000 advertisers using our platform. In the first quarter of 2021, our platform powered an average of over 100,000 ad campaigns per day.

Our platform is user engagement focused. A significant proportion of the engagement created by our recommendations is with the content of the media partner for which we are providing the platform, which we refer to as ‘organic recommendations.’ This provides the user with a personalized content experience, while increasing time spent and engagement on the media partner’s digital properties. We believe this is crucial to increasing long-term loyalty and retention of users for media partners, while increasing the depth and value of

user visits in the short term. Powering a curated feed of both organic recommendations and targeted ads creates significant proprietary, first-party data that enables us to continuously refine our prediction capabilities, supporting our efforts to further increase engagement.

Advertisers use our platform to reach consumers efficiently through various ad formats across thousands of premium digital media properties around the world. Our platform provides access to a significant volume of exclusive ad inventory within the content feeds of these premium digital media properties. Advertisers primarily use our platform for performance driven campaigns, with measurable outcomes. Our ability to drive value and ROAS for advertisers, at scale, is highlighted in the growth of ad spend through our platform.

Data and algorithms are fundamental to everything we do. We process over 1 billion data signals per minute, powering up to 100 million Click Through Rate (“CTR”) predictions and over 100,000 recommendations per second. This drives our ability to deliver approximately 40 million engagements per day. Our ability to collect and synthesize large data sets into our real-time decisioning engine powers our recommendations, our feed experiences and our ad targeting, helping us optimize user engagement and monetization. As our platform grows, we are able to leverage our data scale in order to enhance our algorithms, enabling us to improve the efficacy of our platform. This, in turn, drives additional user engagement and thus more monetization for our partners and ourselves, which helps us further grow our business and scale our data. We refer to this phenomenon as our data flywheel. During 2020, we grew overall engagement with recommendations on our platform by 24% on a year over year basis.

We are targeting a large, fragmented and growing market. Over four billion consumers access the Internet and, by 2022, the average person in the United States will spend more than eight hours a day consuming digital media, according to eMarketer. eMarketer also states that approximately \$378 billion was spent on global digital advertising in 2020. By 2024, this figure is expected to increase to \$646 billion. Approximately 40% of the world’s population has yet to gain access to the Internet. We believe a second factor will complement the increased activity of more people arriving online: the significant majority of consumption and economic activity, such as retail, still takes place offline. As the migration to online takes place, there remains significant future growth potential in eCommerce, given that just 14% of total retail sales in the United States in 2020 occurred online, according to the U.S. Department of Commerce. Online retail sales are both growing and fragmenting, with the leading eCommerce giant’s share of sales declining between 2019 and 2020 from around 44% to roughly 31% according to Digital Commerce 360 estimates. We believe this represents an opportunity as the broader ecosystem of retailers seek advertising and technology partners to support their continued online growth. Advertisers increasingly expect measurable impact from their digital advertising investment, often preferring to pay for outcomes rather than pay for media, according to a 2020 Jounce market outlook report. Within digital advertising, more engaging and user friendly formats, such as native and video, represent the fastest growing segments for ad spend, outgrowing search and traditional forms of display, according to eMarketer. Given our ability to deliver high impact and measurable performance to our advertisers, with significant reach and unique inventory, we believe that we are well positioned to capture a significant share of this growing market.

We have a track record of consistently growing our business, and have achieved significant scale with \$767 million of revenue in 2020 and \$228 million of revenue for the quarter ended March 31, 2021. Our business is profitable and we are benefiting from strong operating leverage as we grow. Our net income was \$4.4 million in 2020, compared to a net loss of \$20.5 million in 2019. Our net income was \$10.7 million for the quarter ended March 31, 2021, up from a net loss of \$9.6 million in the prior year period. Our gross profit was \$165.1 million in 2020, up from \$142 million in 2019 representing year over year growth of 16.4%. In the second half of 2020, our gross profit grew by 36.0% compared to the second half of 2019, highlighting the momentum in our business. Our gross profit was \$53.5 million for the quarter ended March 31, 2021, up 63.7% from \$32.7 million for the quarter ended March 31, 2020. Our Ex-TAC Gross Profit was \$194 million in 2020, up from \$170 million in 2019 representing year over year growth of 14.1%. In the second half of 2020, our Ex-TAC Gross Profit grew by 28.8%, as compared to the second half of 2019, highlighting the momentum in our business. Our Ex-TAC Gross Profit was \$60.4 million for the quarter ended March 31, 2021, up 49.1% from \$40.5 million for the quarter ended March 31, 2020. Our Adjusted EBITDA more than doubled to \$41.1 million in 2020, from \$19.3 million in 2019. In the three months ended March 31, 2021, our Adjusted EBITDA grew nearly tenfold to \$20.6 million, from \$2.2 million in the comparable prior year period. Adjusted EBITDA was 21.2% and 11.3% of Ex-TAC Gross Profit in 2020 and 2019, respectively. Adjusted EBITDA was 34.1% and 5.4 % of Ex-TAC Gross Profit for the quarter ended March 31, 2021 and

2020, respectively. See “Selected Consolidated Financial Data and Other Data” for information regarding how we define non-GAAP financial measures and the related reconciliations to GAAP measures.

Our Industry

Advertising is the primary business model for digital media on the open web. In addition, advertising is also increasingly used as a key revenue driver for other Internet based businesses such as mobile gaming and eCommerce. As a result, digital advertising not only subsidizes media consumption for billions of consumers globally, but also finances the creation of journalism, news, and entertainment while lowering the costs of various products and services to consumers.

We believe that the following industry trends are relevant to our business.

Proliferation of digital media, and digital advertising, particularly across mobile environments. Mobile ad spend is expected to increase at a faster pace than digital ad spend in total. According to eMarketer, global digital ad spend in 2021 is expected to grow to \$455 billion, reflecting a 20.4% year over year increase. Of that, 40.2% is expected to go to search, with 55.2% expected to go to forms of display advertising, including native and video. The percentage of total media ad spending in digital is projected to be 60.9% in 2021, 63.6% in 2022, 65.9% in 2023, 67.8% in 2024 and 69.5% in 2025. Additionally, mobile ad spend is expected to grow to \$341 billion in 2021, a 23.5% year over year increase, with U.S. mobile ad spend reaching \$130 billion in the same year.

Consumer habits and expectations are changing. Consumers have grown accustomed to consuming engaging content that is curated across multiple digital formats, including social, entertainment, gaming and audio. As a result, we believe that personalized and engaging digital content experiences, supported by non-intrusive ads, have become the expectation of media owners, rather than a consumer luxury.

Trusted editorial content is becoming increasingly important. The massive scale of content creation and distribution across social media has made it difficult to curb the creation and proliferation of factually inaccurate news and misinformation, leading to a growing distrust of user-generated social media content. As a result, advertisers have become increasingly cognizant of where they spend ad dollars, seeking media environments that prioritize quality, transparency and brand safety.

Performance and ROAS are becoming increasingly important to advertisers. As digital advertising continues to consume a larger share of advertiser budgets, the ability to target advertising based on specific user interests and context, in real-time, has become increasingly important to advertisers. According to a 2019 IAB report, approximately 63% of 2019 internet advertising revenues were priced on a performance basis.

Data-driven decisioning delivers better experiences and outcomes. Advances in software and hardware along with the growing use of the Internet have made it possible to collect and rapidly process massive amounts of real-time data signals related to content, context and performance. As a result, advertisers are increasingly focused on data-driven decisioning, making these capabilities critical for media partners, as they seek to deliver quality experiences to their users while maintaining their relevance with advertisers.

The Challenge for Digital Media Owners

As the pace of online content creation and consumption continues to accelerate, and competition for user attention intensifies, digital media owners must focus on their core strength: creating relevant, interesting, and high-quality content. However, their success also depends on sustainably attracting, engaging, retaining and monetizing audiences while competing with the major social and aggregation platforms, known as the ‘walled gardens.’ These platforms, driven by the nature of their services and their scale, have significant resources to invest in technology and have amassed large volumes of coveted user data. This enables them to deliver highly targeted and thus effective ads alongside user generated or third-party content, helping them achieve an outsized share of the advertising market.

As a result, we believe that digital media owners, whose properties are often referred to as the ‘open web,’ face challenges in the following key areas:

User experience. In today’s dynamic, mobile-first environment, providing a high-quality user experience that addresses consumer habits and expectations is critical to attracting, engaging and retaining

audiences. Keeping pace with these changes, as well as other emerging products and features, represents a significant challenge to many digital media owners who lack the scale and resources required to compete.

Monetization. The fragmented ecosystem of digital advertising technology intermediaries, constantly evolving landscape of ad formats and the growing sophistication of advertisers seeking measurable ROAS makes it difficult for digital media owners to develop and maintain the technology required to optimize their monetization. In addition, digital media owners often lack access to a large and diverse advertiser base.

Our Solution

We enable digital media owners to provide their users with an experience that is personalized and relevant to their interests while generating incremental revenue through highly engaging content recommendations and relevant advertisements. Our platform is informed by large, proprietary data sets. Our recommendation engine relies on advanced artificial intelligence technology and machine learning algorithms. We leverage our scale, gained through a large number of partners and advertisers, in order to grow and enhance our data and our technology continuously.

By delivering relevant content recommendations that personalize the user experience, alongside targeted ads, our platform increases and monetizes user engagement. Our technology platform forms the underlying “operating system” of our media partners’ content feeds, helping them manage and grow their business.

Our Offering for Media Partners

We provide media partners with an ‘operating system’ that helps them manage and grow their businesses. Our platform and products provide the data, scale, and technology capabilities to personalize the content experience, grow audiences, maximize user engagement and monetize content. We empower media partners, enabling them to innovate their user experience by continuously introducing new features, capabilities and technologies that help optimize content delivery through personalized recommendations. We aggregate advertiser demand on behalf of media partners, providing them with critical monetization. Media partners benefit from the combined scale of technology, data and users, which we derive from the large volume of partners and advertisers that use our platform.

Our product suite for media partners, Outbrain Engage™, encompasses multiple key technologies, enabling media partners to:

- ***Delight users through personalized feeds and data-driven recommendations***
- ***Monetize content through customized, data-driven advertising***
- ***Maximize user engagement***
- ***Manage their business***

Our Offering for Advertisers

Our platform enables advertisers to have one-on-one interactions with consumers, at scale. We provide advertisers a powerful open web platform with significant reach and exclusive inventory, helping them connect with audiences on premium digital properties. Using Outbrain Amplify™, our product suite for advertisers, we enable them to focus their campaigns on the users most likely to engage with their ads. Advertisers log into our platform directly to create campaigns, load or automatically generate creative assets, and manage their advertising activity on the open web, all while optimizing spend toward engagement and ROAS.

Outbrain Amplify provides advertisers with:

- *Seamless and non-intrusive ads*
- *Ads optimized for engagement*
- *Results—optimize and pay for performance*
- *Quality*

Our Personalized Feed Experience for Users—Smartfeed

Smartfeed is our personalized feed solution that drives deeper discovery of content, products and services, longer sessions and better user engagement. Smartfeed powers the content feeds of thousands of the world’s most prestigious digital media owners, combining highly engaging multimedia formats, such as text and image, or video, with a diverse range of experiences and dynamic optimizations, continuously improving a personalized user experience.

Our Strengths

- ***Mission-critical partner for digital media owners.*** We provide digital media partners with mission-critical technology, an “operating system,” that increases user engagement and content monetization.
- ***Unique, at-scale platform for advertisers.*** Through our vast and predominantly exclusive relationships with media partners, we provide advertisers with access to approximately 1 billion unique monthly users.
- ***Unique proprietary data and algorithms driving a virtuous cycle.*** Our direct integrations across our partners’ properties provide us with a large volume of proprietary first-party engagement data. Leveraging our data, we continuously optimize our algorithms to improve CTR and ROAS. By delivering better results to advertisers we are able to grow our business and our platform, which, in turn, helps us collect more data and further enhance our algorithms, driving better results for our partners, helping us further grow our platform and our business.
- ***Well positioned for a privacy-centric world.*** By integrating directly with our media partners’ properties we generate proprietary first-party data and are able to collect and infer valuable user related data and insights. In addition, our ability to use unique contextual signals enables us to deliver strong user engagement and advertiser ROAS without the need to rely solely on user-based targeting, typically enabled through user tracking technologies that may not be available in the future.
- ***History of successful innovation.*** We pioneered our category and have been focused on innovation since our founding. To ensure seamless product innovation we operate as a continuous deployment engineering organization, releasing an average of approximately 250 code deployments daily.
- ***Scaled, profitable and diversified business.*** We have grown our business rapidly while achieving profitability, demonstrating the power of our technology, the strength of our partner and advertiser relationships and the inherent operating leverage of our model. Our business is well diversified.
- ***Team and culture.*** We rely on a global and diverse team of highly capable employees to collaborate, innovate, and execute our vision. 93% of our employees would “recommend Outbrain as a great place to work.”

Our Growth Strategies

- *Continuously improve user engagement*
- *Grow our ad inventory*
- *Grow advertiser spend*
- *Drive adoption of high impact ad formats*
- *Acquisitions and strategic partnerships*

Risk Factor Summary

Investing in our common stock involves risks. You should consider carefully the risks described in “Risk Factors” beginning on page 12 before making a decision to invest in our common stock. If any of these risks actually occurs, our business, financial condition or results of operations would likely be materially adversely affected. In such cases, the trading price of our common stock would likely decline, and you may lose all or part of your investment. The following is a summary of some of the principal risks we face:

- Our revenue and results of operations are highly dependent on overall advertising demand and traffic generated by our media partners;
- A failure to grow or to manage growth effectively may cause the quality of our platform and solutions to suffer, and may adversely affect our business, results of operations, and financial condition;
- Continued growth in our business may place demands on our infrastructure and resources;
- Our research and development efforts may not meet the demands of a rapidly evolving technology market;
- Loss of media partners could have a significant impact on our revenue and results of operations;
- Our sales and marketing efforts may require significant investments and, in certain cases, involve long sales cycles;
- The failure of our recommendation engine to accurately predict user engagement may adversely affect our business, results of operations, and financial condition;
- If the quality of our recommendations deteriorates, or if we fail to present interesting content to our users, we may experience a decline in user engagement, which could result in the loss of media partners;
- The digital advertising industry is intensely competitive, and if we do not effectively compete against current and future competitors, our business, results of operations, and financial condition could be adversely affected;
- Limitations on our ability to collect, use, and disclose data to deliver advertisements;
- Failures or loss of the hardware, software and infrastructure on which we rely, or security breaches, could adversely affect our business; and
- Political and regulatory risks in the various markets in which we operate; the challenges of compliance with differing and changing regulatory requirements.

Industry Data

This prospectus includes data, forecasts and information obtained from industry publications and surveys and other information available to us. Some data is also based on our good faith estimates, which are derived from management’s knowledge of the industry and independent sources. We have not independently verified any of the data from third-party sources, nor have we ascertained the underlying assumptions relied upon therein. While we are not aware of any misstatements regarding the industry data presented herein, estimates and forecasts involve uncertainties and risks and are subject to change based on various factors, including those discussed under the headings “Special Note Regarding Forward-Looking Statements” and “Risk Factors” in this prospectus.

Emerging Growth Company Status

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act (the “JOBS Act”) enacted in April 2012. We intend to take advantage of certain exemptions under the JOBS Act from various public company reporting requirements, including not being required to have our internal control over financial reporting audited by our independent registered public accounting firm pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”), reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden

parachute payments not previously approved. In addition, we have in this prospectus taken and intend to continue to take advantage of certain reduced reporting obligations, including disclosing only two years of audited consolidated financial statements and only two years of related management's discussion and analysis of financial condition and results of operations. We may take advantage of these exemptions until the earlier of the last day of the fiscal year following the fifth anniversary of the completion of this offering or the date we cease to be an "emerging growth company," which will be the earliest of (i) the last day of the fiscal year in which we have more than \$1.07 billion in annual revenue; (ii) the date we qualify as a "large accelerated filer"; and (iii) the date on which we have, during the previous three-year period, issued more than \$1 billion in non-convertible debt securities.

In addition, the JOBS Act provides that an "emerging growth company" can take advantage of an extended transition period for complying with new or revised accounting standards. This provision allows an emerging growth company to delay the adoption of some accounting standards until those standards would otherwise apply to private companies. We have elected to use the extended transition period under the JOBS Act. Accordingly, our consolidated financial statements may not be comparable to the financial statements of public companies that comply with such new or revised accounting standards.

Corporate Information

Outbrain Inc. was incorporated in Delaware in August 2006. Our principal executive offices are located at 222 Broadway, 19th Floor, New York, NY 10038, and our telephone number is (646) 859-8594. Our website address is www.outbrain.com. Information contained on, or that can be accessed through, our website does not constitute a part of this prospectus and is not incorporated by reference herein. We have included our website address in this prospectus solely for informational purposes.

Throughout this prospectus, we refer to various trademarks, service marks and trade names that we use in our business. The "Outbrain" design logo is the property of Outbrain Inc. Outbrain® is our registered trademark in the United States. We have several other trademarks, service marks and pending applications relating to our products. In particular, although we have omitted the "®" and "TM" trademark designations in this prospectus from each reference to all rights to such trademarks are nevertheless reserved. Other trademarks and service marks appearing in this prospectus are the property of their respective holders.

	The Offering
Common stock offered by us	shares
Common stock to be outstanding after this offering	shares
Option to purchase additional shares of common stock from us	shares
Use of proceeds	<p>We intend to use the net proceeds from this offering for working capital and general corporate purposes, including research and development expenditures focused on product development and sales and marketing expenditures aimed at growing our business.</p> <p>We may also use a portion of the net proceeds to make acquisitions or investments in complementary companies or technologies, although we do not have any agreement or understanding with respect to any such acquisition or investment at this time. See “Use of Proceeds.”</p>
Proposed Nasdaq symbol	OB
	<p>The number of shares of our common stock that will be outstanding after this offering is based on shares of common stock outstanding as of June 30, 2021, which includes shares issuable on conversion of the convertible preferred stock and shares of restricted stock. The number of shares of common stock to be outstanding after this offering excludes: (1) 8,134,850 shares of common stock issuable upon the exercise of stock options outstanding as of June 30, 2021 under our 2007 Plan (as defined below) with a weighted-average exercise price of \$3.91 per share; (2) 6,578,232 restricted stock units, or RSUs, outstanding as of June 30, 2021 with respect to our common stock under our 2007 Plan of which 2,978,522 vest in connection with this offering; (3) 5,764 stock appreciation rights, or SARs, outstanding as of June 30, 2021 with respect to our common stock under our 2007 Plan with a weighted-average exercise price of \$4.50; (4) 789,776 shares of common stock reserved for future issuances and grants under our 2007 Plan; (5) 1,055,852 shares of common stock issuable upon the exercise of warrants outstanding as of June 30, 2021 with a weighted average price of \$2.92, including 415,852 warrants which expire if not exercised prior to the completion of this offering; and (6) any RSU awards granted to non-employee directors upon commencement of service under our LTIP (as defined in “Executive Compensation—Equity Compensation Plans—2021 Long-Term Incentive Plan”).</p> <p>Our LTIP provides for annual automatic increases in the number of shares reserved thereunder. Our LTIP also provides for increases to the number of shares that may be granted thereunder based on shares under our 2007 Omnibus Securities and Incentive Plan, as amended and restated, or our 2007 Plan, that expire, are forfeited or otherwise repurchased by us, as more fully described in the section titled “Executive Compensation—Equity Compensation Plans.”</p> <p>Unless otherwise indicated, all information in this prospectus:</p> <ul style="list-style-type: none"> • gives effect to the filing and effectiveness of our amended and restated certificate of incorporation in Delaware and the effectiveness of our amended and restated bylaws, which will occur immediately prior to the closing of this offering; • gives effect to the conversion of all outstanding shares of convertible preferred stock into an aggregate of shares of common stock, which will occur immediately prior to the closing of this offering; • assumes an initial public offering price of \$ per share of common stock, the midpoint of the estimated initial public offering price range set forth on the cover page of this prospectus; and • assumes no exercise by the underwriters of their option to purchase additional shares. <p>In accordance with the antidilution provisions set forth in our amended and restated certificate of incorporation in effect prior to the closing of this offering, depending on the price of the shares sold in this</p>

offering, the shares of our Series D, Series F and Series G convertible preferred stock outstanding immediately prior to the closing of this offering may convert into a higher number of shares of common stock. A change in conversion ratio could also result in us recognizing a beneficial conversion charge on the closing of this offering. Under the provisions of our amended and restated certificate of incorporation, we will not know the conversion rate of our Series D, Series F and Series G convertible preferred stock until the public offering price is determined. See “Conversion of Series D, Series F and Series G Convertible Preferred Stock” for a discussion of the impact of different public offering prices on the conversion rates of such series of convertible preferred stock.

Summary Consolidated Financial and Other Data

The following tables set forth our summary consolidated financial and other data. You should read the following summary consolidated financial and other data in conjunction with “Selected Consolidated Financial and Other Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our audited consolidated financial statements and related notes included elsewhere in this prospectus. Our financial statements have been prepared in accordance with U.S. Generally Accepted Accounting Principles, or U.S. GAAP.

The following tables present selected consolidated statements of operations data for each of the years in the two-year period ended December 31, 2020, and for the three months ended March 31, 2021 and 2020. We derived the statements of operations data for the years ended December 31, 2020 and 2019 and the selected balance sheet data as of December 31, 2020 from the audited financial statements appearing elsewhere in this prospectus. We derived our selected consolidated statements of operations data for the three months ended March 31, 2021 and 2020 and our selected consolidated balance sheet data as of March 31, 2021 from the unaudited condensed consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited condensed consolidated financial statements on the same basis as the audited consolidated financial statements and have included all adjustments, consisting only of normal adjustments, which in our opinion are necessary to state fairly the financial information set forth in those statements. Our historical results are not necessarily indicative of the results that may be expected in the future, and our results of operations for the three months ended March 31, 2021 are not necessarily indicative of the results to be expected for the full year or for any other period.

	<u>Three Months Ended March 31,</u>		<u>Year Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
	(in thousands, except per share data)			
Statements of Operations Data:				
Revenue	\$228,024	\$177,332	\$767,142	\$687,333
Cost of revenue:				
Traffic acquisition costs	167,613	136,806	572,802	517,000
Other cost of revenue	6,942	7,873	29,278	28,548
Gross profit	53,469	32,653	165,062	141,785
Operating expenses:	38,689	42,170	154,885	156,370
Income (loss) from operations	14,780	(9,517)	10,177	(14,585)
Interest expense	(170)	(165)	(832)	(601)
Interest income and other income (expense), net	(2,253)	1,241	(1,695)	152
Income (loss) before provision for income taxes	12,357	(8,441)	7,650	(15,034)
Provision for income taxes	1,611	1,129	3,293	5,480
Net income (loss)	<u>\$ 10,746</u>	<u>\$ (9,570)</u>	<u>\$ 4,357</u>	<u>\$ (20,514)</u>
Net income (loss) per share—basic	\$ 0.14	\$ (0.34)	\$ 0.06	\$ (0.79)
Net income (loss) per share—diluted	\$ 0.12	\$ (0.34)	\$ 0.05	\$ (0.79)

	<u>March 31,</u> <u>2021</u>		<u>December 31,</u> <u>2020</u>	
	(in thousands)			
Balance Sheet Data:				
Cash and cash equivalents	\$ 95,042		\$ 93,641	
Total assets	341,965		356,486	
Total liabilities	245,533		273,855	
Convertible preferred stock	162,444		162,444	
Total stockholders' deficit	(66,012)		(79,813)	
	<u>Three Months Ended March 31,</u>		<u>Year Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
	(in thousands)			
Statement of Cash Flows Data:				
Net cash provided by operating activities	\$ 5,406	\$14,336	\$52,986	\$16,740
Net cash used in investing activities	(2,787)	(2,121)	(9,423)	(7,589)
Net cash (used in) provided by financing activities	(807)	9,044	(4,228)	(3,659)
	<u>Three Months Ended March 31,</u>		<u>Year Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
	(in thousands)			
Non-GAAP Performance Metrics⁽¹⁾:				
Ex-TAC Gross Profit	\$60,411	\$40,526	\$194,340	\$170,333
Adjusted EBITDA	20,583	2,169	41,145	19,275
Adjusted EBITDA as % of Ex-TAC Gross Profit	34.1%	5.4%	21.2%	11.3%

⁽¹⁾ For information on how we define and compute Ex-TAC Gross Profit and Adjusted EBITDA and for reconciliations to the corresponding GAAP measures, which are gross profit and net income, respectively, see "Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures."

Risk Factors

This offering and an investment in our shares of common stock involve a high degree of risk. You should consider carefully the risks described below and all other information contained in this prospectus, before you decide to buy our shares of common stock. If any of the following risks actually occurs, our business, financial condition and results of operations could be materially and adversely affected. In that event, the trading price of our shares of common stock would likely decline and you might lose all or part of your investment.

Risks Related to Outbrain and Outbrain's Industry

Our revenue and results of operations are highly dependent on overall advertising demand in the markets in which we operate. Factors that affect the amount of advertising spending, such as economic downturns and unexpected events, like the COVID-19 pandemic, can make it difficult to predict our revenue and could adversely affect our business, results of operations, and financial condition.

Our business depends on the overall demand for advertising in the markets in which we operate and on the business trends of our current and prospective media partners and advertisers. Macroeconomic factors could cause advertisers to reduce their advertising budgets, including adverse economic conditions and general uncertainty about economic recovery or growth, particularly in North America, EMEA (Europe, Middle East and Africa), and Asia, where we conduct most of our business, as well as instability in political or market conditions generally. Reductions in overall advertising spending as a result of these factors or due to the occurrence of unanticipated events could make it difficult to predict our future performance. The occurrence of unforeseen events, like the pandemic, that affect advertising demand may have a disproportionate impact on our revenues and profitability in certain periods and could adversely affect our business, results of operations, and financial condition.

We cannot predict the extent to which the ongoing and evolving COVID-19 pandemic, including the resulting global economic uncertainty, and measures taken in response to the pandemic, could adversely affect our business, results of operations, and financial condition.

In March 2020, the World Health Organization (“WHO”) characterized the rapid spread of the COVID-19 disease as a pandemic. Since then, the COVID-19 pandemic has disrupted the global economy and put unprecedented strains on governments, health care systems, educational institutions, businesses, and individuals around the world, resulting in regional quarantines, labor shortages or stoppages, changes in consumer purchasing patterns, disruptions to the ability of service providers to deliver data on a timely basis, or at all, and overall economic instability. The impact on the global population and the duration of the COVID-19 pandemic is difficult to assess or predict. It is also difficult to predict the impact on the global economic market, which depends upon the actions of governments, businesses, and other enterprises in response to the pandemic and the effectiveness of those actions. The pandemic has already caused, and is likely to result in further, significant disruption of global financial markets and economic uncertainty. Although the advertising market and our business have generally recovered from the economic effects of the COVID-19 pandemic, it did initially impact our sales and operations adversely. We continue to monitor our operations, and the operations of those in our ecosystem (including media partners, advertisers and agencies), as well as government recommendations.

In response to the COVID-19 pandemic, we required most employees to work remotely, suspended all non-essential travel worldwide for our employees, canceled or postponed company-sponsored events, and discouraged employee attendance at industry events and in-person work-related meetings. Although we continue to monitor the situation and will adjust our current policies over time, temporarily suspending travel and doing business remotely could negatively impact our marketing efforts, lengthen sales cycles, slow down our recruiting efforts, and/or create operational or other challenges as we adjust to a fully (or partially)-remote workforce, any of which could adversely affect our business, results of operations, and financial condition.

By contrast, as the economy recovers and pandemic concerns ease, certain media partners may experience a decline in traffic from the height of traffic during the work-from-home peak digital usage periods. As a result, by comparison to our 2020 results of operations, our results of operations in future periods may be unpredictable.

In order to meet our growth objectives, we will need to continue to innovate, seek to have advertisers and media partners adopt our expanding solutions, and extend our reach into evolving digital media platforms. If we fail to grow, or fail to manage our growth effectively, the quality of our platform and solutions may suffer, and our business, results of operations, and financial condition may be adversely affected.

Our growth plans depend upon our ability to innovate, attract advertisers and media partners to our solutions to buy and sell new inventory, and expand the use of our solutions by advertisers and media partners utilizing other digital media platforms and video. Our business model may not translate well into emerging forms of advertising due to market resistance or other factors, and we may not be able to innovate successfully enough to compete effectively.

The advertising technology market is dynamic, and our success depends upon our ability to develop innovative new technologies and solutions for the evolving needs of sellers of digital advertising, including websites, applications and other media partners, and buyers of digital advertising. We also need to grow significantly to develop the market reach and scale necessary to compete effectively with large competitors. This growth depends to a significant degree upon the quality of our strategic vision and planning. The advertising market is evolving rapidly, and if we make strategic errors, there is a significant risk that we will lose our competitive position and be unable to achieve our objectives. The growth we are pursuing may itself strain the organization, harming our ability to continue that growth, and to maintain the quality of our operations. If we are not able to innovate and grow successfully, the value of our company may be adversely affected.

The continued growth in our business may place demands on our infrastructure and our operational, managerial, administrative, and financial resources.

Our success will depend on our ability to manage growth effectively. Among other things, this will require us at various times to:

- strategically invest in the development and enhancement of our platform and data center infrastructure;
- manage multiple relationships with various media partners, advertisers, and other third parties;
- extend our operating, administrative, legal, financial, and accounting systems and controls;
- increase coordination among our engineering, product, operations, go-to-market and other support organizations; and
- recruit, hire, train, and retain personnel.

If we do not manage our growth well, the efficacy and performance of our platform may suffer, which may harm our reputation and reduce demand for our platform and solutions. Failure to manage our growth effectively may have an adverse effect on our business, results of operations, and financial condition.

Our research and development efforts may not meet the demands of a rapidly evolving technology market resulting in a loss of customers, revenue, and/or market share.

We expect to continue to dedicate significant financial and other resources to our research and development efforts in order to maintain or improve our competitive position. However, investing in research and development personnel, developing new solutions and enhancing existing solutions is expensive and time consuming. Our research and development activities may be directed at maintaining or increasing the performance of our recommendations, developing tools that improve productivity or efficiency, or introducing new solutions. However, there is no assurance that such activities will result in significant new marketable solutions, enhancements to our current solutions, design improvements, additional revenue or other expected benefits. Furthermore, there is no assurance that our efforts to promote new or enhanced solutions, like video solutions or new advertiser tools, will be successful. If we spend significant time and effort on research and development but are unable to generate an adequate return on our investment, our business, results of operations, and financial condition may be adversely affected.

Loss of large media partners could have a significant impact on our revenue and results of operations.

A significant portion of our recommendations are placed on web pages and mobile applications of a small number of our media partners. Certain partners may reduce or terminate their business with us at any time for any reason, including as a result of changes in their financial condition or other business circumstances, such as a change in strategy or model by which they monetize their properties. In 2020 and 2019, each of our two largest media partners accounted for approximately 10% of our revenues. If a large media partner reduces or terminates its relationship with us, or if several small or medium-sized media partners terminate their relationships with us, we may not have access to sufficient media partners to satisfy demand from advertisers resulting in lower revenues. In addition, losing key media partners may lead advertisers to seek alternate advertising solutions, which could slow our growth. A media partner may terminate its relationship with us and enter into a relationship with a competitor, and to the extent that becomes a long-term relationship, reestablishing our relationship with that media partner may prove difficult. As discussed below, establishing relationships with media partners may involve long sales cycles. As a result, the loss of a significant media partner relationship or of several small or medium-sized media partner relationships could have a material adverse impact on our business, results of operations and financial condition.

Our sales and marketing efforts may require significant investments and, in certain cases, involve long sales cycles, and may not yield the results we seek.

Our sales and marketing teams educate prospective media partners and advertisers about the use, technical capabilities, and benefits of our platform. Our sales cycle (with both media partners as well as with certain advertisers and agencies) can take significant time from initial contact to contract execution and implementation. We may not succeed in attracting new media partners despite our significant investment in business development, sales and marketing and it is complex to predict the extent of the revenue that will be generated with a media partner. We may not succeed in expanding relationships with existing media partners and advertisers, despite our significant investment in sales, account management, marketing, and research and development and it is difficult to predict when additional products will generate revenue through our platform, and the extent of that revenue. Programmatic partners tend to have a longer sales cycle with distinct technical and integration requirements, as well as a separate ongoing partner management process.

Our revenue growth and future prospects will be adversely affected if we fail to expand our advertiser relationships.

Our revenue growth depends on our success in expanding and deepening our relationships with existing advertisers. Our growth strategy is premised in part on increasing spend from existing advertisers. In order to do so, we must be able to demonstrate better results for our advertisers with increased user engagement and return on ad spend (“ROAS”), among other things. We do not have long-term commitments from our advertisers. We seek to increase the number of advertisers and to reach new advertisers. Attracting new advertisers and expanding existing relationships with our advertisers requires substantial effort and expense. In particular, large advertisers with well-established brands may require us to spend significant time educating them about our platform and solutions. It may be difficult and time consuming to identify, sell and market to potential advertisers who already allocate their budgets to large competitors and who expect to see a similar return on investment before diversifying or allocating a portion of their advertising budgets to us. As new advertisers spend in our network or as advertisers allocate greater budgets to our platform, our credit loss exposure may increase over time and may exceed reserves for such contingencies. As we expand the application of our solutions, we increasingly depend on media agencies to assist advertisers in planning and purchasing advertising for brand marketing objectives, such as preference shift and brand awareness. We typically experience slow payment cycles by advertising agencies, as is common in our industry, and in some instances, if the advertiser does not pay the agency, the agency is not liable to us, and we must seek payment solely from the advertiser. If we are unsuccessful in developing new advertiser and agency relationships and maintaining and expanding our existing relationships, our results of operations and prospects will be adversely affected.

The failure of our recommendation engine to accurately predict user engagement may adversely affect our business, results of operations, and financial condition.

The success of our recommendation engine depends on the ability of our proprietary algorithms to predict the likelihood users will engage with our recommendations and on the quality of our data assets. We

need to continuously deliver satisfactory results for users, media partners and advertisers in order to maintain revenue, which, in turn, depends in part on the optimal functioning of our platform and solutions. Therefore, a failure of our recommendation engine to accurately predict user engagement could negatively affect our results of operations and revenue.

If the quality of our recommendations deteriorates, or if we fail to present interesting content to our users, we may experience a decline in user engagement, which could result in the loss of media partners.

Our technology selects the recommendations that are displayed to users on the online properties of our media partners. Our success depends on our ability to make valuable recommendations, which, in turn, depends on the quality of recommendations in our index and our ability to predict engagement by an individual user within a specific context. We believe that one of our key competitive advantages is our recommendation technology. Subject to our advertiser guidelines, we offer our media partners a degree of flexibility with respect to the type of recommendation that they believe will appeal to their audience based on the editorial tone of their properties. If the quality of our recommendations suffers, whether due to our actions or decisions made by our media partners, or we are otherwise unable to provide users with valuable and relevant recommendations, user engagement may decline or perceptions of our recommendations may be adversely impacted. If we experience a decline in users or user engagement, for example, because users begin to ignore our platform or direct their attention to other elements on the online properties of our media partners, our media partners and advertisers may in turn not view our solutions as attractive, which could harm our business, results of operations, and financial condition.

The content of advertisements could damage our reputation and brand, or harm our ability to expand our base of users, advertisers and media partners, and negatively impact our business, results of operations, and financial condition.

Our reputation and brand may be negatively affected by ads that are deemed to be hostile, infringing, offensive or inappropriate by users and media partners. From time to time, we make changes in our advertiser guidelines that can result in the inclusion or exclusion of certain types of ads. We cannot predict with certainty the impact that such changes might have on user engagement or perceptions of our recommendations. We have adopted policies regarding unacceptable advertisements and retain authority to remove ads that violate these policies; however, advertisers could nonetheless provide such content and occasionally circumvent our policies. If any of those ads lead to hostile, infringing, offensive or inappropriate content, our reputation could suffer by association. The safeguards we have in place may not be sufficient to avoid harm to our reputation and brand. This could adversely affect existing relationships with media partners and advertisers, as well as our ability to expand our user and media partner base, and harm our business, results of operations, and financial condition.

Conditions in Israel could materially and adversely affect our business.

Many of our employees, including certain members of our management team, operate from our offices in Israel. In addition, a number of our officers and directors are residents of Israel. Accordingly, political, economic and military conditions in Israel and the surrounding region may directly affect our business and operations. In recent years, Israel has been engaged in sporadic armed conflicts with Hamas, an Islamist terrorist group that controls the Gaza Strip, with Hezbollah, an Islamist terrorist group that controls large portions of southern Lebanon, and with Iranian-backed military forces in Syria. In addition, Iran has threatened to attack Israel and may be developing nuclear weapons. Some of these hostilities were accompanied by missiles being fired from the Gaza Strip, Lebanon and Syria against civilian targets in various parts of Israel, including areas in which our employees are located, which negatively affected business conditions in Israel. Any hostilities involving Israel or the interruption or curtailment of trade between Israel and its trading partners could adversely affect our operations, results of operations and financial condition.

Our commercial insurance does not cover losses that may occur as a result of events associated with war and terrorism. Although the Israeli government currently covers the reinstatement value of property damage and certain direct and indirect damages that are caused by terrorist attacks or acts of war, such coverage would likely be limited, may not be applicable to our business (either due to the geographic location of our offices or the type of business that we operate) and may not reinstate our loss of revenue or economic

losses more generally. Furthermore, we cannot assure you that this government coverage will be maintained or that it will sufficiently cover our potential damages. Any losses or damages incurred by us could have a material adverse effect on our business. Any armed conflicts or political instability in the region would likely negatively affect business conditions and could harm our results of operations.

Further, in the past, the State of Israel and Israeli companies have been subjected to economic boycotts. Several countries still restrict business with the State of Israel and with Israeli companies. These restrictive laws and policies may have an adverse impact on the expansion of our business, financial condition and/or our results of operations. In addition, a campaign of boycotts, divestment and sanctions has been undertaken against Israel, which could also adversely impact our business.

Also, many Israeli citizens are obligated to perform several days, and in some cases more, of annual military reserve duty each year until they reach the age of 40 (or older, for reservists who are military officers or who have certain occupations) and, in the event of a military conflict, may be called to active duty. In response to increases in terrorist activity, there have been periods of significant call-ups of military reservists. It is possible that there will be military reserve duty call-ups in the future. Our operations could be disrupted by such call-ups, particularly if such call-ups include the call-up of members of our management. Such disruption could materially adversely affect our business, financial condition and results of operations.

The digital advertising industry is intensely competitive, and if we do not effectively compete against current and future competitors, our business, results of operations, and financial condition could be adversely affected.

The digital advertising ecosystem is competitive and complex. Some of our competitors have longer operating histories, greater name recognition, and greater financial, technical, sales, and marketing resources than we have. In addition, some competitors may have greater flexibility than we do to compete aggressively on the basis of their scale, price and other contract terms, or to compete with us by including in their product offerings services that we may not provide. The market is fragmented and we also face competition from many smaller companies, many of which may be willing to offer their services on prices or terms that are not profitable for us. Some competitors are able or willing to agree to contract terms that expose them to risks and in order to compete effectively we might need to accommodate similar risks that could be difficult to manage or insure against. Media partners are investing in capabilities that enable them to connect more effectively and directly with advertisers. Our business may suffer to the extent that media partners and advertisers sell and purchase advertising inventory directly from one another or through intermediaries other than us, reducing the amount of advertising spend on our platform. If we are unable to compete effectively for media partners' inventory and/or advertisers' advertising spend, we may experience less demand, which could adversely affect our business, results of operations, and financial condition.

There has also been rapid evolution and consolidation in digital advertising, and we expect these trends to continue, thereby increasing the capabilities and competitive positioning of larger companies, particularly those that are already dominant. There is a finite number of large media partners and advertisers in our target markets, and any consolidation of media partners or advertisers may give the resulting enterprises greater bargaining power or result in the loss of media partners and advertisers that use our platform, reducing our potential base of media partners and advertisers, each of which would potentially erode our revenue.

With the introduction of new technologies and the influx of new entrants to the market, we expect competition to persist and intensify in the future, which could harm our ability to increase sales and maintain our profitability. In addition, we and our media partners compete indirectly for user engagement with larger search and social media companies, such as Facebook, Inc., Google Inc., LinkedIn Corp. and Twitter Inc. We also broadly compete for advertiser budgets with other forms of traditional and online marketing, including keyword advertising, social media marketing and display advertising.

Loss of existing or future market share to new competitors and advertisers allocating finite budgets to competitors could substantially harm our business, results of operations, and financial condition.

Our current business model depends on media partners maintaining open access digital properties, monetizing through advertising and attracting users to their digital properties, and could be impacted by continued pressure on the publishing industry.

Our platform depends on users being able to consume content freely on media partners' properties. Some media partners, typically those that participate in both print and digital publishing, charge their users

a subscription fee for online access by implementing a paywall. Our business may be negatively impacted by media partners shifting from open access to paywalls because it may decrease our access to users and advertising inventory. If media partners shift their revenue models to a subscription-based service, they may decrease their reliance on other forms of revenue generation, including our recommendations and ads, which could negatively affect our business, results of operations, and financial condition.

Our results of operations may fluctuate significantly from period to period and may not meet our expectations or those of securities analysts and investors.

Our results of operations have fluctuated in the past, and future results of operations are likely to fluctuate as well. In addition, because our business continues to evolve, you should not place undue reliance on our historical results of operations in assessing our future prospects. Factors that can cause our results of operations to fluctuate include:

- changes in demand and competition for ad inventory sold on our platform;
- changes in our access to valuable ad inventory of media partners;
- the addition or loss of media partners on our platform, and costs associated with adding or attempting to retain them;
- seasonality of our business;
- changes in consumer usage of devices and channels to access media and digital content;
- changes in the structure of the buying and selling of digital ad inventory;
- changes in the pricing policies of media partners and competitors;
- changes in third-party service costs;
- changes and uncertainty in our legislative, regulatory, and industry environment, particularly in the areas of data protection and consumer privacy;
- introduction of new technologies or solutions;
- unilateral actions taken by demand side platforms, agencies, advertisers, media partners, and supply side platforms;
- changes in our capital expenditures as we acquire hardware, technologies, and other assets for our business; and
- changes to the cost of retaining and adding highly specialized personnel.

Any one or more of the factors above may result in significant fluctuations in our results of operations.

Our profitability may be adversely impacted, or may fluctuate on a quarterly basis, due to guarantees that we have provided to some of our media partners.

In order to secure favorable terms, such as exclusivity and longer-term agreements, we may offer media partners contracts with guaranteed minimum rates of payments. These guarantees require us to pay the media owner for the ad impressions we receive, regardless of whether the consumer engages with the ad or we are paid by the advertiser. If the level of user engagement on a media partner property or overall advertiser demand falls, the payments to our media partners with guaranteed minimum rates of payment may adversely impact our Ex-TAC Gross Profit and our margins. This includes the possibility of paying a media partner an amount in excess of the revenue that we generated from ads served on that media partner property. The revenue from ads served on a media partner property or overall advertiser demand could drop for reasons outside of our control. It is also possible that we will agree to a rate of payment that is more difficult to profitably recoup than we originally believed. In addition, many of our contracts that contain guarantee arrangements set a single rate of payment and do not account for seasonal revenue fluctuations. As a result, our gross profit margins may fluctuate with the seasonality of the business. Although we have secured limited exemptions in contracts with guarantees, due to these factors, these guarantees may adversely impact our traffic acquisition costs in absolute dollar terms and as a percentage of revenue, as well as overall profitability. The provision of guaranteed minimum rates to additional media partners or to

existing media partners upon contract renewal, or the provision of such guarantees in contracts that contemplate a large number of page views, such as some of the contracts we have entered into with large media partners, may increase the risk that our gross profit and/or margins may be adversely impacted for the reasons we describe above.

Seasonal fluctuations in advertising activity and large cyclical events could have a material impact on our revenue, cash flow and operating results.

Our revenue, cash flow, operating results and other key operating and performance metrics may vary from quarter to quarter due to the seasonal nature of our advertisers' spending. For example, advertisers tend to devote more of their advertising budgets to the fourth calendar quarter to coincide with user holiday spending. Moreover, advertising inventory in the fourth quarter may be more expensive due to increased demand. Other large cyclical events that attract advertisers, such as elections, the Olympics and other sporting events, the Oscars, or other large entertainment events, also could cause our revenue to increase during certain periods and decrease in other periods.

User growth and engagement depends upon effective interoperation with devices, platforms and standards set by third parties that we do not control.

Our recommendations are currently accessed through desktops, laptops and mobile devices, and are adaptable across many digital environments, including web pages, mobile applications, email and video players. In the future, our recommendations may be accessed through other new devices and media platforms. As a result, we depend on the interoperability of our solutions with popular devices, platforms and standards that we do not control. For example, because many users access our platform through mobile devices, we depend on the interoperability of our solutions with mobile devices and operating systems such as Android and iOS. Any changes in, or restrictions imposed by, such devices, platforms or standards that impair the functionality of our current or proposed solutions or give preferential treatment to competitive products or services could adversely affect usage of our platform.

Some users also download free or paid "ad blocking" software on their computers or mobile devices, not only for privacy reasons, but also to counteract the adverse effect advertisements can have on the user experience, including increased load times, data consumption, and screen overcrowding. If more users adopt these measures, our business, results of operations, and financial condition could be adversely affected. Many applications and other devices allow users to avoid receiving advertisements by paying for subscriptions or other downloads. Prominent media technology companies, including Google, are also limiting what advertisements may be rendered through their browsers in the name of user experience and load times. Ad-blocking technologies could have an adverse effect on our business, results of operations, and financial condition if they reduce the volume or effectiveness and value of advertising.

Prominent technology companies also have announced intentions to discontinue the use of cookies, and to develop alternative methods and mechanisms for tracking users. The most commonly used Internet browsers allow users to modify their browser settings to block first-party cookies (placed directly by the media partner or website owner that the user intends to interact with) or third-party cookies, and some browsers block third-party cookies by default. For example, Apple already prohibits the use of third-party cookies and has announced its intention to move to "opt-in" privacy models with its new iOS releases requiring users to voluntarily choose (opt-in) to permit app developers to track them across applications and websites and therefore receive targeted ads. In January 2020, Google announced its intention to limit the use of third-party cookies potentially starting in 2022 in its Chrome web browser.

Mobile devices using Android and iOS operating systems limit the ability of cookies to track users while they are using applications other than their web browser on the device. As a consequence, fewer of our cookies or media partners' cookies may be set in browsers or be accessible in mobile devices, which adversely affects our business.

As companies replace cookies, it is possible that such companies may rely on proprietary algorithms or statistical methods to track users without cookies, or may utilize log-in credentials entered by users into other web properties owned by these companies, such as their email services, to track web usage, including usage across multiple devices. Alternatively, such companies may build different and potentially proprietary user

tracking methods into their widely-used web browsers. Although we believe we are well positioned to adapt and continue to provide key data insights to our media partners without cookies, this transition could be more disruptive, slower, or more expensive than we currently anticipate, and could materially affect the accuracy of our recommendations and ads and thus our ability to serve our advertisers, adversely affecting our business, results of operations, and financial condition.

If we fail to detect and prevent click fraud or other invalid engagements with the advertisements we serve, we could lose the confidence of our advertisers, which would cause our business to suffer and negatively impact our financial results.

Our success relies on delivering measurable business value to our advertisers. We are exposed to the risk of fraudulent and otherwise invalid engagements that advertisers may perceive as undesirable. A major source of invalid engagements is click fraud in which a user, automated script or computer program intentionally engages with ads for reasons other than accessing the underlying content. If we are unable to detect and prevent such fraudulent or malicious activity, or other invalid engagements or if we choose to manage traffic quality in a way that advertisers find unsatisfactory, the affected advertisers may experience or perceive a reduced return on their investment in our platform, which could lead to dissatisfaction with our solutions, refusals to pay, refund demands or withdrawal of future business. This could damage our brand and lead to a financial loss or to a loss of advertisers which would adversely affect our business, results of operations, and financial condition.

Our business depends on our ability to maintain and scale our technology platform. Real or perceived errors or disruptions in our platform could adversely affect our operating results and growth prospects.

We depend upon the sustained and uninterrupted operation of our platform to generate recommendations, serve ads, manage our content index, continually improve and analyze our data assets and optimize performance in real time. If our platform cannot scale to meet demand, or if there are errors, bugs, or other performance failures, including any related to our third-party service providers, in our execution of any of these functions on our platform, then our business may be harmed. Undetected bugs, defects, errors and other performance failures may occur, especially when we are implementing new solutions or features. Despite testing by us, errors in our platform may occur, which could result in negative publicity, damage to our brand and reputation, loss of or delay in market acceptance of our solutions, increased costs or loss of revenue, loss of competitive position or claims by advertisers or media partners for losses sustained by them. We also face risks of disruptions of service from third-party interference with our platform and cyber-attacks. For such occurrences, our platform is designed with degradation features that enable us to turn off our recommendations and ads without producing white space on the media partner's properties for the vast majority of our media partners. While we have robust systems in place to counter breaches and attacks, such as DoS (a technique used by hackers to take an Internet service offline by overloading its servers), we cannot guarantee that future attacks may not have dire consequences, including impacting what may be displayed on the properties of our media partners and advertisers. Disruptions to our platform and our servers could interrupt our ability to provide our solutions and materially affect our reputation, relationships with media partners and advertisers, business and results of operations. Moreover, alleviating problems resulting from errors or disruptions in our platform could require significant resources, which would adversely impact our financial position, and results of operations.

Failures or loss of the hardware, software and infrastructure on which we rely, or security breaches, could adversely affect our business.

We rely on owned and leased servers and other third-party hardware and infrastructure to support our operations. Our third-party data centers are co-located in three geographically separate locations managed by three different vendors in the United States. We do not control the operation of these facilities and such facilities could be subject to break-ins, computer viruses, sabotage, intentional acts of vandalism and other misconduct. Further, our servers and data centers are vulnerable to damage or interruption from fires, natural disasters, terrorist attacks, power loss, telecommunications failures or similar catastrophic events. If a data center goes offline, an alternate data center would take over our serving and data storage needs, but our service may be slowed or degraded as a result until full data center operations are restored. We cannot assure you that future outages may not have material adverse consequences to our business. Moreover, if for

any reason our arrangement with one or more of the providers of the servers that we use is terminated, we could incur additional expenses in establishing new facilities and support.

Our business depends on our ability to collect, use, and disclose data to deliver advertisements. Any limitation imposed on our collection, use or disclosure of this data could significantly diminish the value of our solution.

We use “cookies,” or small text files placed on consumer devices when an Internet browser is used, as well as mobile device identifiers, to gather data that enables our platform to be more effective. We collect this data through various means, including code that media partners and advertisers implement on their pages, software development kits installed in mobile applications, our own cookies, and other tracking technologies. Our advertisers, directly or through third-party data providers, may choose to further target their campaigns within our platform using their data.

The data we collect improves our algorithms and helps us deliver relevant recommendations with greater user engagement. Our ability to collect and use data is critical to the value of our platform. Without cookies, mobile device IDs, and other tracking technology data, our recommendations would be informed by less information about user interests and advertisers may have less visibility into their return on ad spend. If our ability to use cookies, mobile device IDs or other tracking technologies is limited, we may be required to develop or obtain additional applications and technologies to compensate for the lack of cookies, mobile device IDs and other tracking technology data, which could be time consuming or costly to develop, less effective, and subject to additional regulation. There are many technical challenges relating to our ability to collect, aggregate and associate the data, and we cannot assure you that we will be able to do so effectively, which would adversely affect our business, results of operations, and financial condition.

We depend on highly skilled personnel to grow and operate our business, and if we are unable to hire, retain and motivate our personnel, we may not be able to grow effectively.

Our future success depends upon contributions from our employees, in particular our senior management team. We do not maintain key person life insurance for any employee. From time to time, there may be changes in our senior management team, and such changes may be disruptive to our business.

Our growth strategy also depends on our ability to expand and retain our organization with highly skilled personnel. Identifying, recruiting, training and integrating qualified individuals will require significant time, expense and attention. In addition to hiring new employees, we must continue to focus on retaining our best employees. Competition for highly skilled personnel in our industry is intense across all our locations, particularly in New York City, where our headquarters is located, and in Israel and Slovenia, where we conduct the majority of our research and development activities. We may need to invest significant amounts of cash and equity to attract and retain new employees and we may not realize returns on these investments. If we are not able to effectively add and retain employees, our ability to achieve our strategic objectives will be adversely impacted, and our business will be harmed.

Our corporate culture has contributed to our success, and if we cannot maintain it as we grow, we could lose the innovation, creativity, and teamwork fostered by our culture, and our business may be harmed.

We believe our corporate culture has been a critical component of our success as we believe it fosters innovation, creativity, and teamwork across our business, helping to drive our success. We cannot ensure we can effectively maintain our corporate culture as we continue to grow. As we expand and change, in particular across multiple geographies, following acquisitions, or in a more remote environment, it may be difficult to preserve our corporate culture, which could reduce our ability to innovate, create, and operate effectively. In turn, the failure to preserve our culture could adversely affect our business, results of operations, and financial condition by negatively affecting our ability to attract, recruit, integrate and retain employees, continue to perform at current levels, and effectively execute our business strategy.

If currency exchange rates fluctuate substantially in the future, our results of operations, which are reported in U.S. dollars, could be adversely affected.

We are exposed to the effects of fluctuations in currency exchange rates. We incur operating expenses, including with respect to employee compensation, in local currencies at our offices outside of the United States and, most significantly, in Israel and the United Kingdom, and a significant percentage of our

international revenue is from advertisers who pay us in currencies other than the U.S. dollar. Fluctuations in the exchange rates between the U.S. dollar and those other currencies could result in the U.S. dollar equivalent of such expenses being higher and/or the U.S. dollar equivalent of such foreign-denominated revenue being lower than would be the case if exchange rates were stable. This could have a negative impact on our reported operating results. We evaluate periodically the various currencies to which we are exposed and take hedging measures to reduce the potential adverse impact from the appreciation or the depreciation of our non-U.S.-dollar-denominated operations, as appropriate. Any such strategies, such as forward contracts, options and foreign exchange swaps related to transaction exposures that we may implement to mitigate this risk may not fully eliminate our exposure to foreign exchange fluctuations.

Our tax liabilities may be greater than anticipated.

The U.S. and non-U.S. tax laws applicable to our business activities are subject to interpretation and are changing. We are subject to audit by the U.S. Internal Revenue Service (the “IRS”) and by taxing authorities of the state, local and foreign jurisdictions in which we operate. Our tax obligations are based in part on our corporate operating structure, including the manner in which we develop, value, use and hold our intellectual property, the jurisdictions in which we operate, how tax authorities assess revenue-based taxes such as sales and use taxes, the scope of our international operations, and the value we ascribe to our intercompany transactions. Taxing authorities may challenge, and have challenged, our tax positions and methodologies for valuing developed technology or intercompany arrangements, positions regarding the collection of sales and use taxes, and the jurisdictions in which we are subject to taxes, which could expose us to additional taxes. Any adverse outcomes of such challenges to our tax positions could result in additional taxes for prior periods, interest and penalties, as well as higher future taxes. In addition, our future tax expense could increase as a result of changes in tax laws, regulations or accounting principles, or as a result of earning income in jurisdictions that have higher tax rates. For example, the European Commission has proposed, and various jurisdictions have enacted or are considering enacting laws that impose separate taxes on specified digital services, which may increase our tax obligations in such jurisdictions. Digital services or other similar taxes could, among other things, increase our tax expense, create significant administrative burdens for us, discourage potential customers from subscribing to our platform due to the incremental cost of any such sales or other related taxes, or otherwise have a negative effect on our financial condition and results of operations. Moreover, the determination of our provision for income taxes and other tax liabilities requires significant estimates and judgment by management, and the tax treatment of certain transactions is uncertain. Given uncertainty with respect to the impact of the COVID-19 pandemic on our operations, the income tax benefit/expense we record may vary significantly in future periods. Any changes, ambiguity, or uncertainty in taxing jurisdictions’ administrative interpretations, decisions, policies and positions, including the position of taxing authorities with respect to revenue generated by reference to certain digital services, could also materially impact our income tax liabilities. Although we believe that our estimates and judgments are reasonable, the ultimate outcome of any particular issue may differ from the amounts previously recorded in our financial statements and any such occurrence could adversely affect our business, results of operations, and financial condition.

Our credit facility subjects us to operating restrictions and financial covenants that impose risk of default and may restrict our business and financing activities.

In 2013, we entered into a loan and security agreement with Silicon Valley Bank (“SVB”) that, as amended to date, provides a senior secured revolving credit facility in the aggregate principal amount of up to \$35 million. As of March 31, 2021, we had no borrowings outstanding under this loan and security agreement. Borrowings under this agreement are secured by substantially all of our assets, including all accounts receivable and proceeds from sales of our intellectual property, and are subject to a negative pledge on our intellectual property in favor of SVB. This credit facility is subject to certain financial and other covenants, as well as restrictions that limit our ability without prior written consent, among other things, to:

- dispose of or sell our assets;
- make material changes in our business, management or ownership (other than in connection with a public offering);
- consolidate or merge with other entities;

- incur additional indebtedness;
- create liens on our assets;
- pay dividends;
- make investments, other than permitted investments; and
- pay off or redeem subordinated indebtedness, unless permitted under the terms of the subordination.

These covenants may restrict our ability to finance our operations and to pursue our business activities and strategies. Our ability to comply with these covenants may be affected by events beyond our control. Our ability to renew our existing credit facility, which matures in November 2021, or to enter into a new credit facility to replace or supplement the existing facility may be limited due to various factors, including the status of our business, global credit market conditions, and perceptions of our business or industry by sources of financing. In addition, if credit is available, lenders may seek more restrictive covenants and higher interest rates that may reduce our borrowing capacity, increase our costs, and reduce our operating flexibility. If we do not have or are unable to generate sufficient cash available to repay our debt obligations when they become due and payable, either upon maturity or in the event of a default, we may not be able to obtain additional debt or equity financing on favorable terms, if at all.

We may engage in strategic transactions, which may not yield a positive financial outcome. Further, such activity may result in the company operating in businesses beyond its current core business with risk factors beyond those which are identified here.

From time to time, we may evaluate potential mergers and acquisitions or investment opportunities. We have made a number of acquisitions in the past. Any transactions that we enter into could be material to our financial condition and results of operations. The process of integrating an acquired company, business or technology could create unforeseen operating difficulties and expenditures. Acquisitions and investments carry with them a number of risks, including the following:

- diversion of management time and focus from operating our business;
- implementation or remediation of controls, procedures and policies of the acquired company;
- integration of financial systems;
- coordination of product, engineering and selling and marketing functions;
- retention of employees from the acquired company;
- unforeseen liabilities;
- litigation or other claims arising in connection with the acquired company; and
- in the case of foreign acquisitions, the need to integrate operations across different cultures and languages and to address the particular economic, currency, political and regulatory risks associated with specific countries.

Our failure to address these or other risks encountered in connection with acquisitions could cause us to fail to realize the anticipated benefits of such acquisitions, resulting in unanticipated liabilities and harming our business, results of operations and financial condition.

Risks Relating to Legal or Regulatory Matters

Our business is subject to political and regulatory risks in the various markets in which we operate; compliance with differing and changing regulatory requirements poses compliance challenges.

Our business is subject to regulation, which is rapidly evolving, and the business and regulatory environment in each of the international markets in which we operate may differ. For example, regulations relating to our business, including our employees, our arrangements with media partners and advertisers, and

privacy related regulations affect how we conduct our business. The following are some of the political and regulatory risks and challenges we face across jurisdictions:

- greater difficulty in enforcing contracts;
- higher costs of doing business internationally, including costs incurred in establishing and maintaining office space and equipment for our international operations;
- risks associated with trade restrictions and foreign legal requirements, including any certification and localization of our platform that may be required in foreign countries;
- greater risk of unexpected changes in regulatory practices, tariffs, and tax laws and treaties;
- compliance with anti-bribery laws, including, without limitation, compliance with the U.S. Foreign Corrupt Practices Act and the UK Bribery Act;
- compliance with data collection and privacy law regimes of various countries;
- heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of, or irregularities in, financial statements;
- the uncertainty of protection for intellectual property rights in some countries;
- general economic and political conditions in these foreign markets, including political and economic instability in some countries;
- the potential for heightened regulation relating to content curation or discovery as a result of concerns relating to the spread of disinformation through technology platforms; and
- double taxation of our international earnings and potentially adverse tax consequences due to changes in the tax laws of the United States or the foreign jurisdictions in which we operate.

We are subject to laws and regulations related to data privacy, data protection, and information security, and consumer protection across different markets where we conduct our business, including in the United States and Europe. Such laws, regulations, and industry requirements are constantly evolving and changing and could potentially impact data collection and data usage for advertising and recommendations. Our actual or perceived failure to comply with such obligations could have an adverse effect on our business, results of operations, and financial condition.

We receive, store, and process data about or related to users in addition to our media partners, advertisers, services providers and employees. Our handling of this data is subject to a variety of federal, state, and foreign laws and regulations and is subject to regulation by various government authorities. Our data handling also is subject to contractual obligations and may be deemed to be subject to industry standards.

The U.S. federal and various state and foreign governments have adopted or proposed limitations on the collection, distribution, use, and storage of data relating to individuals, including the use of contact information and other data for marketing, advertising and other communications with individuals and businesses. In the United States, various laws and regulations apply to the collection, processing, disclosure, and security of certain types of data. Additionally, the Federal Trade Commission and many state attorneys general are interpreting federal and state consumer protection laws as imposing standards for the online collection, use, dissemination, and security of data and issuing separate guidance in this area. If we fail to comply with any such laws or regulations, we may be subject to enforcement actions that may not only expose us to litigation, fines, and civil and/or criminal penalties, but also require us to change our business practices as well as have an adverse effect on our business, results of operations, and financial condition.

The regulatory framework for data privacy issues worldwide is evolving and is likely to remain uncertain for the foreseeable future. The occurrence of unanticipated events often rapidly drives the adoption of legislation or regulation affecting the use, collection, or other processing of data and manners in which we conduct our business. Restrictions could be placed upon the collection, management, aggregation, and use of information, which could result in a material increase in the cost of collecting or otherwise obtaining certain kinds of data and could limit the ways in which we may use or disclose information. In particular, interest-based advertising, or the use of data to draw inferences about a user's interests and deliver relevant

advertising to that user, and similar or related practices (sometimes referred to as interest-based advertising, behavioral advertising or personalized advertising), such as cross-device data collection and aggregation, steps taken to de-identify personal data, and to use and distribute the resulting data, including for purposes of personalization and the targeting of advertisements, have come under increasing scrutiny by legislative, regulatory, and self-regulatory bodies in the United States and abroad that focus on consumer protection or data privacy (and also by app platforms, as discussed above). Much of this scrutiny has focused on the use of cookies and other technologies to collect information about Internet users' online browsing activity on web browsers, mobile devices, and other devices, to associate such data with user or device identifiers or de-identified identities across devices and channels. Because we rely upon large volumes of such data collected primarily through cookies and similar technologies, it is possible that these efforts may have a substantial impact on our ability to collect and use data from Internet users, and it is essential that we monitor developments in this area domestically and globally, and engage in responsible privacy practices, including providing users with notice of the types of data we collect and how we use that data to provide our services.

In the United States, the U.S. Congress and state legislatures, along with federal regulatory authorities have recently increased their attention on matters concerning the collection and use of consumer data. In the United States, non-sensitive consumer data generally may be used under current rules and regulations, subject to certain restrictions, so long as the person does not affirmatively "opt-out" of the collection or use of such data. If an "opt-in" model or other more restrictive regulations were to be widely adopted in the United States, less data would be available, and could adversely affect our business.

California enacted legislation, the California Consumer Privacy Act, along with related regulations (together, the "CCPA"), which became effective in 2020. The CCPA creates individual privacy rights for California residents and increases the privacy and security obligations of businesses handling personal data. The CCPA is enforceable by the California Attorney General and there is also a private right of action relating to certain data security incidents. The CCPA generally requires covered businesses to, among other things, provide disclosures to California consumers and afford California consumers abilities to opt-out of the sharing of personal data between parties, a concept that is defined broadly, and although formal guidance has not been issued, behavioral advertising is believed to trigger such requirements under the CCPA by us, consumer advocacy groups and in some cases our larger competitors. We cannot yet fully predict the impact of the CCPA or subsequent guidance on our business or operations, but it may require us to further modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. Decreased availability and increased costs of information could adversely affect our ability to meet our advertisers' requirements and could have an adverse effect on our business, results of operations, and financial condition.

Additionally, starting in January 2023, the California Privacy Rights Act ("CPRA"), which was voted into law in November 2020 and amends the CCPA, imposes additional data protection obligations on certain businesses doing business in California, including honoring additional consumer rights and limiting the use and processing of personal data including sensitive data. In addition, the CPRA explicitly requires businesses to provide consumers with the right to opt-out of sharing of personal data with third parties for behavioral advertising. Accordingly, the CPRA could have an adverse effect on our business, results of operations, and financial condition.

Further, in March, 2021, Virginia enacted the Consumer Data Protection Act ("CDPA"), which will also take effect on January 1, 2023. The CDPA, similar to the CCPA and CPRA, provides various individual privacy rights to Virginia residents concerning the processing of their personal data by businesses subject to the CDPA. The CDPA also imposes certain obligations on businesses, including the requirements to obtain opt-in consent to process sensitive data, to implement and maintain reasonable security requirements, and to conduct and document data protection impact assessments concerning the processing of personal data for purposes of behavioral advertising. Similar to the CPRA, businesses must provide consumers with the right to opt-out of the processing of their personal data for behavioral advertising. The effects of the CCPA, CPRA, and CDPA are potentially significant and may require us to modify our data collection or processing practices and policies and to incur substantial costs and expenses in an effort to comply and increase our potential exposure to regulatory enforcement and/or litigation.

The CCPA has encouraged "copycat" laws in other states across the country, such as in Connecticut, Florida, New York, Oklahoma, and Washington. This legislation may add additional complexity, variation

in requirements, restrictions, and potential legal risk, require additional investment in resources to compliance programs, and could impact strategies and availability of previously useful data and could result in increased compliance costs and/or changes in business practices and policies. Such new privacy laws add additional complexity, requirements, restrictions, and potential legal risk, require additional investment in resources to compliance programs, and could impact trading strategies and availability of previously useful data.

In Europe, the General Data Protection Regulation (EU) 2016/679 (“GDPR”) took effect on May 25, 2018 and applies to products and services that we provide in Europe, as well as the processing of personal data of European Economic Area (“EEA”) citizens, wherever that processing occurs. The GDPR includes operational requirements for companies that receive or process personal data of residents of the EEA that are different than those that were in place in the EEA prior to the GDPR. Failure to comply with GDPR, or the UK GDPR in the United Kingdom, may result in significant penalties for non-compliance ranging from €10 million to €20 million or 2% to 4% of an enterprise’s global annual revenue, whichever is greater in the case of the GDPR or the greater of £17.5 million or 4% of the total worldwide turnover in the preceding financial year in the case of the United Kingdom. In addition to the foregoing, a breach of the GDPR or the UK GDPR could result in regulatory investigations, reputational damage, orders to cease/change our processing of our data, enforcement notices, and/or assessment notices (for a compulsory audit). We may also face civil claims including representative actions and other class action type litigation (where individuals have suffered harm), potentially amounting to significant compensation or damages liabilities, as well as associated costs, diversion of internal resources, and reputational harm.

There is an increasing focus on compliance requirements with respect to the digital advertising ecosystem, including criticism that the Internet Advertising Bureau (“IAB”) Transparency & Consent Framework (“TCF”) is inherently incompatible with GDPR given the high velocity personal data trading. The UK Information Commissioner’s Office has also recently announced it has restarted its investigation into the adtech industry which will look in particular at data management platforms and the role of data brokers. If the TCF is invalidated, we may not have another means of adequately requesting and obtaining consent, which could negatively affect our business, results of operations, and financial condition.

Further, in the European Union, current national laws that implement the ePrivacy Directive (2002/58/EC) will be replaced by an EU Regulation, known as the ePrivacy Regulation, which will significantly increase fines for non-compliance and impose burdensome requirements around placing cookies. While the text of the ePrivacy Regulation is still under development, a European court decision and regulators’ recent guidance in the Court of Justice of the European Union (“CJEU”) Fashion ID case are driving increased attention to cookies and tracking technologies. On April 7, 2021 the Austrian online privacy campaign group NYOB announced that it filed a complaint with the French information commissioner’s office (the “CNIL”), against the use of the Google Android Advertising Identifier code on the ground that users do not have the opportunity to delete the code and that this amounts to a violation of ePrivacy laws. As regulators start to enforce the strict approach (which has already begun to occur in Germany, where data protection authorities have initiated a probe on third-party cookies), this could lead to substantial costs, require significant systems changes, limit the effectiveness of our marketing activities, divert the attention of our technology personnel, adversely affect our margins, increase costs, and subject us to additional liabilities.

In addition, some countries are considering or have passed legislation implementing data protection requirements or requiring local storage and processing of data or similar requirements that could increase the cost and complexity of delivering our services. Though GDPR intended to harmonize the privacy and data protection laws across the EEA, member state interpretations of the law continue to vary making an already detailed regulatory framework increasingly complex to comply with. For example, as of October 1, 2020, CNIL clarified their interpretative position and began to enforce their guidelines around consent and cookies and consequently consent management platforms.

Any failure to achieve required data protection standards may result in lawsuits, regulatory fines, or other actions or liability, all of which may harm our results of operations. It is possible that CCPA, GDPR, UK GDPR and the ePrivacy Regulation in Europe and related standards may be interpreted and applied in manners that are, or are asserted to be, inconsistent with our data management practices or the technological features of our solutions. The risk is further exacerbated because of the evolving interpretation and application of privacy and data protection laws.

In addition to government regulation, privacy advocacy and industry groups may propose new and different self-regulatory standards that either legally or contractually apply to us or our advertisers. We are members of self-regulatory bodies that impose additional requirements related to the collection, use, and disclosure of consumer data. Under the requirements of these self-regulatory bodies, in addition to other compliance obligations, we are obligated to provide consumers with notice about our use of cookies and other technologies to collect consumer data and of our collection and use of consumer data for certain purposes, and to provide consumers with certain choices relating to the use of consumer data. Some of these self-regulatory bodies have the ability to discipline members or participants, which could result in fines, penalties, and/or public censure (which could in turn cause reputational harm). Additionally, some of these self-regulatory bodies might refer violations of their requirements to the Federal Trade Commission or other regulatory bodies. If we were to be found responsible for such a violation, it could adversely affect our reputation, as well as our business, results of operations, and financial condition.

If media partners, advertisers, and data providers do not obtain necessary and requisite consents from consumers for us to process their personal data, we could be subject to fines and liability.

Pursuant to GDPR, the UK GDPR and related ePrivacy laws, media partners and any downstream partners, are required to obtain unambiguous consent from EEA data subjects to process their personal data, which the industry has addressed through the release and widespread adoption of the IAB TCF in April 2018 and subsequent 2.0 update in August 2020. Because we do not have direct relationships with users, we rely on media partners, advertisers, and data providers, as applicable, to implement notice or choice mechanisms required under applicable laws, and transmit notification of the consent (or no consent) of the user to us. Where applicable, we may only use user data to deliver interest-based advertisements where we have consent. If media partners, advertisers, or data providers do not follow the process (and in any event as the legal requirements in this area continue to evolve and develop), we could be subject to fines and liability. We may not have adequate insurance or contractual indemnity arrangements to protect us against any such claims and losses.

Recent rulings from the Court of Justice of the European Union invalidated the EU-U.S. Privacy Shield as a lawful means for transferring personal data from the EEA or the UK to the United States; this introduces increased uncertainty and may require us to change our EEA/UK data practices and/or rely on an alternative legally sufficient compliance measure.

The GDPR and the UK GDPR, generally prohibit the transfer of personal data of EEA/UK subjects outside of the EEA/UK, unless a lawful data transfer solution has been implemented or a data transfer derogation applies. On July 16, 2020, in a case known as Schrems II, the CJEU ruled on the validity of two of the primary data transfer solutions. The first method, EU-U.S. Privacy Shield operated by the U.S. Department of Commerce (the “Privacy Shield”), was declared invalid as a legal mechanism to transfer data from EEA/UK to the United States. As a result, despite the fact that we had certified our compliance to the Privacy Shield, we may no longer rely on this mechanism as a lawful means to transfer EEA/UK data to us in the United States. While the United States and the European Union are in discussions regarding a replacement to the Privacy Shield, we cannot predict if it will happen or if it does, what impact it will have on our business and industry.

The second mechanism, Standard Contractual Clauses (“SCCs”), for EEA/UK data transfers was upheld as a valid legal mechanism for transnational data transfer. However, the ruling requires that European organizations seeking to rely on the SCCs to export data out of the EEA/UK ensure the data is protected to a standard that is “essentially equivalent” to that in the EEA/UK including, where necessary, by taking “supplementary measures” to protect the data. It remains unclear what “supplementary measures” must be taken to allow the lawful transfer of personal data to the United States, and it is possible that EEA/UK data protection authorities may determine that there are no supplementary measures that can legitimize EU-U.S. data transfers. For the time being, we rely on SCCs for EU-U.S. transfers of EEA/UK personal data and explore what “supplementary measures” can be implemented to protect EEA/UK personal data that is transferred to us in the United States. It remains unclear whether SCCs can cover our use of cookies and other tracking technologies placed directly on users’ browsers or devices through our media partners or advertisers’ websites. New SCCs are likely to come into effect in the course of 2021 and the existing SCCs

will need to be replaced by the new SCCs. It is possible that the new SCCs may require us to reassess the basis upon which we can transfer personal data out of the EEA/UK.

We may also need to restructure our data export practices as a result of Brexit. Under the EU-UK Trade and Cooperation Agreement signed on December 30, 2020, following the expiry of the transition period, the UK will continue to benefit from the free movement of data from the EEA until the earlier of (a) the European Commission reaching an adequacy decision with respect to the UK; or (b) a period of four months (which may be extended for a further two months) from the date the EU-UK Trade and Cooperation Agreement enters into force (the Specified Period). The European Commission has now published its draft adequacy decision, finding that the United Kingdom does ensure an adequate level of data protection. Before the decision is formally adopted, the European Data Protection Board will need to issue a non-binding opinion on the draft and each member state must approve the decision. There is currently uncertainty as to how long this process will take. In the interim, transfers of personal data from the EEA to the UK will not be considered transfers to a third country. Should approval not be obtained prior to the expiry of the Specified Period, organizations will be required to implement a valid data transfer mechanism for data transfers from the EEA to the UK.

In the event that use of the SCCs is subsequently invalidated as a solution for data transfers to the United States, or there are additional changes to the data protection regime in the EEA/UK resulting in any inability to transfer personal data from the EEA/UK to the United States in compliance with data protection laws, European media partners and advertisers may be more inclined to work with businesses that do not rely on such compliance mechanisms to ensure legal and regulatory compliance, such as EEA/UK-based companies or other competitors that do not need to transfer personal data to the United States in order to avoid the above-identified risks and legal issues. Such changes could cause us to incur penalties under GDPR or UK GDPR and could increase the cost and complexity of operating our business.

If the security of the confidential information or personal data of our media partners and the users of our media partner properties stored in our systems is breached or otherwise subjected to unauthorized access, our reputation may be harmed and we may be exposed to liability.

We believe that we take reasonable steps to protect the security, integrity and confidentiality of the information we collect and store, but there is no guarantee that inadvertent (*e.g.*, software bugs or other technical malfunctions, employee error or malfeasance, or other factors) or unauthorized disclosure will not occur or that third parties will not gain unauthorized access to this information despite our efforts. To reduce our vulnerability, we have a dedicated information security team responsible for improving and coordinating security across the company. We (i) conduct routine employee training sessions and onboarding security training, including phishing simulation, to increase awareness of phishing and other cyber threats; (ii) require multi-factor authentication access methods for all employees into our network; (iii) operate general monitoring and service protections that are subject to continuous enhancements to detect and mitigate various threats, including performing ongoing manual and automatic vulnerability assessment tests; (iv) manage an ongoing cyber risk-management framework to assess internal technological changes, as well as external systems and services as part of supply chain risk; and (v) maintain ISO 27001 security certification. However, since techniques used to obtain unauthorized access frequently evolve, we may be unable to anticipate these techniques or to implement adequate preventative measures. If our security measures are breached because of third-party action, employee error, malfeasance or otherwise, or if design flaws in our software are exposed and exploited, and, as a result, a third party obtains unauthorized access to any of our users' data, our relationships with our users may be damaged, and we could incur liability. In addition, some jurisdictions have enacted laws requiring companies to notify individuals of data security breaches involving certain types of personal data, and our agreements with certain partners require us to notify them in the event of a security incident. These mandatory disclosures regarding a security breach sometimes lead to negative publicity and may cause our users, media partners or advertisers to lose confidence in the effectiveness of our data security measures. In the European Union/United Kingdom a data breach involving personal data will generally require notification of the national Information Commissioner's Office and, where the risk to individuals is high, notification of the affected individuals themselves. In the European Union/United Kingdom there is a possibility of significant fines being imposed in the event of a security breach. Any security breach, whether actual or perceived, may harm our reputation, and we could lose users

or fail to acquire new users, media partners or advertisers, all of whom may, in addition, have claims against us as a result of a security breach. Users also may be able to bring a class action against us.

Any governmental investigations, legal proceedings, or claims against us could result in liability, harm our reputation and could be costly and time-consuming to defend.

From time to time, we may be subject to litigation claims, whether arising in connection with employment or commercial matters, including certain terms in our commercial agreements. We also may be exposed to potential claims brought by third parties against us, our media partners or our advertisers. Such claims may allege, for example, that our advertisers' recommendations (including the destination page reached) infringe the intellectual property or other rights of third parties, is false, deceptive, misleading or offensive, or that our advertisers' products are defective or harmful.

In addition, we may be involved in regulatory issues and government investigations, including, but not limited to, actions relating to competition law. For example, on April 29, 2021, we were notified that the Antitrust Division of the U.S. Department of Justice is conducting a criminal investigation into the hiring activities in our industry that includes us. We are cooperating with the Antitrust Division. While there can be no assurance regarding the ultimate resolution of this matter, we do not believe that our conduct violated applicable law.

Our reputation as a business with high standards of regulatory compliance depends in part on our media partners' and advertisers' adherence to laws and regulations of multiple jurisdictions concerning copyright, trademark and other intellectual property rights, unfair competition, privacy and data protection, and truth in advertising, and their use of our platform in ways consistent with users' expectations. In general, we require our media partners and advertisers to comply with all applicable laws, including all applicable intellectual property, privacy and data protection regulations. We rely on contractual representations from media partners and advertisers that they will comply with all such applicable laws. We make reasonable efforts to enforce contractual notice requirements, but, due to the nature of our business, we are unable to audit fully our media partners' and advertisers' compliance with our recommended disclosures or with applicable laws and regulations. If our media partners or advertisers were to breach their contractual or other requirements in this regard, or a court or governmental agency were to determine that we, our media partners and/or our advertisers failed to comply with any applicable law, then we may be subject to potentially adverse publicity, damages and related possible investigation, litigation or other regulatory activity. In addition, any perception that we, our media partners and/or our advertisers fail to comply with current or future regulations and industry practices, may expose us to public criticism, collective redress actions, reputational harm or claims by regulators, which could disrupt our industry and/or operations and expose us to increased liability.

In some instances, we may be required to indemnify media partners against such claims with respect to our advertisers' campaigns. Therefore, we may require our advertisers to indemnify us for any damages from any such claim, although in certain cases we may not be so indemnified. We cannot assure prospective investors that our advertisers will have the ability to satisfy their indemnification obligations to us, in whole, in part or at all, and pursuing any claims for indemnification may be costly or unsuccessful. As a result, we may be required to satisfy indemnification obligations to media partners, or claims against us, with our own assets.

As a result of any of the above, we could become involved in litigation or governmental investigations, whether on our own, or involving or concerning our media partners or advertisers, including class action claims, and, as a result, may become subject to significant liability, including claims for damages and financial penalties. Claims may be expensive to defend, divert management's attention from our business operations, and affect the cost and availability of insurance, even if we ultimately prevail. If any of this occurs, it may have a material adverse effect on our reputation, business operations, financial position, competitive position and prospects.

We may be unable to obtain, maintain and protect our intellectual property rights and proprietary information or prevent third parties from making unauthorized use of our intellectual property.

Our intellectual property rights are important to our business. We rely on a combination of confidentiality clauses, trade secrets, copyrights, patents and trademarks to protect our intellectual property

and know-how. However, the steps we take to protect our intellectual property may be inadequate. We will not be able to protect our intellectual property if we are unable to enforce our rights or if we do not detect unauthorized use of our intellectual property. Despite our precautions, it may be possible for unauthorized third parties, including our employees, consultants, service providers, media partners or advertisers, to copy our products and/or obtain and use information that we regard as proprietary to create solutions and services that compete with ours. We cannot assure you that the steps taken by us will prevent misappropriation of our trade secrets or technology or infringement of our intellectual property. In addition, the laws of some foreign countries where we operate do not protect our proprietary rights to as great an extent as the laws of the United States, and many foreign countries do not enforce these laws as diligently as government agencies and private parties in the United States.

Our policy is to enter into confidentiality and invention assignment agreements with our employees and consultants and enter into confidentiality agreements with the parties with whom we have strategic relationships and business alliances. No assurance can be given that these agreements will be effective in controlling access to our proprietary information and other intellectual property. Further, these agreements do not prevent our competitors from independently developing technologies that are substantially equivalent or superior to our solutions.

We may from time to time be subject to claims of prior use, opposition or similar proceedings with respect to applications for registrations of our intellectual property, including but not limited to our trademarks and patent applications. The process of seeking patent protection can be lengthy and expensive, and any of our pending or future patent or trademark applications, whether or not challenged, may not be issued with the scope of the claims we seek, if at all. We are unable to guarantee that patents or trademarks will issue from pending or future applications or that, if patents or trademarks issue, they will not be challenged, invalidated or circumvented, or that the rights granted under the patents will provide us with meaningful protection or any commercial advantage. We rely on our brand and trademarks to identify our solutions to our media partners and advertisers and to differentiate our solutions from those of our competitors. If we are unable to adequately protect our trademarks, third parties may use our brand names or trademarks similar to ours in a manner that may cause confusion to our users or confusion in the market, or dilute our brand names or trademarks, which could decrease the value of our brand.

From time to time, we may discover that third parties are infringing, misappropriating or otherwise violating our intellectual property rights. However, policing unauthorized use of our intellectual property and misappropriation of our technology is difficult and we may therefore not always be aware of such unauthorized use or misappropriation. Despite our efforts to protect our intellectual property rights, unauthorized third parties may attempt to use, copy or otherwise obtain and market or distribute our intellectual property rights or technology or otherwise develop solutions with the same or similar functionality as our solutions. If competitors infringe, misappropriate or otherwise misuse our intellectual property rights and we are not adequately protected, or if such competitors are able to develop solutions with the same or similar functionality as ours without infringing our intellectual property, our competitive position and results of operations could be harmed and our legal costs could increase.

We may be subject to intellectual property rights claims by third parties, which are costly to defend and could require us to pay significant damages and could limit our ability to use technology or intellectual property.

We operate in an industry with extensive intellectual property litigation. There is a risk that our business, platform, and services may infringe or be alleged to infringe the trademarks, copyrights, patents, and other intellectual property rights of third parties, including patents held by our competitors or by non-practicing entities. We may also face allegations that our employees have misappropriated or divulged the intellectual property of their former employers or other third parties. Regardless of whether claims that we are infringing patents or other intellectual property rights have any merit, the claims are time consuming, divert management attention and financial resources and are costly to evaluate and defend. Some of our competitors have substantially greater resources than we do and are able to sustain the cost of complex intellectual property litigation to a greater extent and for longer periods of time than we could. Results of these litigation matters are difficult to predict and may require us to stop offering some features, purchase licenses, which may not be available on favorable terms or at all, or modify our technology or our platform while we develop non-infringing substitutes, or incur significant settlement costs. Any of these events could adversely affect our business, results of operations, and financial condition.

Our platform relies on third-party open source software components. Failure to comply with the terms of the underlying open source software licenses could expose us to liabilities, and the combination of open source software with code that we develop could compromise the proprietary nature of our platform.

Our platform utilizes software licensed to us by third-party authors under “open source” licenses and we expect to continue to utilize open source software in the future. The use of open source software may entail greater risks than the use of third-party commercial software, as open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or the quality of the code. To the extent that our platform depends upon the successful operation of the open source software we use, any undetected errors or defects in this open source software could prevent the deployment or impair the functionality of our platform, delay new solutions introductions, result in a failure of our platform, and injure our reputation. For example, undetected errors or defects in open source software could render it vulnerable to breaches or security attacks, and, in conjunction, make our systems more vulnerable to data breaches. Furthermore, some open source licenses contain requirements that we make available source code for modifications or derivative works we create based upon the type of open source software we use. If we combine our proprietary software with open source software in a specific manner, we could, under some open source licenses, be required to release the source code of our proprietary software to the public. This would allow our competitors to create similar solutions with lower development effort and time and ultimately put us at a competitive disadvantage.

Although we monitor our use of open source software to avoid subjecting our platform to conditions we do not intend, we cannot assure you that our processes for controlling our use of open source software in our platform will be effective. If we are held to have breached the terms of an open source software license, we could be required to seek licenses from third parties to continue operating using our solution on terms that are not economically feasible, to re-engineer our solution or the supporting computational infrastructure to discontinue use of code, or to make generally available, in source code form, portions of our proprietary code.

We are required to comply with international advertising regulations in connection with the distribution of advertising, including potential regulation or oversight of native advertising disclosure standards. Failure to comply could negatively impact us, our media partners and/or our advertisers, which could have an adverse effect on our business, results of operations, and financial condition.

We are subject to complex and changing advertising regulations in many jurisdictions in which we operate, including regulatory and self-regulatory requirements to comply with native advertising regulations in connection with the advertising we distribute for our advertisers. For example, in the United States, the Federal Trade Commission requires that all online advertising meet certain principles, including the clear and conspicuous disclosure of advertisements. If we, or our advertisers, make mistakes in implementing this varied and evolving guidance, or our commitments with respect to these principles, we could be subject to negative publicity, government investigation, government or private litigation, or investigation by self-regulatory bodies or other accountability groups. Any such action against us could be costly and time consuming and may require us to change our business practices, cause us to divert management’s attention and our resources and be damaging to our reputation and our business. Moreover, additional or different disclosures may lead to a reduction in user engagement, which could have an adverse effect on our business, results of operations, and financial condition.

Risks Related to this Offering, the Securities Markets and Ownership of Our Common Stock

The trading price of the shares of our common stock is likely to be volatile, and purchasers of our common stock could incur substantial losses.

Technology stocks historically have experienced high levels of volatility. The trading price of our common stock following this offering may fluctuate substantially. Following the completion of this offering, the market price of our common stock may be higher or lower than the price you pay in the offering, depending on many factors, some of which are beyond our control and may not be related to our results of operations. These fluctuations could cause you to incur substantial losses, including all of your investment in

our common stock. Factors that could cause fluctuations in the trading price of our common stock include the following:

- significant volatility in the market price and trading volume of technology companies in general and of companies in the digital advertising industry in particular;
- announcements of new solutions or technologies, commercial relationships, acquisitions, or other events by us or our competitors;
- price and volume fluctuations in the overall stock market from time to time;
- changes in how advertisers perceive the benefits of our platform and future offerings;
- the public's reaction to our press releases, other public announcements, and filings with the U.S. Securities and Exchange Commission (the "SEC");
- fluctuations in the trading volume of our shares or the size of our public float;
- sales of large blocks of our common stock;
- actual or anticipated changes or fluctuations in our results of operations;
- changes in actual or future expectations of investors or securities analysts;
- litigation involving us, our industry, or both;
- governmental or regulatory actions or audits;
- regulatory developments applicable to our business, including those related to privacy in the United States or globally;
- general economic conditions and trends;
- major catastrophic events in our domestic and foreign markets; and
- departures of key employees.

In addition, if the market for technology stocks, the stock of digital advertising companies or the stock market, in general, experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, results of operations, or financial condition. The trading price of our common stock might also decline in reaction to events that affect other companies in the digital advertising industry even if these events do not directly affect us. In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been brought against that company. If litigation is instituted against us, we could incur substantial costs and divert management's attention and resources.

There has been no prior public trading market for our common stock, and an active trading market for our common stock might not develop.

Before this offering, there has been no public market for shares of our common stock. We cannot assure you that an active trading market for our shares will develop or that any market will be sustained. We cannot predict the prices at which our common stock will trade. The initial public offering price of our stock will be determined by negotiations between us and the underwriters, and may not bear any relationship to the price at which our common stock will trade after the completion of this offering or to any other established criteria of the value of our business.

In addition, the market price of our common stock following this offering is likely to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. Accordingly, we cannot assure you of the liquidity of any trading market, your ability to sell your shares of our common stock when desired or the prices that you may obtain for your shares of our common stock.

If securities or industry analysts do not publish research or publish unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will, to some extent, depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these

analysts. If one or more of the analysts who cover us should downgrade our shares, change their opinion of our business prospects or publish inaccurate or unfavorable research about our business, our share price may decline. If one or more of these analysts who cover us ceases coverage of our company or fails to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

We will have broad discretion in the use of proceeds from this offering and may invest or spend the proceeds in ways with which you do not agree and in ways that may not yield a return.

We intend to use the net proceeds from this offering for working capital and general corporate purposes, including research and development expenditures focused on product development and sales and marketing expenditures aimed at growing our business. We may also use a portion of the net proceeds to make acquisitions or investments in complementary companies or technologies, although we do not have any agreement or understanding with respect to any such acquisition or investment at this time. Consequently, our management will have broad discretion over the specific use of these net proceeds and may do so in a way with which our investors disagree. The failure by our management to apply and invest these funds effectively may not yield a favorable return to our investors and may adversely affect our business, results of operations, and financial condition. Pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value. If we do not use the net proceeds that we receive in this offering effectively, our business, results of operations, and financial condition could be adversely affected.

Substantial future sales of our common stock could cause the market price of our common stock to decline.

The market price of our common stock could decline as a result of substantial sales of our common stock, particularly sales by our directors, executive officers and significant stockholders, a large number of shares of our common stock becoming available for sale or the perception in the market that holders of a large number of shares intend to sell their shares. Immediately following completion of this offering, we will have _____ shares of common stock outstanding, based on the number of shares outstanding as of March 31, 2021. In addition, the Notes (as defined in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Senior Subordinated Secured Notes”) issued to one or more institutional investors affiliated with and funds managed by The Baupost Group, L.L.C. (the “Baupost Investors”) may be exchanged for convertible notes, which are convertible into shares of common stock under certain circumstances. The holders will be subject to lock-up agreements restricting their sale and hedging for 180 days after the date of this prospectus; however, thereafter, if converted, the underlying shares of common stock may be available for sale. The remaining shares are currently restricted securities. Substantially all of these shares are also subject to lock-up agreements restricting their sale for 180 days after the date of this prospectus. In addition, the 180-day restrictions will no longer apply to 25% of the shares subject to each lock-up agreement if, at any time beginning 90 days after the date of this prospectus, (i) we have filed at least one quarterly report on Form 10-Q or annual report on Form 10-K and (ii) the last reported closing price per share of our shares of common stock is at least 25% greater than the initial public offering price per share of our shares of common stock for 10 out of any 15 consecutive trading days, including the last day, ending on or after the 90th day after the date of this prospectus (which 15-day trading period may begin prior to the 90th day after the date of this prospectus). If the conditions for early lock-up termination described in the preceding sentence are met when our trading window is closed, the lock-up restriction will continue to apply until the opening of trading on the second business day following the date that (i) we are no longer in a closed trading window and (ii) the reported closing price per share of our shares of common stock on such date is at least 25% greater than the initial public offering price per share of our shares of common stock.

After this offering, the holders of an aggregate of 47,009,166 shares of our common stock will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or our stockholders. We also intend to register shares of common stock that we may issue under our employee equity incentive plans. Once we register these shares, they will be able to be sold freely in the public market upon issuance, subject to existing market stand-off and/or lock-up agreements.

Purchasers in this offering will experience immediate and substantial dilution in the book value of their investment.

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering. Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of shares of our common stock in this offering and the pro forma as adjusted net tangible book value per share of our common stock immediately after completion of this offering.

Following the offering, a small number of significant beneficial owners of our common stock acting together will have a significant influence over matters requiring stockholder approval, which could delay or prevent a change of control.

Following the offering, the largest beneficial owners of our common stock, an entity affiliated with Lightspeed Venture Partners (“Lightspeed”), Viola Ventures III, L.P. (“Viola Ventures”), entities affiliated with Gemini Israel Ventures (“Gemini Israel”), entities affiliated with Index Ventures (“Index Ventures”), Gruner + Jahr GmbH (“G+J”), and Yaron Galai each of which currently beneficially owns more than 5% of our outstanding common stock, will beneficially own in the aggregate % of our outstanding common stock. As a result, these stockholders, if they act together, could exercise significant influence over our operations and business strategy since they will have sufficient voting power to control the outcome of matters requiring stockholder approval. These matters may include:

- the composition of our board of directors which has the authority to direct our business and to appoint and remove our officers;
- approving or rejecting a merger, consolidation or other business combination;
- raising future capital; and
- amending our certificate of incorporation which governs the rights attached to our common stock.

This concentration of ownership of our shares could delay or prevent proxy contests, mergers, tender offers, open-market purchase programs or other purchases of our common stock that might otherwise give you the opportunity to realize a premium over the then-prevailing market price of our common stock. This concentration of ownership may also adversely affect our share price.

Upon completion of this offering, our existing stockholders will continue to have significant influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction. As only some of our stockholders own Series D, Series F and Series G convertible preferred stock, changes in our valuation in connection with this offering will impact the conversion ratio of our Series D, Series F and Series G convertible preferred stock and thus the relative ownership of our common stock upon completion of this offering among our existing stockholders.

Failure to design, implement and maintain effective internal controls may adversely affect investor confidence in our company and, as a result, the value of our common stock.

As a result of becoming a public company, we will be obligated to develop and maintain proper and effective internal control over financial reporting. Following this offering, we will be required to disclose, on a quarterly basis, changes made in our internal control over financial reporting. We will also be required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting as of the end of the first complete fiscal year after this offering. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. However, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until the later of the year following our first annual report required to be filed with the SEC, or the date we are no longer an “emerging growth company” as defined in

the JOBS Act. At such time, our independent registered public accounting firm may issue a report that is adverse if it is not satisfied with the level at which our controls are documented, designed or operating.

In preparation for becoming a public company, we have undertaken and continue to undertake a range of actions to augment our internal control over financial reporting. These include implementing new internal controls and procedures and hiring additional accounting and financial reporting staff. We intend to continue to enhance our internal control over financial reporting following this offering. Any failure of our internal controls could result in a material misstatement in our financial statements. Furthermore, if we are unable to conclude that our internal control over financial reporting is effective at the time that we are required to make such assessment, we could lose investor confidence in the accuracy and completeness of our financial reports, which would cause the price of our common stock to decline, and we may be subject to investigation or sanctions by the SEC.

We are an emerging growth company subject to reduced disclosure requirements, and there is a risk that availing ourselves of such reduced disclosure requirements will make our common stock less attractive to investors.

We are an emerging growth company, and for as long as we continue to be an emerging growth company, we intend to take advantage of exemptions from various reporting requirements such as, but not limited to, not being required to obtain auditor attestation of our reporting on internal control over financial reporting, having reduced disclosure obligations about our executive compensation in this prospectus and in our periodic reports and proxy statements, and not being required to hold advisory stockholder votes on executive compensation and stockholder approval of any golden parachute payments not previously approved. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock, and our stock price may be more volatile.

In addition, Section 107 of the JOBS Act provides that an “emerging growth company” can take advantage of an extended transition period for complying with new or revised accounting standards. This provision allows an emerging growth company to delay the adoption of some accounting standards until those standards would otherwise apply to private companies. We have elected to use the extended transition period under the JOBS Act. Accordingly, our consolidated financial statements may not be comparable to the financial statements of public companies that comply with such new or revised accounting standards.

We will remain an emerging growth company until the earliest of: the end of the fiscal year in which the market value of the shares of our outstanding capital stock held by non-affiliates is \$700 million or more as of the end of the second quarter of that year, the end of the fiscal year in which we have total annual gross revenue of \$1.07 billion, the date on which we issue more than \$1.0 billion in nonconvertible debt in a three-year period, or five years from the date of our initial public offering.

Our management team has limited experience managing a public company and we will incur significantly increased costs and devote substantial management time as a result of operating as a public company.

Most members of our management team have limited experience managing a publicly traded company, interacting with public company investors, and complying with the increasingly complex laws, rules, and regulations that govern public companies. As a public company, we are subject to significant obligations relating to reporting, procedures and internal controls, and our management team may not successfully or efficiently manage such obligations. These obligations and scrutiny will require significant attention from our management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, results of operations, and financial condition. We expect that these requirements will increase our compliance costs. We will need to hire additional accounting, financial, and legal staff with appropriate public company experience and technical accounting knowledge and may need to establish an internal audit function. We cannot predict or estimate the amount of additional costs we may incur as a result of becoming a public company or the timing of these costs.

We also expect that being a public company will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and qualified executive officers.

The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain executive management and qualified board members.

As a public company, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the listing requirements of the Nasdaq and other applicable securities rules and regulations. Compliance with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources, particularly after we are no longer an "emerging growth company."

The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and results of operations. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could adversely affect our business, results of operations, and financial condition. We may need to hire more employees in the future or engage outside consultants to comply with these requirements, which will increase our costs and expenses. In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices.

We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected. However, for as long as we remain an "emerging growth company" as defined in the JOBS Act, we may take advantage of certain exemptions from various reporting requirements that are applicable to "emerging growth companies" as described above. We may take advantage of these reporting exemptions until we are no longer an "emerging growth company."

We do not intend to pay dividends on our common stock, so any returns will be limited to the value of our common stock.

We have never declared or paid cash dividends on our common stock. We currently anticipate that we will retain any future earnings and do not expect to pay any dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend on a number of factors, including our financial condition, results of operations, capital requirements, general business conditions and other factors that our board of directors may deem relevant. Our current credit facility imposes certain limitations on our ability to pay dividends and any new credit facility may contain certain similar restrictions. Until such time that we pay a dividend, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

We may need to raise additional funds to pursue our strategy, and we may be unable to raise capital when needed or on acceptable terms.

From time to time, we may seek additional equity or debt financing to fund our growth, develop new solutions or make acquisitions or other investments. Our business plans may change, general economic, financial or political conditions in our markets may change, or other circumstances may arise that have a material adverse effect on our cash flow and the anticipated cash needs of our business. Any of these events or circumstances could result in significant additional funding needs, requiring us to raise additional capital. We cannot predict the timing or amount of any such capital requirements at this time. If financing

is not available on satisfactory terms, or at all, we may be unable to expand our business or to develop new business at the rate desired and our results of operations may suffer.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws may delay or prevent an acquisition of us or a change in our management. These provisions include:

- authorizing “blank check” preferred stock, which could be issued by the board without stockholder approval and may contain voting, liquidation, dividend and other rights superior to our common stock, which would increase the number of outstanding shares and could thwart a takeover attempt;
- a classified board of directors whose members can only be dismissed for cause;
- the prohibition on actions by written consent of our stockholders;
- the limitation on who may call a special meeting of stockholders;
- the establishment of advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon at stockholder meetings; and
- the requirement of at least 75% of the outstanding capital stock to amend any of the foregoing second through fifth provisions.

In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which limits the ability of stockholders owning in excess of 15% of our outstanding voting stock to merge or combine with us. Although we believe these provisions collectively provide for an opportunity to obtain greater value for stockholders by requiring potential acquirers to negotiate with our board of directors, they would apply even if an offer rejected by our board were considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

Future events may impact our deferred tax asset position including deferred tax assets related to our utilization of net operating losses (“NOLs,” each a “NOL”) and U.S. deferred federal income taxes on undistributed earnings of international affiliates that are considered to be reinvested indefinitely.

We evaluate our ability to utilize deferred tax assets and our need for valuation allowances based on available evidence. This process involves significant management judgment regarding assumptions that are subject to change from period to period based on changes in tax laws or variances between future projected operating performance and actual results. We are required to establish a valuation allowance for deferred tax assets if we determine, based on available evidence at the time the determination is made, that it is more likely than not that some portion or all of the deferred tax assets will not be utilized. In making this determination, we evaluate all positive and negative evidence as of the end of each reporting period. Future adjustments (either increases or decreases), to a deferred tax asset valuation allowance are determined based upon changes in the expected realization of the net deferred tax assets. The utilization of our deferred tax assets ultimately depends on the existence of sufficient taxable income in either the carry-back or carry-forward periods under the applicable tax law. Due to significant estimates used to establish a valuation allowance and the potential for changes in facts and circumstances, it is reasonably possible that we will be required to record adjustments to a valuation allowance in future reporting periods. Changes to a valuation allowance or the amount of deferred taxes could have a materially adverse effect on our business, financial condition and results of operations. Further, while we have no current intention to do so in the foreseeable future, should we change our assertion regarding the permanent reinvestment of the undistributed earnings of certain of our foreign subsidiaries, a deferred tax liability may need to be established.

The ability to fully utilize our NOL and tax credit carryforwards to offset future taxable income may be limited. Under Sections 382 of the Internal Revenue Code of 1986, as amended (the “Code”), if a corporation undergoes an “ownership change,” the corporation’s ability to use its pre-change NOL

carryforwards to offset its post-change income may be limited. In general, an “ownership change” will occur if there is a cumulative change in our ownership by 5% or greater stockholders that exceeds 50% over a rolling three-year period. Similar rules may apply under state tax laws. We may experience ownership changes in the future as a result of future transactions in our stock. As a result, if we earn net taxable income, our ability to use our pre-change NOL carryforwards or other pre-change tax attributes to offset United States federal and state taxable income may be subject to limitations. Any such limitations on the ability to use our NOL carryforwards and other tax assets could adversely impact our business, financial condition, and operating results.

Special Note Regarding Forward-Looking Statements

This prospectus contains forward-looking statements within the meaning of the federal securities laws, which statements involve substantial risks and uncertainties. Forward-looking statements generally relate to possible or assumed future results of our business, financial condition, results of operations, liquidity, plans and objectives. You can generally identify forward-looking statements because they contain words such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions that concern our expectations, strategy, plans or intentions. We have based these forward-looking statements largely on our current expectations and projections regarding future events and trends that we believe may affect our business, financial condition and results of operations. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in the section entitled “Risk Factors” and elsewhere in this prospectus. Accordingly, you should not rely upon forward-looking statements as predictions of future events. We cannot assure you that the results, events and circumstances reflected in the forward-looking statements will be achieved or occur, and actual results, events or circumstances could differ materially from those projected in the forward looking statements. Forward-looking statements contained in this prospectus include, but are not limited to, statements regarding:

- overall advertising demand and traffic generated by our media partners;
- factors that affect advertising spending, such as economic downturns and unexpected events;
- the effects of the ongoing and evolving COVID-19 pandemic, including the resulting global economic uncertainty, and measures taken in response to the pandemic;
- our ability to continue to innovate, and adoption by our advertisers and media partners of our expanding solutions;
- our ability to extend our reach into evolving digital media platforms;
- our ability to continue to grow our business;
- our research and development efforts;
- the loss of one or more of our large media partners, and our ability to expand our advertiser and media partner relationships;
- our future financial and operating results;
- our ability to compete effectively against current and future competitors;
- our ability to maintain our profitability despite quarterly fluctuations in our results, whether due to seasonality, large cyclical events, or other causes; and
- our ability to maintain and scale our technology platform.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this prospectus. In addition, in light of these risks and uncertainties, the matters referred to in the forward-looking statements contained in this prospectus may not occur. The forward-looking statements made in this prospectus relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Use of Proceeds

We estimate that the net proceeds from the sale of shares of our common stock will be approximately \$ _____ million, based on the assumed initial public offering price of \$ _____ per share, the midpoint of the estimated offering price range set forth on the cover of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' option to purchase additional shares from us is exercised in full, we estimate that we will receive additional net proceeds of approximately \$ _____ million after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

Each \$1.00 increase (decrease) in the assumed initial public offering price per share would increase (decrease) the estimated net proceeds to us by approximately \$ _____ million (or approximately \$ _____ million if the underwriters exercise in full their option to purchase additional shares of common stock), assuming that the number of shares of common stock sold by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 100,000 shares in the number of shares of common stock offered by us would increase (decrease) the net proceeds to us from this offering by approximately \$ _____ million, assuming that the assumed initial public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to obtain additional capital, to increase our financial flexibility and visibility in the marketplace, to create a public market for our common stock and to facilitate our future access to the public equity markets. We intend to use the net proceeds from this offering for working capital and general corporate purposes, including research and development expenditures focused on product development and sales and marketing expenditures aimed at growing our business.

We may also use a portion of the net proceeds to make acquisitions or investments in complementary companies or technologies, although we do not have any agreement or understanding with respect to any such acquisition or investment at this time.

We will have broad discretion over the uses of the net proceeds in this offering, and, as of the date of this prospectus, we have not allocated the net proceeds to particular uses. Until we use the proceeds we receive from this offering for the above-mentioned purposes, we intend to invest the net proceeds in short-term, investment-grade interest-bearing securities such as money market funds, certificates of deposit, commercial paper, high grade and investment grade corporate debt securities, and obligations of the U.S. government and government agencies.

Dividend Policy

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any future earnings and do not expect to pay any cash dividends on our common stock for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend on a number of factors, including our earnings, capital requirements and overall financial condition. Our credit agreement for our revolving credit facility also contains restrictions on our ability to pay dividends.

Capitalization

The following table sets forth our cash and cash equivalents and capitalization as of March 31, 2021 on:

- an actual basis;
- a pro forma basis, giving effect to (i) the automatic conversion of all outstanding shares of our convertible preferred stock into 47,009,166 shares of our common stock (assuming an initial public offering price of \$ _____ per share, the midpoint of the estimated initial public offering price range reflected on the cover page of this prospectus), (ii) the vesting of _____ shares of common stock underlying RSUs in connection with this offering, (iii) an approximately \$ _____ million increase in accumulated deficit and increase to additional paid-in capital associated with stock-based compensation due to the satisfaction of the liquidity event vesting criteria of outstanding stock options, SARs, shares of restricted stock and RSUs in connection with this offering; and (iv) the issuance of the Notes to the Baupost Investors; and
- a pro forma as adjusted basis to give further effect to (i) the issuance and sale of the shares of our common stock offered by us in this offering and the application of the net proceeds therefrom at an assumed initial public offering price of \$ _____ per share, the midpoint of the estimated initial public offering price range reflected on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us; (ii) the issuance by us of _____ shares of common stock upon the exercise of stock options immediately prior to the closing of this offering and the receipt of \$ _____ million by us from such exercise; and (iii) the exchange of the Notes held by the Baupost Investors for the Convertible Notes (as defined in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Exchange of Notes for Convertible Notes”).

The information below is illustrative only, and our capitalization following the closing of this offering will be adjusted based on the actual initial public offering price and other terms of the offering determined at the pricing of this offering. You should read this table in conjunction with the sections entitled “Selected Consolidated Financial and Other Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

	As of March 31, 2021		
	Actual	Pro Forma	Pro Forma As Adjusted
	(in thousands, except share data)		
Cash and cash equivalents	\$ 95,042	\$ _____	\$ _____
Long-term debt			
Convertible preferred stock, par value of \$0.001 per share, issuable in Series A, B, C, D, E, F, G and H; 47,203,157 shares authorized; 47,009,166 shares issued and outstanding; aggregate liquidation preference of \$200.4 million actual; no shares issued and outstanding, pro forma or pro forma as adjusted	162,444		
Common stock, par value of \$0.001 per share; 110,812,435 shares authorized; 29,523,983 shares issued and outstanding, actual; 110,812,435 shares authorized, shares issued and outstanding, pro forma; _____ shares issued and outstanding, pro forma as adjusted	30		
Additional paid-in capital	94,527		
Accumulated other comprehensive loss	(3,070)		
Accumulated deficit	(157,499)		
Total stockholders’ deficit	(66,012)		
Total capitalization	\$ 96,432		

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ _____ per share, would increase (decrease) the as adjusted amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' deficit and total capitalization by approximately \$ _____ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 100,000 shares in the number of shares offered by us would increase (decrease) the as adjusted amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' deficit and total capitalization by approximately \$ _____ million, assuming that the initial public offering price of \$ _____ per share remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters' option to purchase additional shares of our common stock from us were exercised in full, pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' deficit and total capitalization as of March 31, 2021 would be \$ _____ million, \$ _____ million, \$ _____ million and \$ _____ million, respectively.

The number of shares of our common stock issued and outstanding as of March 31, 2021 excludes (1) 8,636,999 shares of our common stock issuable upon the exercise of stock options outstanding under our equity incentive plan with a weighted-average exercise price of \$3.74 per share; (2) 6,404,423 RSUs outstanding with respect to our common stock under our equity incentive plan; (3) 5,764 SARs outstanding with respect to our common stock under our equity incentive plan with a weighted-average exercise price of \$4.50; (4) 1,130,194 shares of common stock reserved for future issuances and grants under our equity incentive plan; and (5) 1,055,852 shares of common stock issuable upon the exercise of warrants as of March 31, 2021 with a weighted-average price of \$2.92, consisting of 415,852 warrants which expire if not exercised and 640,000 warrants issuable upon exercise.

The number of shares of our common stock that will be issued and outstanding as of March 31, 2021, pro forma and pro forma as adjusted excludes (1) 8,636,999 shares of our common stock issuable upon the exercise of stock options outstanding under our equity incentive plan with a weighted-average exercise price of \$3.74 per share; (2) 5,764 SARs outstanding with respect to our common stock under our equity incentive plan with a weighted-average exercise price of \$4.50; (3) 1,130,194 shares of common stock reserved for future issuances and grants under our equity incentive plan; and (4) 1,055,852 shares of common stock issuable upon the exercise of warrants as of March 31, 2021 with a weighted-average price of \$2.92, consisting of 415,852 warrants, which expire if not exercised and 640,000 warrants issuable upon exercise.

Dilution

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering. Our pro forma net tangible book value as of March 31, 2021 was \$ _____ million, or \$ _____ per share of common stock. Net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by the number of shares of common stock outstanding as of March 31, 2021, after giving effect to (i) the automatic conversion of all outstanding shares of our convertible preferred stock into shares of our common stock, which conversion will occur immediately prior to the closing of this offering and (ii) the net issuance of _____ shares of common stock upon the vesting of outstanding RSUs.

After giving effect to (i) the sale by us of shares of our common stock in this offering at an assumed initial public offering price of \$ _____ per share, which is the midpoint of the estimated offering price range reflected on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, (ii) the conversion of all outstanding shares of convertible preferred stock into shares of common stock immediately prior to the closing of this offering, (iii) a \$ _____ million reduction in retained earnings (deficit) and increase in additional paid-in capital associated with stock-based compensation due to the satisfaction of vesting criteria of outstanding stock options, SARs, RSAs and RSUs, and (iv) the issuance by us of common stock upon the exercise of stock options immediately prior to the closing of this offering and the receipt of \$ _____ million by us from such exercise, our pro forma as adjusted net tangible book value as of March 31, 2021 would have been approximately \$ _____ million, or approximately \$ _____ per share. This amount represents an immediate increase in pro forma net tangible book value of \$ _____ per share to our existing stockholders and an immediate dilution in pro forma net tangible book value of approximately \$ _____ per share to new investors purchasing shares of our common stock in this offering at the assumed initial public offering price. The following table illustrates this dilution:

Assumed initial public offering price per share	\$ _____
Pro forma net tangible book value per share as of March 31, 2021	\$ _____
Increase in pro forma net tangible book value per share attributable to new investors	_____
Pro forma as adjusted net tangible book value per share after this offering	_____
Dilution per share to new investors in this offering	\$ _____

Each \$1.00 increase (decrease) in the assumed initial public offering price of _____ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value per share to new investors by \$ _____, and would increase (decrease) dilution per share to new investors in this offering by \$ _____, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 100,000 shares in the number of shares offered by us would increase (decrease) our pro forma as adjusted net tangible book value by approximately \$ _____ per share and increase (decrease) the dilution to new investors by \$ _____ per share, assuming the assumed initial public offering price remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters' option to purchase additional shares of our common stock from us is exercised in full, the pro forma as adjusted net tangible book value per share of our common stock, as adjusted to give effect to this offering, would be \$ _____ per share, and the dilution in pro forma net tangible book value per share to new investors in this offering would be \$ _____ per share.

The following table presents on a pro forma as adjusted basis as of March 31, 2021, after giving effect to the automatic conversion of all outstanding shares of convertible preferred stock into our common stock immediately prior to the closing of this offering, the differences between the existing stockholders and the new investors purchasing shares of our common stock in this offering with respect to the number of shares purchased from us, the total consideration paid or to be paid to us, which includes net proceeds received from

the issuance of our common stock, convertible preferred stock, cash received from the exercise of stock options and the average price per share paid or to be paid to us at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	\$
Existing stockholders		%	\$	%	\$
New investors					
Total		100%		100%	

Each \$1.00 increase (decrease) in the assumed initial public offering price of \$ _____ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors and total consideration paid by all stockholders by approximately \$ _____ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 100,000 shares in the number of shares offered by us would increase (decrease) the total consideration paid by new investors and total consideration paid by all stockholders by approximately \$ _____ million, assuming that the initial public offering price of \$ _____ per share remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Except as otherwise indicated, the above discussion and tables assume no exercise of the underwriters' option to purchase additional shares of our common stock from us. If the underwriters' option to purchase additional shares of our common stock were exercised in full, our existing stockholders would own _____ % and our new investors would own _____ % of the total number of shares of our common stock outstanding upon completion of this offering.

The number of shares of our common stock issued and outstanding as of March 31, 2021 excludes (1) 8,636,999 shares of our common stock issuable upon the exercise of stock options outstanding under our equity incentive plan with a weighted-average exercise price of \$3.74 per share; (2) 6,404,423 RSUs outstanding with respect to our common stock under our equity incentive plan; (3) 5,764 SARs outstanding with respect to our common stock under our equity incentive plan with a weighted-average exercise price of \$4.50; (4) 1,130,194 shares of common stock reserved for future issuances and grants under our equity incentive plan; and (5) 1,055,852 shares of common stock issuable upon the exercise of warrants as of March 31, 2021 with a weighted-average price of \$2.92, consisting of 415,852 warrants which expire if not exercised and 640,000 warrants issuable upon exercise.

Conversion of Series D, Series F and Series G Convertible Preferred Stock

In connection with the closing of this offering, all of our outstanding shares of convertible preferred stock will convert into common stock. In accordance with the antidilution provisions set forth in our amended and restated certificate of incorporation in effect prior to the closing of this offering, the conversion ratio of our Series D, Series F and Series G shares of convertible preferred stock may be adjusted in connection with the closing of this offering. If the public offering price of our common stock is less than \$9.22 per share, the per share conversion rate of our Series D convertible preferred stock will be adjusted so that each share of Series D convertible preferred stock converts into 1.5 shares of common stock. If the public offering price of our common stock is less than \$13.42 per share, the per share conversion rate of our Series F convertible preferred stock will be adjusted so that each share of Series F convertible preferred stock converts into a number of shares of common stock equal to a fraction, the numerator of which is \$6.7075 and the denominator of which is 50% of the public offering price. If the public offering price of our common stock is less than \$8.83 per share, the per share conversion rate of our Series G convertible preferred stock will be adjusted so that each share of Series G convertible preferred stock converts into a number of shares of common stock equal to a fraction, the numerator of which is \$8.8243 and the denominator of which is the public offering price. Therefore, depending on the price of the shares sold in this offering, the holders of the Series D, Series F and Series G convertible preferred stock may receive more than one share of common stock for each share of Series D, Series F or Series G convertible preferred stock converted in connection with this offering. Under the provisions of our amended and restated certificate of incorporation, we will not know the conversion rate of our Series D, Series F and Series G convertible preferred stock until the public offering price is determined.

Assuming an initial public offering price of \$ _____ per share, the midpoint of the estimated initial public offering price range set forth on the cover page of this prospectus an aggregate of _____ shares of common stock would be issued upon conversion of the Series D convertible preferred stock, an aggregate of _____ shares of common stock would be issued upon conversion of the Series F convertible preferred stock and an aggregate of _____ shares of common stock would be issued upon conversion of the Series G convertible preferred stock as further described in Note 9, "Convertible Preferred Stock," to our consolidated financial statements included elsewhere in this prospectus.

The following table sets forth the impact on the number of shares of common stock issuable upon conversion of the Series D, Series F and Series G convertible preferred stock in the event of an increase or decrease of \$1.00 per share in the assumed initial public offering price of \$ _____ per share, the midpoint of the estimated initial public offering price range set forth on the cover page of this prospectus:

	Decrease in Number of Shares Issuable Upon \$1.00 Increase in Assumed Public Offering Price	Increase in Number of Shares Issuable Upon \$1.00 Decrease in Assumed Public Offering Price
Series D convertible preferred stock		
Series F convertible preferred stock		
Series G convertible preferred stock		

Upon completion of this offering, our existing stockholders will continue to have significant influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction. As only some of our stockholders own Series D, Series F and Series G convertible preferred stock, changes in our valuation in connection with this offering will impact the conversion ratio of our Series D, Series F and Series G convertible preferred stock and thus the relative ownership of our common stock upon completion of this offering among our existing stockholders.

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering. Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of shares of our common stock in this offering and the pro forma as adjusted net tangible book value per share of our common stock immediately after completion of this offering.

Selected Consolidated Financial and Other Data

The following tables set forth our selected consolidated financial and other data. You should read the following selected consolidated financial and other data in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus. Our financial statements have been prepared in accordance with U.S. GAAP.

The following tables present selected consolidated statements of operations data for each of the years in the two-year period ended December 31, 2020, and for the three months ended March 31, 2021 and 2020. We derived the statements of operations data for the years ended December 31, 2020 and 2019 and the balance sheet data as of December 31, 2020 from the audited financial statements appearing elsewhere in this prospectus. We derived our selected consolidated statements of operations data for the three months ended March 31, 2021 and 2020 and the selected consolidated balance sheet data as of March 31, 2021 from the unaudited condensed consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited condensed consolidated financial statements on the same basis as the audited consolidated financial statements and have included all adjustments, consisting only of normal adjustments, which in our opinion are necessary to state fairly the financial information set forth in those statements. Our historical results are not necessarily indicative of the results that may be expected in the future, and our results of operations for the three months ended March 31, 2021 are not necessarily indicative of the results to be expected for the full year or for any other period.

	Three Months Ended March 31,		Year Ended December 31,	
	2021	2020	2020	2019
	(in thousands, except per share data)			
Statements of Operations Data:				
Revenue	\$228,024	\$177,332	\$767,142	\$687,333
Cost of revenue:				
Traffic acquisition costs	167,613	136,806	572,802	517,000
Other cost of revenue	6,942	7,873	29,278	28,548
Gross profit	53,469	32,653	165,062	141,785
Operating expenses:	38,689	42,170	154,885	156,370
Income (loss) from operations	14,780	(9,517)	10,177	(14,585)
Interest expense	(170)	(165)	(832)	(601)
Interest income and other income (expense), net	(2,253)	1,241	(1,695)	152
Income (loss) before provision for income taxes	12,357	(8,441)	7,650	(15,034)
Provision for income taxes	1,611	1,129	3,293	5,480
Net income (loss)	<u>\$ 10,746</u>	<u>\$ (9,570)</u>	<u>\$ 4,357</u>	<u>\$ (20,514)</u>
Net income (loss) per share—basic	\$ 0.14	\$ (0.34)	\$ 0.06	\$ (0.79)
Net income (loss) per share—diluted	\$ 0.12	\$ (0.34)	\$ 0.05	\$ (0.79)

	March 31,	December 31,
	2021	2020
	(in thousands)	
Balance Sheet Data:		
Cash and cash equivalents	\$ 95,042	\$ 93,641
Total assets	341,965	356,486
Total liabilities	245,533	273,855
Convertible preferred stock	162,444	162,444
Total stockholders’ deficit	(66,012)	(79,813)

	Three Months Ended March 31,		Year Ended December 31,	
	2021	2020	2020	2019
	(in thousands)			
Statement of Cash Flows Data:				
Net cash provided by operating activities	\$ 5,406	\$14,336	\$52,986	\$16,740
Net cash used in investing activities	(2,787)	(2,121)	(9,423)	(7,589)
Net cash (used in) provided by financing activities	(807)	9,044	(4,228)	(3,659)

Non-GAAP Financial Measures

In addition to the above GAAP performance measures, we use the following supplemental non-GAAP financial measures to evaluate our business, measure our performance, identify trends and allocate our resources:

	Three Months Ended March 31,		Year Ended December 31,	
	2021	2020	2020	2019
	(in thousands)			
Ex-TAC Gross Profit	\$60,411	\$40,526	\$194,340	\$170,333
Adjusted EBITDA	20,583	2,169	\$ 41,145	\$ 19,275
Adjusted EBITDA as % of Ex-TAC Gross Profit	34.1%	5.4%	21.2%	11.3%

These non-GAAP financial measures are defined and reconciled to the corresponding GAAP measures below. These non-GAAP financial measures are subject to significant limitations, including those identified below. In addition, other companies in our industry may define these measures differently, which may reduce their usefulness as comparative measures. As a result, this information, should be considered as supplemental in nature and is not meant as a substitute for revenue, gross profit or net income presented in accordance with U.S. GAAP.

Ex-TAC Gross Profit

Ex-TAC Gross Profit is a non-GAAP financial measure. Gross profit is the most comparable GAAP measure. In calculating Ex-Tac Gross Profit, we add back other cost of revenue to gross profit. Ex-TAC Gross Profit may fluctuate in the future due to various factors, including, but not limited to, seasonality and changes in the number of media partners and advertisers, advertiser demand or user engagements.

We present Ex-TAC Gross Profit, Adjusted EBITDA, and Adjusted EBITDA as a percentage of Ex-TAC Gross Profit because they are key profitability measures used by our management and board of directors to understand and evaluate our operating performance and trends, develop short-and long-term operational plans and make strategic decisions regarding the allocation of capital. Accordingly, we believe that these measures provide information to investors and the market in understanding and evaluating our operating results in the same manner as our management and board of directors. There are limitations on the use of Ex-TAC Gross Profit in that traffic acquisition cost is a significant component of our total cost of revenue but not the only component and, by definition, Ex-TAC Gross Profit presented for any period will be higher than gross profit for that period. A potential limitation of this non-GAAP financial measure is that other companies, including companies in our industry which have a similar business, may define ex-TAC Gross Profit differently, which may make comparisons difficult. As a result, this information, should be considered as supplemental in nature and is not meant as a substitute for revenue or gross profit presented in accordance with U.S. GAAP.

The following table presents the reconciliation of Ex-TAC Gross Profit to gross profit, the most directly comparable U.S. GAAP measure, for the periods presented:

	<u>Three Months Ended March 31,</u>		<u>Year Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
	(in thousands)			
Revenue	\$ 228,024	\$ 177,332	\$ 767,142	\$ 687,333
Traffic acquisition costs	(167,613)	(136,806)	(572,802)	(517,000)
Other cost of revenue	(6,942)	(7,873)	(29,278)	(28,548)
Gross profit	53,469	32,653	165,062	141,785
Other cost of revenue	6,942	7,873	29,278	28,548
Ex-TAC Gross Profit	<u>\$ 60,411</u>	<u>\$ 40,526</u>	<u>\$ 194,340</u>	<u>\$ 170,333</u>

Adjusted EBITDA

We define Adjusted EBITDA as net income (loss) before interest expense; interest income and other income (expense), net; provision for income taxes; depreciation and amortization; stock-based compensation, and other income or expenses that we do not consider indicative of our core operating performance, including, but not limited to, merger and acquisition costs and a tax contingency. We present Adjusted EBITDA as a supplemental performance measure because we believe it facilitates operating performance comparisons from period to period.

We believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors. However, Adjusted EBITDA is a non-GAAP financial measure and how we calculate Adjusted EBITDA is not necessarily comparable to non-GAAP information of other companies. Adjusted EBITDA should be considered as a supplemental measure and should not be considered in isolation or as a substitute or any measures of our financial performance that are calculated and reported in accordance with GAAP.

The following table presents the reconciliation of Adjusted EBITDA to net income (loss), the most directly comparable U.S. GAAP measure, for the periods presented:

	<u>Three Months Ended March 31,</u>		<u>Year Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
	(in thousands)			
Net income (loss)	\$10,746	\$(9,570)	\$ 4,357	\$(20,514)
Interest income and other (income) expense, net	2,423	(1,076)	2,527	449
Provision for income taxes	1,611	1,129	3,293	5,480
Depreciation and amortization	4,527	4,649	18,509	16,744
Stock-based compensation	1,487	916	3,588	3,876
Merger and acquisition costs ⁽¹⁾	(211)	6,121	11,168	10,527
Tax contingency ⁽²⁾	—	—	(2,297)	2,713
Adjusted EBITDA	<u>\$20,583</u>	<u>\$ 2,169</u>	<u>\$ 41,145</u>	<u>\$ 19,275</u>

⁽¹⁾ Primarily includes transaction-related costs in connection with our acquisition of Ligatus GmbH (“Ligatus”)™ in April 2019, as well as costs related to our terminated merger with Taboola.com Ltd. (“Taboola”).

⁽²⁾ Reflects a reversal of a tax contingency recorded within operating expenses in 2019 and a corresponding charge to income tax expense in 2020, net of foreign exchange impact.

To Outbrain's Shareholders, Present and Future:

We founded Outbrain out of a deep passion for stories and great story-telling, as manifested in the newspapers, magazines and blogs that we love.

When we pioneered the business of recommendations for publishers, there were two areas we viewed as broken:

- 1. The content experience:** In the haystack of the Internet, it was nearly impossible to find a delightful "needle" of a story.
- 2. The advertising experience:** The main business model for publishers — advertising — seemed challenged in the long term because it so often delivered a bad user experience.

We founded Outbrain with a clear goal of fixing these two key problems, thereby helping users enjoy a better experience, while ensuring that publishing can remain sustainable and thrive.

Fast forward to today, and Outbrain is a global leader in monetization and user engagement for publishers and media owners. Over the past decade, in the 18 countries in which Outbrain operates, we have generated over \$3B+ in direct revenue for our media partners. Supporting some of the world's most prestigious news organizations, this number represents a tremendous amount of journalism and editorial resources that otherwise might not have existed. We are incredibly proud of Outbrain's profound contribution to sustaining journalism, local news and independent publishing.

Trying to explain how we achieved this, and how we plan to continue growing our business, is not trivial, as some of the key pillars of our strategy can at times seem counterintuitive. Therefore, we thought it is important to provide you, our shareholders, with a clear understanding, so that you have the context and insight into our thinking. We hope you join us on our journey.

Our core, contrarian, thesis

At the core of Outbrain is a thesis that is contrarian to much of the broader market in which we operate – the digital advertising market. Since our core approach to making money is contrarian, it is sometimes misunderstood.

Online advertising has three constituents that participate in the value exchange: the publishers (or media owners) that create the content, the advertisers that pay to be featured alongside the content, and the people who consume the content and ads.

All three constituents are critically important for this value exchange, yet one constituent is oftentimes ignored - the consumers of content. Outbrain's approach is different, we focus on the consumer first. In fact, we refer to the consumer as 'Our Boss.'

This contrarian approach manifests itself in one particular way - how ads are typically priced and prioritized online. As a rule of thumb, most companies that facilitate online advertising will typically sort ads from those priced highest down to the cheapest, and show you, the consumer, the priciest ads they've been able to sell. Herein lies the conundrum of how such a vast industry with so much technology ends up serving so many ads that are so underwhelming to all of us.

At Outbrain, we know that 'Our Boss,' the consumer, is interested in many different things: She's interested in politics, and technology, in sports, and entertainment. We also know for a fact that there is one thing she is NOT interested in at all — the price of the ads served to her. We have yet to find a person who has consumed any form of media and said: *"That ad is so delightfully priced! I have to spend more time on this site!"*

More likely, if the content and advertising user experience is not great - the consumer is not likely to come back tomorrow.

This is why our core thesis is predicated on the long-term behavior patterns of the consumer. We like to think that we are 'long-term greedy,' as we don't optimize for the specific ad, but rather, for the long-term revenue stream that the user represents. As an illustrative example, we believe that across our industry, when most companies need to select between two ads, one priced at \$1.00 and the other at \$0.80, they will automatically choose to show the \$1.00 ad.

In contrast, at Outbrain we ask: "Between these two ads - which is more likely to result in the consumer engaging more with this publisher in the future?" If our predictive AI models indicate that the consumer's engagement is more likely to compound over time if we choose the \$0.80 ad - that is what we will choose to serve.

The price paid by our advertisers is determined by the advertisers, not by Outbrain. In most industries and most companies, pricing power is considered an important indicator of a business' strength. At Outbrain that is not necessarily true. The reason is that we always aim to first grow our revenues based on user engagements, and not through price. Again - if we can get 2 (or more) user engagements at \$0.80 each, or even \$0.50 each - we will much prefer that than getting 1 user engagement at \$1.00.

While our contrarian model requires patient discipline, we believe that in the long run it should reward our shareholders handsomely for several reasons:

First - the compounding effect: Prices of ads, like those of any other product, can fluctuate. They can go up or down based on supply-vs-demand, seasonality, competition, geography, etc. The price an advertiser was willing to pay during March of last year has little to do with the price the same advertiser will be willing to pay next December, right before Christmas.

In contrast, **user engagement compounds over time.** If a consumer ('Our Boss') clicked on a link, or visited a site, and had a good user experience - she is slightly more likely to come back tomorrow. And if she indeed comes back tomorrow and again has a good user experience - she's slightly more likely to engage again the day after. And so forth and so on, for many years to come.

So while the entire industry seems to be obsessed with grabbing the highest priced ad regardless of the long-term impact on users, Outbrain focuses on the gradual compounding effect of user engagement.

Second - Return-On-Ad-Spend (ROAS): When we choose to serve ads that are more engaging rather than pricier, that translates to lower prices that our advertisers have to pay. Again - in most industries this might be viewed as lack of pricing power. However, we see tremendous value in this, as it helps drive superior value, typically referred to as Return on Ad Spend (ROAS), for the advertisers that choose to spend on Outbrain.

In the long run, advertisers choose to spend more money on the platforms that deliver them the best ROAS. As at Outbrain we prefer to opt for the long-term compounding effects, rather than capture short-term pricing fluctuations - we prefer to charge advertisers less per user engagement, but collect from them more total spend for more user engagements over time.

To refer back to the pricing example above, our approach means that our pricing power should not be derived from pricing per se — when we select an \$0.80 ad vs a \$1.00 ad, we knowingly chose the lower priced one. Instead, our pricing power should be derived from the yield that we generate for our partners and for ourselves. In this example, if we were able to gain two user engagements, we yielded in the long-term \$1.60 while our competitors yielded only \$1.00. And we did that while at the same time delivering 20% better value and higher ROAS for our advertisers.

These tradeoffs, while counterintuitive, are ones we'll always attempt to make at Outbrain as we believe they will serve our business, and thus our shareholders, well in the long term.

Lastly - the deep, typically exclusive, nature of our media owner partnerships: Since the Outbrain model optimizes for the user's experience, it works best when Outbrain exclusively powers a media owner's entire feed of recommendations. Unlike many advertising technology companies that occasionally serve an ad in a variety of places, Outbrain's default model is to exclusively power 100% of our partner's recommendation feed, including all of the content, videos, ads, etc that are within it. These long-term, typically exclusive partnerships give us a tremendous amount of first party data, and provide us with predictability of the model into the future.

Beyond our business - Outbrain's culture & values

As you consider investing in our business, it is important for us to ensure that you have a strong understanding of not just 'what' we do and 'why' we do it, but also 'how' we do things. To state the obvious – we believe that just like the 'what' and the 'why,' how we go about running our business is core to our ability to succeed in the long run:

- **Integrity is at our core** - In how we conduct ourselves with our employees, with our business partners, with our shareholders and in our communities - integrity is of paramount importance to us. We don't mean this just as lip service. Over the years, when confronted with specific choices that might have resulted in short term gains, but would have breached our integrity - we have always chosen the path of integrity. We will continue to conduct ourselves in this way in the future.
- **Trust is our fundamental currency** - In the spirit of this letter, we strongly believe that the most fundamental currency for media owners, and therefore for Outbrain, is consumers' trust in the stories and the ads that they are served. For example, Outbrain was the first company in this space to codify public advertising guidelines

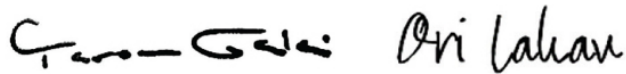
and ban fake news. We did that some five years before other competitors did, even as it had a significant negative impact to our revenue, as we believe that it serves our shareholders well in the long term.

- **We are risk-takers when it comes to innovation** - We like to manage our business conservatively and humbly, to ensure that Outbrain's business is sustainable for many years to come. But when it comes to product and technology, we are happy to be the risk-taking innovators. Simply put, we believe that in a dynamic industry such as ours, it's impossible to sustain a leadership position without being bold when it comes to innovation.

Historically, this approach has worked well for us, as Outbrain has pioneered many of the major product innovations in our space. But innovation and experimentation is only truly that, if it occasionally fails. We've had our fair share of innovations that have ultimately failed and which we have shut down. These failures will not discourage us, and we will continue making big bets on innovations that we believe could yield material returns for our shareholders in the long run.

- **We take our company culture seriously** - Since founding the company, we have led it based on the values and aspirations that we have attempted to summarize in our company's "Culture Manifesto." It is publicly available on our website, and we encourage you to take a look: www.outbrain.com/about/cultural-manifesto.

We hope that laying out the driving philosophy behind how we run our business will help you understand our framework for making decisions. We hope to have you as a shareholder and to earn your trust today, and into the future, understanding that we plan to continue making decisions that are focused on maximizing the compounding returns for our shareholders in the long term.

Handwritten signatures of Yaron Galai and Ori Lahav in black ink.

Yaron Galai & Ori Lahav
Co-Founders of Outbrain Inc.

Management’s Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis of our financial condition and results of operations together with the audited annual consolidated financial statements and interim condensed consolidated financial statements, each accompanied by the related notes to the consolidated financial statements included elsewhere in this prospectus. In addition to historical financial information, the following discussion contains forward-looking statements that reflect our plans, estimates, beliefs and expectations, and involve risks and uncertainties. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this prospectus, particularly under the captions “Risk Factors” and “Special Note Regarding Forward-Looking Statements.”

Overview

Outbrain is a leading recommendation platform powering the open web. Founded in 2006, we pioneered the online content recommendation category. Fueled by over 1 billion data events gathered each minute, our platform matches audiences with personalized content and ads, driving quality engagement while delivering efficient, sustainable monetization. In 2020, we provided personalized content feeds and ads to approximately 1 billion monthly unique users, delivering on average over 10 billion recommendations per day, with over 20,000 advertisers using our platform. We are a mobile-first company and our Smartfeed technology and recommendations are highly effective on mobile devices. We generated over 66% of our revenue on mobile platforms in 2020.

Today our platform enables over 7,000 online properties, including many of the world’s most prestigious publications, helping them engage their users and monetize their visits. We have delivered over \$3 billion in direct revenue to our media partners since inception, and the average tenure of our top 20 media partners, based on our 2020 revenue, is approximately seven years.

Some of our key company milestones are:

- 2006 — Founded
- 2008 — Pioneered algorithmic-based content recommendations for media partners
- 2011 — First year with over 1 billion user engagements
- 2012 — Launched our self-serve advertising platform
- 2013 — First year with over \$100 million in revenue
- 2014 — First year with over 1,000 media partners on our platform
- 2014 — Launched our solution for mobile apps
- 2015 — First year with over 1 billion user engagements per month
- 2016 — Mobile platforms generate over 50% of total revenue
- 2017 — First year with over \$500 million in revenue
- 2017 — Launched Smartfeed, adopted by global partners such as CNN, Focus.de, HELLO!, and Le Parisien.
- 2017 — Expanded programmatic technology capabilities with the acquisition of Zemanta™
- 2018 — First profitable year on an Adjusted EBITDA basis
- 2018 — First year with over 3,000 media partners on our platform
- 2019 — Acquired Ligatus, a leading native advertising platform in Europe
- 2020 — Released our next generation feed optimization technology, driving significant engagement uplift
- 2020 — First year with over 4,000 media partners
- 2020 — Achieved record revenue and profitability

- 2021 — First quarter revenue grew 28.6%, net income grew 212.3% Ex-TAC Gross Profit grew 49.1%, and Adjusted EBITDA grew nearly tenfold on a year over year basis

The following is a summary of our performance for the periods presented:

- Our revenue increased 28.6%, totaling \$228.0 million for the three months ended March 31, 2021, compared to \$177.3 million for the three months ended March 31, 2020. Our revenue increased 11.6%, totaling \$767.1 million in 2020, compared to \$687.3 million in 2019. Revenue increased 20.7% for the six months ended December 31, 2020 on a year over year basis.
- Our gross profit was \$53.5 million and our gross margin was 23.4% for the three months ended March 31, 2021, compared to gross profit of \$32.7 million and gross margin of 18.4% for the comparable prior year period. Our gross profit was \$165.1 million in 2020, compared to \$141.8 million in 2019. Our gross margin was 21.5% and 20.6% in 2020 and 2019, respectively.
- Our Ex-TAC Gross Profit⁽¹⁾ increased 49.1% to \$60.4 million for the three months ended March 31, 2021, compared to \$40.5 million for the three months ended March 31, 2020. Our Ex-TAC Gross Profit⁽¹⁾ increased 14.1% to \$194.3 million in 2020 from \$170.3 million in 2019. Ex-TAC Gross Profit⁽¹⁾ increased 28.8% for the six months ended December 31, 2020 on a year over year basis.
- Our net income (loss) increased \$20.3 million to net income of \$10.7 million for the three months ended March 31, 2021, compared to a net loss of \$9.6 million for the three months ended March 31, 2020. Our net income increased \$24.9 million to \$4.4 million in 2020, compared to a net loss of \$20.5 million in 2019.
- Our Adjusted EBITDA⁽¹⁾ increased to \$20.6 million for the three months ended March 31, 2021, from \$2.2 million for the three months ended March 31, 2020. Adjusted EBITDA⁽¹⁾ was 34.1% and 5.4% of Ex-TAC Gross Profit⁽¹⁾ for the three months ended March 31, 2021 and 2020, respectively. Our Adjusted EBITDA⁽¹⁾ more than doubled to \$41.1 million in 2020, from \$19.3 million in 2019. Adjusted EBITDA⁽¹⁾ was 21.2% and 11.3% of Ex-TAC Gross Profit⁽¹⁾ in 2020 and 2019, respectively.

Growth for the second half of 2020 is being presented to better reflect current trends, as the COVID-19 pandemic had a negative impact on our results in the first half of 2020, particularly in the second quarter, but rebounded in the second half of 2020.

⁽¹⁾ Ex-TAC Gross Profit and Adjusted EBITDA are non-GAAP financial measures. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for the definitions and limitations of these measures, and reconciliations to the most comparable GAAP financial measures. See “Quarterly Financial Data and Seasonality” below for quarterly reconciliations to the most comparable GAAP financial measures.

COVID-19

In March 2020, the WHO declared the spread of COVID-19 as a global pandemic. The COVID-19 pandemic resulted in a global slowdown of economic activity causing a decrease in demand for a broad variety of goods and services, including those provided by certain advertisers using our platform. Many of our advertisers reduced their advertising spending, which had a negative impact on our revenue during the first half of 2020, as further described within “Results of Operations.” As the world quickly shifted to online activities and advertisers gradually shifted their spending toward digital advertising, our revenue trends improved meaningfully and returned to growth in the second half of 2020. Although we have seen a recovery in the advertising market and our business, the full impact of the COVID-19 pandemic remains uncertain.

Factors Affecting Our Business

Retention and Growth of Relationships with Media Partners

We rely on relationships with our media partners for a significant portion of our advertising inventory and for our ability to increase revenue through expanding their use of our platform. To further strengthen

these relationships, we continuously invest in our technology and product functionality to drive user engagement and monetization by (i) improving our algorithms; (ii) effectively managing our supply and demand; and (iii) expanding the adoption of our enhanced products by media partners.

Our relationships with media partners are typically long-term, exclusive and strategic in nature. Our top 20 media partners, based on our 2020 revenue, have been using our platform for an average of seven years, despite their typical contract length being two to three years. Net revenue retention is an important indicator of media partner satisfaction, the value of our platform, as well as our ability to grow revenue from existing relationships.

We calculate media partner net revenue retention at the end of each quarter by starting with revenue generated on media partners' properties in the same period in the prior year, "Prior Period Retention Revenue." We then calculate the revenue generated on these same media partners' properties in the current period, "Current Period Retention Revenue." Current Period Retention Revenue reflects any expansions within the media partner relationships, such as any additional placements or properties on which we extend our recommendations, as well as contraction or attrition. It does not reflect any media partner relationships for which we did not generate revenue in the prior period. Our media partner net revenue retention in a quarter equals the Current Period Retention Revenue divided by the Prior Period Retention Revenue. To calculate media partner net revenue retention for year-to-date and annual periods, we sum the quarterly Current Period Retention Revenue and divide it by the sum of the quarterly Prior Period Retention Revenue. Our media partner net revenue retention was 123% for the three months ended March 31, 2021 and 103% for the three months ended March 31, 2020. Our media partner net revenue retention was 104% for the year ended December 31, 2020, 95% for 2019 (104% excluding one media partner that we chose not to renew in 2019) and 108% for 2018. For the six months ended December 31, 2020, our media partner net revenue retention was 115%.

Our growth also depends on our ability to secure new partnerships with media partners. New media partners are defined as those relationships on which revenue was not generated in the prior period. Revenue generated on new media partners' properties contributed approximately 7% to revenue growth for the three months ended March 31, 2021 and approximately 10% for the three months ended March 31, 2020. Revenue generated on new media partners' properties contributed approximately 7% to revenue growth for the year ended December 31, 2020, 10% for 2019 and 7% for 2018. For the six months ended December 31, 2020, revenue growth attributable to new media partners was approximately 6%.

User Engagement with Relevant Media and Advertising Content

We believe that engagement is a key pillar of the overall value that our platform provides to users, media partners and advertisers. Our algorithms enable effective engagement of users by facilitating the discovery of content, products and services that they find most interesting, as well as connecting them to personalized ads that are relevant to them. We believe that the user experience has a profound impact on long-term user behavior patterns and thus "compounds" over time improving our long-term monetization prospects. This principle guides our behavior, and, as a result, we do not focus on the price of ads, nor on maximizing these, as may be the case with some of our competitors. Given this view, we do not focus on cost-per click or cost-per impression as key performance indicators for the business. Consequently, we have a differentiated approach to monetization as we optimize our algorithms for the overall user experience rather than just for the price of each individual user engagement.

Growth in user engagement is driven by several factors, including enhancements to our recommendation engine, growth in the breadth and depth of our data assets, the increase in size and quality of our content and advertising index, expansion on existing media partner properties where our recommendations can be served and the adoption of our platform by new media partners. As we grow user engagement we are able to collect more data, enabling us to further enhance our algorithms, which in turn helps us make smarter recommendations and further grow user engagement, providing our platform and our business with a powerful growth flywheel. We measure the impact of this growth flywheel on our business by reviewing the growth of Click Through Rate ("CTR") for ads on our platform. In the six months ended December 31, 2020, CTR for ads on our platform improved by 25% relative to the second half of 2019. We believe that we have a significant opportunity to further grow user engagement, and thus our business, as today CTR on our platform is less than 1% of recommendations served. CTR improvements increase the number of clicks on

our platform. In fact, we have been experiencing growth in clicks over the last two years as a result of our technology investment and advancements as well as our growth in both media partners and advertisers.

Advertiser Retention and Growth

We focus on serving ads that are more engaging rather than on the price of the ads. Our growth is partially driven by retaining and expanding the amount of spend by advertisers on our platform, as well as acquiring new advertisers. Improving our platform’s functionality and features increases the attractiveness of our platform to existing and new advertisers while also growing our share of their advertising budgets. We continuously invest in enhancing our technological capabilities to deliver better return on ad spend (“ROAS”) and transparency on ad spend, and market these attributes to grow our advertiser base and share of wallet.

Prices paid by advertisers on our platform fluctuate period to period for a variety of reasons, including supply and demand, competition and seasonality. While in 2019 and 2020 average prices on an annual basis were down relative to the prior year, we have noted an upward trend since June 2020. Movements in average prices do not necessarily correlate to our revenue or Ex-TAC Gross Profit trends. In order to grow our revenue and Ex-TAC Gross Profit and maximize value for our advertisers and media partners, our focus as a business is on driving user engagement and ROAS for advertisers, not on optimizing for price.

For the year ended December 31, 2020, over 20,000 unique advertisers were active on our platform. For advertiser campaigns that were launched and active on our platform in a recent 60-day period, over 90% of advertisers interacted directly with our platform to manage their campaigns. In addition, we continue to grow our programmatic partnerships, enabling us to grow our advertiser base efficiently.

Expansion Into New Environments, New Content Experiences and New Ad Formats

The accelerating pace of technological innovation and adoption, combined with continuously evolving user behavior and content consumption habits, presents multiple opportunities for growth. The emergence of new devices, platforms and environments in which users spend time consuming content is one area of expansion for us. Similarly, the formats in which content can or will be consumed continue to evolve, as well as user-friendly and impactful ad formats that can be delivered in or alongside that content. Fundamentally, we plan to continue making our platform available for media partners on all types of devices and platforms, and all formats of media, that carry their content.

Examples of new environments in which content consumption is expected to grow include connected TVs, screens for autonomous vehicles and public transport, pre-installed applications on new smartphones, smartphone native content feeds, push notifications and email newsletters. We are developing solutions that allow media partners, service providers and manufacturers to provide better curated, personalized and more engaging content feeds and recommendations in these environments.

The development and deployment of new ad formats allow us to better serve users, media partners and, ultimately, advertisers who seek to target and engage users at scale; this continues to open and grow new types of advertiser demand, while ensuring relevance as the environments in which we operate diversify.

Investment in Our Technology and Infrastructure

Innovation is a core tenet of our company and our industry. We plan to continue our investments in our people and our technology in order to retain and enhance our leadership position. For example, improvements to our algorithms help us deliver more relevant ads, driving higher user engagement, thereby improving ROAS for advertisers and increasing monetization for our media partners. In addition, we continue to invest in media partner and advertiser focused tools, technology and products as well as privacy-centric solutions.

We believe that our proprietary micro-services, API-based cloud infrastructure provides us with a strategic competitive advantage as we are able to deploy code an average of 250 times per day and grow in a scalable and highly cost-effective manner. As we develop and deploy solutions for enhanced integration of our technologies in new environments, with new content and ad formats, we anticipate activity through our platform to grow. We anticipate that the investment in our technology, infrastructure and solutions will contribute to our long-term growth.

Seasonality

The global advertising industry experiences seasonal trends that affect most participants in the digital advertising ecosystem. Most notably, advertisers have historically spent relatively more in the fourth quarter of the calendar year to coincide with the holiday shopping season. We generally expect this seasonal trend to continue, though historical seasonality may not be predictive of future results given the potential for changes in advertising buying patterns. These trends will affect our operating results and we expect our revenue to continue to fluctuate based on seasonal factors that affect the advertising industry as a whole.

Industry Dynamics

Our business depends on the overall demand for digital advertising and on the continuous success of our current and prospective media partners. We believe that the following are the key dynamics impacting our industry and our business:

- Digital advertising is a rapidly evolving and growing industry.
- The growth of digital advertising has outpaced the growth of the broader advertising industry.
- Digital advertising, given its highly targeted nature and measurability, has been more resilient to economic downturns compared to the advertising industry generally.
- Content consumption is increasingly shifting online, requiring media owners to adapt in order to successfully attract, engage and monetize their users.
- Given the large and growing volume of content being generated online, content curation tools are increasingly becoming a necessity for users and media owners alike.
- Advertisers increasingly rely on digital advertising platforms that deliver highly targeted ads and measurable performance.
- Regulators across most developed markets are increasingly focused on enacting and enforcing user privacy rules as well as tighter oversight of the major ‘walled garden’ platforms.
- Industry participants have recently been, and likely will continue to be, impacted by changes implemented by platform leaders such as Apple’s change to its Identifier for Advertisers policy and Google’s evolving roadmap pertaining to the use of cookies within its Chrome web browser.

Given our focus on innovation, the depth and length of our media partner relationships and our scale, we believe that we are well positioned to address and benefit from many of these industry dynamics.

Definitions of Financial and Performance Measures**Revenue**

We generate revenue from advertisers through ads that we deliver across a variety of media partner properties. We charge advertisers for clicks on and, to a lesser extent, impressions of their ads, depending on how they choose to contract with us. We recognize revenue in the period in which the click or impression occurs.

The amount of revenue that we generate depends on the level of demand from advertisers to promote their content to users across our media partners’ properties. We generate higher revenue at times of high demand, which is largely impacted by seasonal factors. For any given marketing campaign, the advertiser has the ability to adjust its price in real time and set a maximum daily spend. This allows advertisers to adjust the estimated ad spend attributable to the particular campaign. Due to the measurable performance that our advertisers achieve with us, a significant part of our advertisers spend with us on an unlimited basis, as long as their ROAS objectives are met.

Our agreements with advertisers provide them with considerable flexibility to modify their overall budget, price (cost per click or cost per impression), and the ads they wish to deliver on our platform.

Traffic Acquisition Costs

We define traffic acquisition costs (“TAC”) as amounts owed to media partners for their share of the revenue we generated on their properties. We incur traffic acquisition costs in the period in which the revenue

is recognized. Traffic acquisition costs are based on the media partners' revenue share or, in some circumstances, based on a guaranteed minimum rate of payment from us in exchange for guaranteed placement of our ads on specified portions of the media partner's digital properties. These guaranteed rates are typically provided per thousand qualified page views, whereas our minimum monthly payment to the media partner may fluctuate based on how many qualified page views the media partner generates, subject to a maximum guarantee. Traffic acquisition costs also include amounts payable to programmatic supply partners.

Other Cost of Revenue

Other cost of revenue consists of costs related to the management of our data centers, hosting fees, data connectivity costs and depreciation and amortization. Other cost of revenue also includes the amortization of capitalized software that is developed or obtained for internal use associated with our revenue-generating technologies.

Operating Expenses

Our operating expenses consist of research and development, sales and marketing and general and administrative expenses. The largest component of our operating expenses is personnel costs. Personnel costs consist of wages, benefits, bonuses and, with respect to sales and marketing expenses, sales commissions. Personnel costs also include stock-based compensation, which are expected to show an increase upon completion of this offering as a result of certain vesting of RSAs and RSUs upon the satisfaction of a performance condition upon our initial public offering.

Research and Development. Research and development expenses are related to the development and enhancement of our platform and consist primarily of personnel and the related overhead costs, amortization of capitalized software for non-revenue generating infrastructure and facilities costs.

Sales and Marketing. Sales and marketing expenses consist primarily of personnel and the related overhead costs for personnel engaged in marketing, advertising, client services, and promotional activities. These expenses also include advertising and promotional spend on media, conferences and other events to market our services, and facilities costs.

General and Administrative. General and administrative expenses consist primarily of personnel and the related overhead costs, professional fees, facilities costs, insurance, and certain taxes other than income taxes. General and administrative personnel costs include our executive, finance, human resources, information technology and legal functions. Our professional service fees consist primarily of accounting, audit, tax, legal, information technology and other consulting costs.

Other Income (Expense), Net

Other income (expense), net is comprised of interest expense and interest income and other expense, net.

Interest Expense. Interest expense consists of interest expense on our revolving credit facility and capital leases. Interest expense may increase as we incur borrowings periodically under our revolving credit facility or if we enter into new debt facilities or capital leasing arrangements. Interest expense is expected to increase in future periods as a result of the July 1, 2021 sale of the Notes and our intent to exchange the Notes for Convertible Notes as discussed further in Liquidity and Capital Resources.

Interest Income and Other Income (Expense), Net. Interest and other income (expense), net primarily consists of interest earned on our cash and cash equivalents and money market funds, as well as foreign currency exchange gains and losses. Foreign currency exchange gains and losses, both realized and unrealized, relate to transactions and monetary asset and liability balances denominated in currencies other than the functional currencies. Foreign currency gains and losses may continue to fluctuate in the future due to changes in foreign currency exchange rates.

Provision for Income Taxes

Provision for income taxes consists of federal and state income taxes in the United States and income taxes in certain foreign jurisdictions, as well as deferred income taxes and changes in valuation allowance,

reflecting the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

Realization of our deferred tax assets depends on the generation of future taxable income. In considering the need for a valuation allowance, we consider our historical and future projected taxable income, as well as other objectively verifiable evidence, including our realization of tax attributes, assessment of tax credits and utilization of net operating loss carryforwards.

Results of Operations

We have one operating segment, which is also our reportable segment. The following tables set forth our results of operations for the periods presented:

	Three Months Ended March 31,		Year Ended December 31,	
	2021	2020	2020	2019
	(in thousands)			
Consolidated Statements of Operations:				
Revenue	\$228,024	\$177,332	\$767,142	\$687,333
Cost of revenue:				
Traffic acquisition costs	167,613	136,806	572,802	517,000
Other cost of revenue	6,942	7,873	29,278	28,548
Total cost of revenue	174,555	144,679	602,080	545,548
Gross profit	53,469	32,653	165,062	141,785
Operating expenses:				
Research and development	8,428	6,982	28,961	26,391
Sales and marketing	19,868	20,295	77,570	78,941
General and administrative	10,393	14,893	48,354	51,038
Total operating expenses	38,689	42,170	154,885	156,370
Income (loss) from operations	14,780	(9,517)	10,177	(14,585)
Other income (expense), net:				
Interest expense	(170)	(165)	(832)	(601)
Interest income and other income (expense), net	(2,253)	1,241	(1,695)	152
Total other expense, net	(2,423)	1,076	(2,527)	(449)
Income (loss) before provision for income taxes	12,357	(8,441)	7,650	(15,034)
Provision for income taxes	1,611	1,129	3,293	5,480
Net income (loss)	\$ 10,746	\$ (9,570)	\$ 4,357	\$ (20,514)
Other Financial Data:				
Research and development as % of revenue	3.7%	3.9%	3.8%	3.8%
Sales and marketing as % of revenue	8.7%	11.4%	10.1%	11.5%
General and administrative as % of revenue	4.6%	8.4%	6.3%	7.4%
Non-GAAP Financial Data: ⁽¹⁾				
Ex-TAC Gross Profit	\$ 60,411	\$ 40,526	\$ 194,340	\$ 170,333
Adjusted EBITDA	\$ 20,583	\$ 2,169	\$ 41,145	\$ 19,275

⁽¹⁾ See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for definitions of, explanations of our management’s use of and limitations of the non-GAAP financial measures used in this prospectus. The reconciliations of Ex-TAC Gross Profit to gross profit and of Adjusted EBITDA to net income are also presented in the “Non-GAAP Reconciliations” section below.

Three Months Ended March 31, 2021 Compared to the Three Months Ended March 31, 2020

Revenue

Revenue increased by \$50.7 million, or 28.6%, to \$228.0 million for the three months ended March 31, 2021 from \$177.3 million for the three months ended March 31, 2020. Revenue grew approximately 23%, or \$41 million, from net revenue retention on existing media partners primarily due to increased monetization

from growth in CTR, and approximately 7%, or \$12 million, from new media partners. Revenue for the three months ended March 31, 2021 benefited from net favorable foreign currency effects of approximately \$7.0 million.

Cost of Revenue and Gross Profit

Traffic acquisition costs increased \$30.8 million, or 22.5%, for the three months ended March 31, 2021 compared to the prior year period, including net unfavorable foreign currency effects of approximately \$4.6 million. Traffic acquisition costs grew less than revenue due to favorable revenue mix from higher margin media partners and improved performance on media owners with guarantee arrangements. As a percentage of revenue, traffic acquisition costs decreased to 73.5% for the three months ended March 31, 2021, from 77.1% in the three months ended March 31, 2020.

Other cost of revenue decreased \$0.9 million, or 11.8%, for the three months ended March 31, 2021 compared to the prior year period, which was primarily attributable to the favorable impact of cost savings initiatives and lower amortization expense. As a percentage of revenue, other cost of revenue decreased to 3.0% for the three months ended March 31, 2021, from 4.4% in the three months ended March 31, 2020.

Gross profit increased \$20.8 million, or 63.7%, to \$53.5 million for the three months ended March 31, 2021 compared to \$32.7 million for the three months ended March 31, 2020, which was primarily attributable to the increase in revenue, partially offset by the corresponding increase in cost of revenue, as previously described.

Ex-TAC Gross Profit

Our Ex-TAC Gross Profit increased 49.1% to \$60.4 million for the three months ended March 31, 2021, from \$40.5 million for the three months ended March 31, 2020, primarily driven by our revenue growth as well as favorable revenue mix from higher margin media partners and improved performance on media owners with guarantee arrangements. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” and “Non-GAAP Reconciliations” for the related definition, limitations and reconciliations to our gross profit.

Operating Expenses

Operating expenses decreased by \$3.5 million, or 8.3%, to \$38.7 million for the three months ended March 31, 2021 from \$42.2 million for the three months ended March 31, 2020, including net unfavorable foreign currency effects of approximately \$1.6 million. The decrease in operating expenses was primarily driven by \$6.1 million of terminated merger expenses for the three months ended March 31, 2020. Excluding these merger-related costs, operating expenses increased \$2.6 million primarily due to higher personnel-related costs of \$2.7 million and professional fees of \$1.2 million, offset in part by \$1.2 million of reduced expenses in connection with the COVID-19 pandemic, largely due to lower travel and entertainment expenses.

The components of operating expenses are discussed below:

- ***Research and development expenses***—increased \$1.4 million, primarily due to higher personnel costs to invest in the growth of our platform.
- ***Sales and marketing expenses***—decreased \$0.4 million, as reduced travel and entertainment and marketing expenses in connection with the COVID-19 pandemic were partially offset by increased commissions due to higher revenue.
- ***General and administrative expenses***—decreased \$4.5 million, primarily due to \$6.1 million of terminated merger expenses for the three months ended March 31, 2020. Excluding these merger-related costs, expenses increased \$1.6 million, largely due to increased professional fees of \$1.1 million and higher personnel costs of \$0.9 million.

Operating expenses as a percentage of revenue declined to 17.0% for the three months ended March 31, 2021, from 23.8% for the three months ended March 31, 2020, primarily driven by the absence of the prior year merger expenses and our operating leverage on higher revenue. We continue to expect our operating expenses on an absolute basis to increase this year due to increased sales and marketing expenses, increased

expenses assuming a transition from a fully remote environment over the course of the year, and incremental costs related to becoming a public company.

Total Other Income (Expense), Net

Total other income (expense), net, was an expense of \$2.4 million for the three months ended March 31, 2021, compared to income of \$1.2 million for the three months ended March 31, 2020. This change was primarily due to higher foreign currency losses of \$2.4 million resulting from transactions denominated in currencies other than the functional currencies, including mark-to-market adjustments on undesignated foreign exchange forward contracts. In addition, total other income (expense), net in the three months ended March 31, 2020 included a \$1.1 million gain on sale of an asset.

Provision for Income Taxes

Provision for income taxes increased by \$0.5 million to \$1.6 million for the three months ended March 31, 2021 from \$1.1 million for the three months ended March 31, 2020, primarily attributable to the increase in our taxable income. Our effective tax rate was 13.0% for the three months ended March 31, 2021, compared to (13.4)% for the three months ended March 31, 2020 due to a loss from operations in the prior year period.

We expect our future effective tax rate to be affected by the geographic mix of earnings in countries with different statutory rates. Additionally, our future effective tax rate may be affected by changes in the valuation of our deferred tax assets or liabilities, or changes in tax laws, regulations, or accounting principles, as well as certain discrete items.

Net Income (Loss)

As a result of the foregoing, net income (loss) increased \$20.3 million, to net income of \$10.7 million for the three months ended March 31, 2021, from a net loss of \$9.6 million for the three months ended March 31, 2020.

Adjusted EBITDA

Our Adjusted EBITDA increased \$18.4 million to \$20.6 million for the three months ended March 31, 2021 from \$2.2 million for the three months ended March 31, 2020, which was primarily attributable to the increase in revenue, partially offset by the corresponding increase in cost of revenue, as previously described. See “Definitions of Financial and Performance Measures” and “Non-GAAP Reconciliations” for the related definitions, limitations, and reconciliations to our net income.

Year Ended December 31, 2020 Compared to Year Ended December 31, 2019

Revenue

Revenue increased by \$79.8 million, or 11.6%, to \$767.1 million in 2020 from \$687.3 million in 2019. Approximately 7%, or \$52 million, of the increase in revenue was from new media partners and approximately 4%, or \$27 million, was from net revenue retention on existing media partners as we continue to expand business with them. The COVID-19 pandemic negatively impacted our revenue trends in the first half of 2020. Revenue for the year ended December 31, 2020 benefited from net favorable foreign currency effects of \$6.3 million.

Cost of Revenue and Gross Profit

Traffic acquisition costs increased \$55.8 million, or 10.8%, in 2020 compared to 2019 including net unfavorable foreign currency effects of \$5.3 million, and were generally commensurate with the increase in revenue. As a percentage of revenue, traffic acquisition costs decreased approximately 50 basis points to 74.7% in 2020, compared to 75.2% in 2019.

Other cost of revenue increased \$0.7 million, or 2.6%, in 2020 compared to 2019, which was primarily attributable to an increase in services that fluctuate with the growth of ad traffic, largely offset by the favorable

impact of cost savings initiatives and efficiency projects. As a percentage of revenue, other cost of revenue decreased 40 basis points to 3.8% in 2020, compared to 4.2% in 2019.

Gross profit increased \$23.3 million, or 16.4%, to \$165.1 million in 2020 compared to \$141.8 million in 2019, which was primarily attributable to the increase in revenue, partially offset by the corresponding increase in cost of revenue, as previously described.

Ex-TAC Gross Profit

Our Ex-TAC Gross Profit increased 14.1% to \$194.3 million in 2020, from \$170.3 million in 2019, primarily due to revenue growth. Ex-TAC Gross Profit increased 28.8%, to \$114.1 million for the six months ended December 31, 2020, compared to \$88.6 million in the same period of the prior year. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” and “Quarterly Financial Data and Seasonality” for the related definition, limitations and reconciliations of Ex-TAC Gross Profit to gross profit, the most comparable GAAP measure.

Operating Expenses

Operating expenses decreased by \$1.5 million, or 0.9%, to \$154.9 million in 2020 from \$156.4 million in 2019. The decrease in operating expenses was mainly attributable to \$6.5 million of reduced expenses in connection with the COVID-19 pandemic, including travel and entertainment, facilities, and marketing event expenses, as well as a favorable change of \$4.2 million relating to a reversal of a tax-contingency recorded in 2019, as further discussed below. These declines were largely offset by an increase of approximately \$9.0 million in personnel-related costs.

The components of operating expenses are discussed below:

- ***Research and development expenses***—increased \$2.6 million, primarily due to higher personnel costs, to invest in the growth of our platform.
- ***Sales and marketing expenses***—decreased \$1.4 million, primarily reflecting a decrease of \$5.0 million due to reduced expenses in connection with the COVID-19 pandemic, partially offset by an increase of \$3.4 million in personnel costs primarily related to higher incentive-based compensation.
- ***General and administrative expenses***—decreased \$2.7 million, which included a favorable change of \$4.2 million relating to a reversal of a tax-contingency recorded in 2019 and a corresponding charge to income tax expense in 2020, as well as a \$3.0 million reduction in expenses in connection with the COVID-19 pandemic and other travel and entertainment expenses. These decreases were partially offset by increased personnel costs of \$3.6 million primarily attributable to increased incentive-based compensation costs and \$0.6 million of increased acquisition-related costs.

Operating expenses as a percentage of revenue declined by 2.6%, from 22.8% in 2019 to 20.2% in 2020. We expect our operating expenses on an absolute basis to increase over the next twelve months due to increased sales and marketing expenses, increased expenses assuming a transition from a fully remote environment over the course of the year, and incremental costs related to becoming a public company.

Total Other Expense, Net

Total other expense, net, increased \$2.1 million, to \$2.5 million in 2020 from \$0.4 million in 2019, primarily due to higher foreign currency losses of \$3.5 million resulting from transactions denominated in currencies other than the functional currencies, partially offset by a \$1.1 million gain on sale of an asset.

Provision for Income Taxes

Provision for income taxes decreased by \$2.2 million to \$3.3 million in 2020 from \$5.5 million in 2019. This decrease was primarily attributable to the valuation allowance against one of our foreign subsidiaries’ net operating losses, which was recorded in 2019 and released in 2020 due to the increase in taxable income, as well as higher uncertain tax positions in 2019. Our effective tax rate was 43.0% in 2020, compared to

(36.5)% in 2019 due to a loss from operations for that year. Our 2020 effective tax rate was unfavorably impacted by approximately 16.5 percentage points due to certain non-recurring prior year taxes in a foreign tax jurisdiction.

We expect our future effective tax rate to be affected by the geographic mix of earnings in countries with different statutory rates. Additionally, our future effective tax rate may be affected by changes in the valuation of our deferred tax assets or liabilities, or changes in tax laws, regulations, or accounting principles, as well as certain discrete items.

Net Income (Loss)

As a result of the foregoing, net income (loss) increased \$24.9 million, to net income of \$4.4 million in 2020, from a net loss of \$20.5 million in 2019.

Adjusted EBITDA

Our Adjusted EBITDA increased \$21.8 million, or 113%, to \$41.1 million in 2020 from \$19.3 million in 2019, which was primarily attributable to the increase in revenue, partially offset by the corresponding increase in cost of revenue, as previously described. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for the related definition, limitations and reconciliations of Adjusted EBITDA to our net income, the most comparable GAAP measure.

2019 Transaction

On April 1, 2019, we completed the acquisition of all the outstanding shares of Ligatus, a German-based native advertising company, pursuant to a share purchase agreement with Gruner + Jahr GmbH. The acquisition date fair value of the consideration transferred was approximately \$40.1 million, which consisted of 6,125,404 shares of our common stock. The acquisition was accounted for as a business combination and the results of operations of the acquired entity have been included in our results of operations as of the acquisition date.

As part of our growth strategy, we plan to continue to evaluate strategic acquisition or investment opportunities to add incremental growth with compounding benefits to our business, to further expand our offerings, add key technology and/or reach new markets.

Non-GAAP Reconciliations

The following tables are presented to reconcile certain supplemental non-GAAP financial measures that are used by our management to evaluate our business, measure our performance, identify trends and allocate our resources to the corresponding GAAP financial measures. The definitions and limitations of our non-GAAP financial measures are further described within “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures.”

Ex-TAC Gross Profit

The following table presents the reconciliation of Ex-TAC Gross Profit to gross profit, the most directly comparable U.S. GAAP measure, for the periods presented:

	<u>Three Months Ended March 31,</u>		<u>Year Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
	(in thousands)			
Revenue	\$ 228,024	\$ 177,332	\$ 767,142	\$ 687,333
Traffic acquisition costs	(167,613)	(136,806)	(572,802)	(517,000)
Other cost of revenue	(6,942)	(7,873)	(29,278)	(28,548)
Gross profit	53,469	32,653	165,062	141,785
Other cost of revenue	6,942	7,873	29,278	28,548
Ex-TAC Gross Profit	<u>\$ 60,411</u>	<u>\$ 40,526</u>	<u>\$ 194,340</u>	<u>\$ 170,333</u>

Adjusted EBITDA

The following table presents the reconciliation of Adjusted EBITDA to net income (loss), the most directly comparable U.S. GAAP measure, for the periods presented:

	Three Months Ended March 31,		Year Ended December 31,	
	2021	2020	2020	2019
	(in thousands)			
Net income (loss)	\$10,746	\$(9,570)	\$ 4,357	\$(20,514)
Interest expense and other income (expense), net	2,423	(1,076)	2,527	449
Provision for income taxes	1,611	1,129	3,293	5,480
Depreciation and amortization	4,527	4,649	18,509	16,744
Stock-based compensation	1,487	916	3,588	3,876
Merger and acquisition costs ⁽¹⁾	(211)	6,121	11,168	10,527
Tax contingency ⁽²⁾	—	—	(2,297)	2,713
Adjusted EBITDA	<u>\$20,583</u>	<u>\$ 2,169</u>	<u>\$41,145</u>	<u>\$ 19,275</u>
Adjusted EBITDA as % of Ex-TAC Gross Profit	<u>34.1%</u>	<u>5.4%</u>	<u>21.2%</u>	<u>11.3%</u>

(1) Primarily includes transaction-related costs in connection with our acquisition of Ligatus GmbH (“Ligatus”)™ in April 2019, as well as costs related to our terminated merger with Taboola.com Ltd. (“Taboola”).

(2) Reflects a reversal of a tax contingency recorded within operating expenses in 2019 and a corresponding charge to income tax expense in 2020, net of foreign exchange impact.

Quarterly Financial Data and Seasonality

The following table sets forth selected unaudited quarterly financial data for the first quarter of 2021 and each of the quarters in 2020 and 2019. The information for each of these quarters has been prepared on a basis consistent with our audited annual consolidated financial statements appearing elsewhere in this prospectus and, in our opinion, includes all adjustments, consisting of normal adjustments necessary for the fair statement of the financial information contained in those statements. The following unaudited consolidated quarterly financial data should be read in conjunction with our annual consolidated financial statements and the related notes included elsewhere in this prospectus. Our quarterly results are subject to fluctuations due to seasonality and other factors. These quarterly results present our historical trends, which may or may not be indicative of the results of operations that may be achieved in future periods.

	Three Months Ended								
	March 31, 2021	December 31, 2020	September 30, 2020	June 30, 2020	March 31, 2020	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
	(in thousands)								
Revenue	\$228,024	\$245,438	\$186,510	\$157,862	\$177,332	\$189,609	\$168,122	\$173,522	\$156,080
Cost of revenue									
Traffic acquisition costs	167,613	179,990	137,866	118,140	136,806	142,978	126,143	130,118	117,761
Other cost of revenue	6,942	6,986	6,771	7,648	7,873	7,330	7,487	7,677	6,054
Total cost of revenue	174,555	186,976	144,637	125,788	144,679	150,308	133,630	137,795	123,815
Gross profit	53,469	58,462	41,873	32,074	32,653	39,301	34,492	35,727	32,265
Operating expenses:									
Research and development	8,428	8,209	6,867	6,903	6,982	6,743	6,432	6,757	6,459
Sales and marketing	19,868	21,983	17,476	17,816	20,295	20,649	19,708	21,025	17,559
General and administrative	10,393	12,496	13,909	7,056	14,893	14,806	15,581	12,020	8,631
Total operating expenses	38,689	42,688	38,252	31,775	42,170	42,198	41,721	39,802	32,649
Income (loss) from operations	14,780	15,774	3,621	299	(9,517)	(2,897)	(7,229)	(4,075)	(384)
Other income (expense), net:									
Interest expense	(170)	(205)	(196)	(266)	(165)	(166)	(167)	(145)	(123)
Interest income and other income (expense)	(2,253)	(1,373)	(878)	(685)	1,241	(337)	(106)	658	(63)
Total other income (expense), net	(2,423)	(1,578)	(1,074)	(951)	1,076	(503)	(273)	513	(186)
Income (loss) before provision for income taxes	12,357	14,196	2,547	(652)	(8,441)	(3,400)	(7,502)	(3,562)	(570)
Provision (benefit) for income taxes	1,611	187	6	1,971	1,129	2,335	2,791	(397)	751
Net income (loss)	<u>\$ 10,746</u>	<u>\$ 14,009</u>	<u>\$ 2,541</u>	<u>\$ (2,623)</u>	<u>\$ (9,570)</u>	<u>\$ (5,735)</u>	<u>\$ (10,293)</u>	<u>\$ (3,165)</u>	<u>\$ (1,321)</u>
Non-GAAP Financial Data: ⁽¹⁾									
Ex-TAC Gross Profit	\$ 60,411	\$ 65,448	\$ 48,644	\$ 39,722	\$ 40,526	\$ 46,632	\$ 41,979	\$ 43,403	\$ 38,319
Adjusted EBITDA	20,583	21,062	12,761	5,153	2,169	7,855	4,296	2,146	4,978
Adjusted EBITDA as % of Ex-TAC Gross Profit	34.1%	32.2%	26.2%	13.0%	5.4%	16.8%	10.2%	4.9%	13.0%
Adjusted EBITDA Reconciliation:									
Net income (loss)	\$ 10,746	\$ 14,009	\$ 2,541	\$ (2,623)	\$ (9,570)	\$ (5,735)	\$ (10,293)	\$ (3,165)	\$ (1,321)
Interest expense and other income (expense), net	2,423	1,578	1,074	951	(1,076)	503	273	(513)	186
Provision (benefit) for income taxes	1,611	187	6	1,971	1,129	2,335	2,791	(397)	751
Depreciation and amortization	4,527	4,456	4,623	4,781	4,649	4,316	4,725	4,420	3,283
Stock-based compensation	1,487	856	874	942	916	824	1,155	796	1,101
Merger and acquisition costs	(211)	(24)	3,643	1,428	6,121	3,342	5,202	1,005	978
Tax contingency	—	—	—	(2,297)	—	2,270	443	—	—
Adjusted EBITDA	<u>\$ 20,583</u>	<u>\$ 21,062</u>	<u>\$ 12,761</u>	<u>\$ 5,153</u>	<u>\$ 2,169</u>	<u>\$ 7,855</u>	<u>\$ 4,296</u>	<u>\$ 2,146</u>	<u>\$ 4,978</u>

(1) Ex-TAC Gross Profit and Adjusted EBITDA are non-GAAP financial measures. See “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for definitions of, and the explanations of our management’s use and limitations of, the non-GAAP financial measures used in this prospectus. Ex-TAC Gross Profit is calculated as gross profit plus other cost of revenue. We define Adjusted EBITDA as net income (loss) before interest expense; interest income and other income (expense), net; provision for income taxes; depreciation and amortization; stock-based compensation, and other income or expenses that we do not consider indicative of our core operating performance, including, but not limited to, merger and acquisition costs and a tax contingency.

Our revenue generally fluctuates from quarter to quarter as a result of a variety of factors, including seasonality, as many advertisers allocate the largest portion of their budgets to the fourth quarter of the

calendar year to coincide with increased holiday purchasing, as well as the timing of advertising budget cycles. Historically, the fourth quarter of the year has reflected the highest levels of advertiser spending, and the first quarter has reflected the lowest level of advertiser spending. In addition, expenditures by advertisers tend to be cyclical and discretionary in nature, reflecting changes in brand advertising strategy, budgeting constraints and buying patterns and a variety of other factors, many of which are outside of our control. The quarterly rate of increase in our traffic acquisition costs is generally commensurate with the quarterly rate of increase in our revenue. However, traffic acquisition costs have, at times, grown at a faster or slower rate than revenue, primarily due to the mix of the revenue generated or contracted terms with media partners.

Liquidity and Capital Resources

Our principal sources of liquidity are our cash and cash equivalents, cash from our operations, and available capacity under our revolving credit facility. We have historically financed our operations primarily through private placements of our convertible preferred stock as well as through borrowings on our revolving credit facility.

As of March 31, 2021, we had \$95.0 million of cash and cash equivalents, of which \$35.4 million was held outside of the United States by our non-U.S. subsidiaries. We currently do not have any plans to repatriate our earnings from our foreign subsidiaries. We intend to continue to reinvest our earnings from foreign operations for the foreseeable future, and do not anticipate that we will need funds generated from foreign operations to fund our domestic operations.

Our primary source of operating cash flows is cash receipts from advertisers. Our primary uses of operating cash are amounts due to media partners and vendors, as well as for personnel costs and other employee-related expenditures. We have historically experienced higher cash collections during our first quarter due to seasonally strong fourth quarter sales, and, as a result, our working capital needs typically decrease during this quarter. We expect these trends to continue as we continue to grow our business.

Our cash flow from investing activities primarily consists of capital expenditures and capitalized software development costs. We anticipate that our capital expenditures will be approximately \$5 million to \$8 million in 2021, which will include expenditures related to servers and related equipment, as well as leasehold improvements; however, actual amounts may vary from these estimates.

We believe that cash generated from our operations and existing cash equivalents will be sufficient to meet our working capital requirement for the next twelve months and the foreseeable future. However, there are multiple factors that could impact our future liquidity, including our ability to collect payments from our advertisers, having to pay our media partners even if our advertisers decrease their payments due to economic conditions, the continued impacts of the COVID-19 pandemic or other factors. In addition, we expect interest expense to increase in future periods as a result of the July 1, 2021 sale of the Notes and our intent to exchange the Notes for Convertible Notes, as further described below.

Revolving Credit Facility

We are party to a loan and security agreement (“Revolving Credit Facility”) with SVB that provides us an initial maximum borrowing capacity of up to \$35.0 million that we may use to borrow against our qualifying receivables based on a defined borrowing formula. The Revolving Credit Facility matures on November 2, 2021.

The Revolving Credit Facility contains customary conditions to borrowings, events of default and negative covenants, including covenants that restrict our ability to dispose of assets, merge with or acquire other entities, incur indebtedness, incur encumbrances, make distributions to holders of our capital stock, make investments or engage in transactions with our affiliates. We are also subject to financial covenants with respect to a monthly modified liquidity ratio and Adjusted EBITDA for trailing six-month periods. Our obligations under the Revolving Credit Facility are secured by a first priority security interest in substantially all of our assets with a negative pledge on our intellectual property. We were in compliance with all financial covenants under the Revolving Credit Facility as of March 31, 2021. As of March 31, 2021 and December 31, 2020, we had no borrowings outstanding under our Revolving Credit Facility. Our available borrowing capacity on March 31, 2021, was \$35.0 million based on the defined borrowing formula.

Our ability to renew or replace the Revolving Credit Facility may be limited due to various factors, including the status of our business, global credit market conditions, and perceptions of our business or industry by sources of financing. In addition, if credit is available, lenders may seek more restrictive covenants and high interest rates that may reduce our borrowing capacity, increase our costs, and reduce our operating flexibility.

Senior Subordinated Secured Notes

On July 1, 2021, we completed the sale of \$200 million aggregate principal amount of senior subordinated secured notes due July 1, 2026 (the “Notes”), in a private placement (the “Private Placement”) to the Baupost Investors, pursuant to a Senior Subordinated Secured Note Purchase Agreement dated July 1, 2021 (the “Note Purchase Agreement”).

We intend to exchange the Notes for Convertible Notes (described below) upon the consummation of this offering. Upon issuance of the Convertible Notes, all the Notes and the obligations thereunder shall be canceled and extinguished.

Exchange of Notes for Convertible Notes

Pursuant to the Note Purchase Agreement, we agreed that upon the consummation of our initial public offering or a similar liquidity event (an “IPO”) that results in our having a pre-money equity value of less than or equal to \$2 billion, we will, at our option, either (i) exchange all the Notes for newly-issued five-year Convertible Senior Notes (the “Convertible Notes”) having an aggregate principal amount equal to the Minimum Note Redemption Price (described below) or (ii) redeem all the Notes for cash in an amount equal to the Minimum Note Redemption Price. The Minimum Note Redemption Price will be equal to the greater of (a) \$236 million if the IPO occurs on or before August 15, 2021 (or \$240 million if the IPO occurs after August 15, 2021 but on or before December 31, 2021) and (b) an internal rate of return of 16% per annum, compounded quarterly and determined under the Note Purchase Agreement. As noted above, we intend to exchange the Notes for the Convertible Notes upon the consummation of this offering.

The Convertible Notes will have a term of five (5) years. The initial conversion rate for the Convertible Notes per \$1,000 principal amount of Convertible Notes will be a number of shares of common stock equivalent to a conversion price of 125% of the initial public offering price of our common stock. The Convertible Notes will bear a stated interest equal to the greater of (A) 2.95% per annum and (B) 2.95% per annum plus (x) the closing yield of the 5-year U.S. Treasury Rate as of the business day immediately prior to the day of issuance of the Convertible Notes *minus* (y) 0.80%, rounded up to the next highest 0.05% increment. Holders of the Convertible Notes may, at their option, convert all or any portion of their Convertible Notes into shares of our common stock at any time until the second scheduled trading day immediately preceding the maturity date, at the conversion rate then in effect. We will settle conversions of the Convertible Notes by paying or delivering, as the case may be, cash, shares of our common stock, or a combination thereof, at our election.

In connection with the Private Placement and the execution of the Note Purchase Agreement, we agreed to a form of indenture for the Convertible Notes (“Convertible Notes Indenture Form”) that will govern the Convertible Notes when issued upon the consummation of the IPO. If we undergo a fundamental change (as defined in the Convertible Notes Indenture Form) prior to the five-year maturity date, holders may, at their option, require us to repurchase for cash all or any portion of their Convertible Notes at a price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the repurchase date. We may not redeem the Convertible Notes prior to the third anniversary of their issuance. On or after such date, we may, at our option, redeem for cash all or any portion of the Convertible Notes, if the last reported sale price of our common stock has been at least 130% of the conversion price on each of at least 20 trading days during the 30 consecutive trading day period ending on and including the trading day preceding the date on which we provide notice of redemption, at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus any accrued and unpaid interest to, but excluding, the redemption date. In addition, calling any Convertible Note for redemption will constitute a “make-whole fundamental change” with respect to that Convertible Note, in which case the conversion rate applicable to the conversion of that Convertible Note will be increased if it is converted by holders after it is called for redemption.

The Convertible Notes will also include standard provisions regarding “fundamental changes,” “make-whole fundamental changes,” adjustments to conversion rates upon the happening of specified events, events of default and remedies, customary for public company convertible notes. The Bank of New York Mellon has agreed to act as trustee for the Convertible Notes.

SVB Subordination Agreement

The Notes issued in the Private Placement, which we expect and intend will be exchanged and cancelled upon the IPO, bear interest that accrues at the rate of (i) prior to July 1, 2024, 10.0% per annum and (ii) on and after July 1, 2024, 14.5% per annum, payable, in cash or in kind at our option, quarterly. The Notes are our senior secured obligations and will, on a date on or before 60 days following the closing of the Private Placement, be guaranteed on a senior secured basis by certain of our wholly-owned subsidiaries and secured by a second priority lien on all of our and their tangible and intangible assets, subject to certain excluded assets, permitted liens and customary exceptions. Subject to certain exceptions, the Note Purchase Agreement limits our ability to incur debt, pay dividends or make restricted payments, sell or dispose assets, incur liens securing debt, enter into affiliate transactions, or merge or sell all or substantially all our assets. The agreement contains customary events of default including, nonpayment of principal or interest, breach of negative covenants or fundamental representations, and certain bankruptcy or insolvency events.

In connection with the Revolving Credit Facility and our entering into the Note Purchase Agreement, SVB, the Baupost Investors and the Bank of New York Mellon as collateral agent for the Notes entered into a subordination agreement, dated as of July 1, 2021, pursuant to which (i) SVB, as senior creditor, consented to our entering into the Note Purchase Agreement and related loan documents and (ii) the Baupost Investors agreed to subordinate our obligations to them under the Notes to our obligations to SVB.

Cash Flows

The following table summarizes the major components of net cash flows for the periods presented:

	<u>Three Months Ended March 31,</u>		<u>Year Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>	<u>2020</u>	<u>2019</u>
	(in thousands)			
Net cash provided by operating activities	\$ 5,406	\$14,336	\$52,986	\$16,740
Net cash used in investing activities	(2,787)	(2,121)	(9,423)	(7,589)
Net cash (used in) provided by financing activities	(807)	9,044	(4,228)	(3,659)
Effect of exchange rate changes	(430)	(1,437)	4,750	64
Net increase in cash, cash equivalents and restricted cash	<u>\$ 1,382</u>	<u>\$19,822</u>	<u>\$44,085</u>	<u>\$ 5,556</u>

Operating Activities

Net cash provided by operating activities decreased \$8.9 million, to \$5.4 million for the three months ended March 31, 2021 as compared to the same prior year period, mainly due to higher publisher payments in part based on timing, as well as higher payments associated with incentive compensation and merger related costs. These higher payments were partially offset by a \$25.0 million increase in net income after non-cash adjustments.

Net cash provided by operating activities increased \$36.3 million, to \$53.0 million in 2020 from \$16.7 million in 2019, primarily due to a \$21.2 million increase in net income after non-cash adjustments. Net cash provided by operating activities also reflected a \$14.9 million net increase related to favorable changes in working capital, primarily attributable to the growth in our business, particularly in the fourth quarter of 2020, and improved cash collections.

Investing Activities

Cash used in investing activities increased \$0.7 million, to \$2.8 million for the three months ended March 31, 2021 from \$2.1 million in the same prior year period, primarily due to the absence of cash flow from disposal activities in the current year period.

Cash used in investing activities increased \$1.8 million, to \$9.4 million in 2020 from \$7.6 million in 2019, primarily due to lower cash flows related to our acquisition and disposal activities.

Financing Activities

Cash used in financing activities was \$0.8 million for the quarter ended March 31, 2021, primarily comprised of principal payments on capital lease obligations. In the three months ended March 31, 2020, cash from financing activities was \$9.0 million, primarily due to \$10.0 million in borrowings under our revolving credit facility, partially offset by principal payments on capital lease obligations.

Cash used in financing activities increased by \$0.5 million, to \$4.2 million in 2020 from \$3.7 million in 2019 reflecting lower proceeds from exercises of stock options and warrants and increased principal payments on capital lease obligations.

Contractual Obligations

As of December 31, 2020, our contractual obligations are as follows:

	Payments Due by Period				
	Total	2021	2022-2023	2024-2025	2026
Operating lease obligations ⁽¹⁾	\$16,531	\$ 6,437	\$6,235	\$3,458	\$401
Capital lease obligations ⁽²⁾	8,146	4,316	3,702	128	—
Total⁽³⁾	\$24,677	\$10,753	\$9,937	\$3,586	\$401

- (1) Operating lease agreements relate to leases for certain office and data center facilities, as well as certain apartment facilities and motor vehicles.
- (2) Capital lease and other obligations relate to leases for certain servers and related equipment. For the year ended December 31, 2020, we made regular payments totaling \$4.8 million on our capital lease obligations.
- (3) We are unable to reliably estimate the timing of future payments related to uncertain tax positions; therefore, we have excluded \$1.2 million from the preceding table related to uncertain tax positions, including accrued interest and penalties as of December 31, 2020.

Obligations under contracts that we can cancel without a significant penalty and contracts that are variable based upon volume, such as contracts with media partners that guarantee a minimum rate of payment if the media partner reaches certain performance targets, are not included in the table above. See “Definitions of Financial and Performance Measures —Traffic Acquisition Costs.”

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

We believe that the following policies may involve a higher degree of judgment and complexity in their application than most of our accounting policies and represent the critical accounting policies used in the preparation of our financial statements. Readers are encouraged to consider this summary together with our audited consolidated financial statements and the related notes, including Note 2, for a more complete understanding of the critical accounting policies discussed below.

Revenue Recognition

We recognize revenue when we transfer control of promised services directly to our customers, in an amount that reflects the consideration to which we expect to be entitled to in exchange for those services.

We recognize revenue pursuant to the five-step framework contained in ASC 606: (i) identify the contract with a client; (ii) identify the performance obligations in the contract, including whether they are distinct in the context of the contract; (iii) determine the transaction price, including the constraint on variable consideration; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue as we satisfy the performance obligations.

We generate revenue primarily from advertisers through user engagement with the ads that we place on media partners' web pages and mobile applications. Our platform delivers ads to end-users that appear as links to articles, products and videos on media partners' sites.

Our customers include brands, performance advertisers and other advertisers, which we collectively refer to as our advertisers, each of which contracts for use of our services primarily through insertion orders or through our self-service tools, allowing advertisers to establish budgets for their advertising campaigns. Advertising campaigns are primarily billed on a monthly basis. Our payment terms generally range from 30 to 60 days. Because the amount billed is representative of the value of the service delivered to advertisers, we recognize revenue as we satisfy our performance obligations based on the users' clicks or ads displayed because the advertiser can direct the use of, and obtain substantially all of the remaining benefits from, the services simultaneously.

For advertising campaigns priced on a cost-per-click basis, we bill our advertisers and recognize revenue when a user clicks on an advertisement we deliver.

For campaigns priced on a cost-per-impression basis, we bill our advertisers and recognize revenue based on the number of times an advertisement is displayed to a user.

Variable consideration, including allowances, discounts, refunds, credits, incentives, or other price concessions is estimated and recorded at the time that related revenue is recognized. Advance payments from advertisers for future services represent contract liabilities and are recorded as deferred revenue in our consolidated balance sheets.

The determination of whether revenue should be reported on a gross or net basis involves significant judgment. In general, we act as a principal on behalf of our advertisers and revenue is recognized gross of any costs that we remit to the media partners. In these cases, we determined that we control the advertising inventory before it is transferred to our advertisers. Our control is evidenced by our ability to monetize the advertising inventory before it is transferred to our advertisers. For those revenue arrangements where we do not control the advertising inventory before it is transferred to our advertisers, we are the agent and recognize revenue on a net basis. We recognize revenue net of applicable sales taxes.

Stock-based Compensation

We recognize stock-based compensation for stock-based awards, including stock options, warrants, RSAs, RSUs and SARs. Determining the appropriate fair value of stock-based awards requires numerous assumptions, some of which are highly complex and subjective.

Stock option awards, RSAs, RSUs and SARs generally vest subject to the satisfaction of service requirements, or the satisfaction of both service requirements and achievement of certain performance conditions. For stock awards that vest subject to the satisfaction of service requirements, stock-based compensation is measured based on the fair value of the award on the date of grant and is recognized as stock-based compensation on a straight-line basis over the requisite service period. For stock awards that have a performance component, stock-based compensation is measured based on the fair value on the grant date and is recognized over the requisite service period as achievement of the performance objective becomes probable.

We estimate the fair value of our stock option awards on the grant date using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires the use of judgments and assumptions, including fair value of our common stock, the option's expected term, the expected price volatility of the underlying stock, risk free interest rates and the expected dividend yield. The fair value of our RSAs and RSUs is the fair value of our common stock on the date of grant. The fair value of our RSAs and RSUs is estimated on the date of grant based on the fair value of our common stock. We account for forfeitures as they occur.

There were no stock options granted in 2019 or during the three months ended March 31, 2021 or March 31, 2020. In December 2020, we granted 1.8 million stock options to employees, the estimated grant-date fair value of which was calculated using the Black-Scholes option pricing model, based on the following assumptions:

	<u>Year Ended December 31, 2020</u>
Expected term (in years)	6.02
Risk-free interest rate	0.52%
Expected volatility	44%
Dividend rate	0%
Fair value of common stock	\$6.44

The Black-Scholes model assumptions are further described below:

- *Expected term.* The expected term represents the period that our stock-based awards are expected to be outstanding. For option grants that are considered to be “plain vanilla,” we determine the expected term using the simplified method. The simplified method deems the term to be the average of the time-to-vesting and the contractual life of the stock-based awards.
- *Risk-free interest rate.* The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the date of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the stock-based awards’ expected term.
- *Expected Volatility.* Since we do not have a trading history for our common stock, the expected volatility was derived from the average historical stock volatilities of several actively traded public companies within our industry that we consider to be comparable to our business over a period equivalent to the expected term of the stock-based awards.
- *Dividend rate.* The expected dividend rate was assumed to be zero as we have not paid and do not anticipate paying any dividends in the foreseeable future.
- *Fair value of our common stock.* Because there is no public market for our common stock as we are a private company, our board of directors has determined the fair value of the common stock by considering a number of objective and subjective factors, including having valuations of our common stock performed by an unrelated valuation specialist, valuations of comparable peer companies, sales of our convertible preferred stock to unrelated third parties, operating and financial performance, the lack of liquidity of our capital stock, and general and industry-specific economic outlook, as further described under “Valuation of Common Stock” below. The fair value of our common stock will be determined by our board of directors until such time as our common stock is listed on an established stock exchange and the shares begin trading.

If any of the assumptions used in the Black-Scholes option-pricing model change significantly, stock-based compensation for future awards may differ materially compared with the previously granted awards.

Valuation of Common Stock

In the absence of a public trading market for our common stock, the fair value of our common stock is determined by our board of directors, considering input from management and valuations provided from an independent third-party valuation specialist. We develop an estimate of the fair value of our common stock to determine an exercise price for each stock option award. Our board intended all options granted to have an exercise price per share not less than the fair value of our common stock underlying those options on the date of grant. We have determined the fair value of our common stock using methodologies, approaches and assumptions consistent with the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held-Company Equity Securities Issued as Compensation.

The assumptions used in the valuation models were based on future expectations combined with management’s judgment, and consider a number of highly complex and subjective factors to determine the best estimate of the fair value of our common stock as of the date of each grant, including the following:

- our operating and financial performance;

- current business conditions and projections;
- the market price of actively traded comparable peer companies in similar lines of business;
- the rights and restrictions associated with each class of equity;
- the lack of liquidity of our common stock; and
- the likelihood of achieving potential liquidity events, such as an initial public offering

For our valuations, the fair value of our common stock was generally estimated using a combination of income and market approaches. The income approach estimates the aggregate enterprise value of our company based on the present value of future estimated cash flows that we expect to generate. These future cash flows are discounted to their present values using a discount rate based on analysis of the weighted-average cost of capital for comparable public company industry peers and adjusted to reflect the risks inherent in our business cash flows.

We used the option pricing method, or OPM, to allocate the enterprise value determined under the income approach to each element of our capital structure, including our common stock. Under the OPM, ordinary and preferred shares are treated as call options, with an exercise price based on the liquidation preference of the preferred shares. The value of the call options is determined using the Black-Scholes option-pricing model. The OPM considers the capital structure of the company, the seniority of securities, future financing needs, the time to liquidation event.

We also used the market approach to estimate the aggregate enterprise value of our company by applying market multiples of key metrics from comparable public company industry peers, or guideline companies. We believe that using revenue and EBITDA multiples to estimate our aggregate enterprise value was appropriate given our focus on growing our business and because our comparable public company industry peers were in various stages of growth and investment. These multiples were adjusted based on the assessment of the strengths and weaknesses of our company relative to those comparable public company industry peers.

Under the market approach, we determined the value of our common stock by calculating the present value of our enterprise value from a future expected initial public offering date and allocating this value to our outstanding common shares at the valuation date, on a fully diluted-basis, assuming all our stock-based awards were exercised.

The marketable value of our common stock is estimated upon using a weighted average of various exit event scenarios, such as a strategic sale or an initial public offering, which requires significant assumptions.

In addition, under both approaches, a discount adjustment was applied to the valuations due to the lack of marketability of the ordinary share because stockholders of private companies do not have access to trading markets, compared to stockholders of public companies. The discount for marketability was determined using a put option model, which is based on using a put option as a proxy for a lack of marketability of security, estimated using the Black-Sholes option-pricing model. The significant assumptions involved were the same as described above.

The third-party valuations are performed at least once every twelve months, or more often if there is a material event that may affect our value. Accordingly, the dates of our valuations do not always coincide with the dates of our stock-based compensation grants. In such instances, we based the fair value on the most recent preceding valuation of shares of our common stock. For valuations after the completion of this offering, our shares will be publicly traded and the fair value of our awards will be based on the closing price of our common stock on the date of grant.

Income Taxes

We are subject to income taxes in the United States and numerous foreign jurisdictions. Significant judgment is required in determining our provision for income taxes and income tax assets and liabilities, including evaluating uncertainties in the application of accounting principles and complex tax laws.

We record a provision for income taxes for the anticipated tax consequences of the reported results of operations using an asset and liability approach, which requires recognition of deferred income tax assets

and liabilities for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities, as well as for operating loss and tax credit carryforwards. Deferred income tax assets and liabilities are measured using the currently enacted tax rates that apply to taxable income in effect for the years in which those tax assets and liabilities are expected to be realized or settled. We record a valuation allowance to reduce our deferred tax assets to the net amount that we believe is more likely than not to be realized.

We recognize tax benefits from uncertain tax positions only if we believe that it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. Although we believe that we have adequately reserved for our uncertain tax positions, we can provide no assurance that the final tax outcome of these matters will not be materially different. We make adjustments to these reserves when facts and circumstances change, such as the closing of a tax audit or the refinement of an estimate. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will affect the provision for income taxes in the period in which such determination is made and could have a material impact on our financial condition and operating results. The provision for income taxes includes the effects of any reserves that we believe are appropriate, as well as the related interest and penalties.

Accounting for Convertible Instruments

On January 1, 2021, we early adopted Accounting Standards Update (“ASU”) 2020-06, “Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity,” which simplified the accounting for convertible debt instruments by reducing the number of accounting models used to allocate proceeds from five to three, removing certain conditions for equity classification and amending earnings per share calculations to assume share settlement and to require the if-converted method to be applied to all for convertible debt instruments. The adoption of this standard did not have an impact on our consolidated financial statements as of the date of adoption. We will apply this guidance to our Convertible Notes upon consummation of our IPO.

Off-Balance Sheet Arrangements

We do not currently engage in off-balance sheet financing arrangements. In addition, we do not have any interest in entities referred to as variable interest entities, which includes special purpose entities and other structured finance entities.

Recently Issued Accounting Pronouncements

See Note 1 to the accompanying consolidated financial statements for recently issued accounting standards, which may have an impact on our financial statements upon adoption.

Quantitative and Qualitative Disclosure about Market Risk

We have operations both in the United States and internationally, and we are exposed to market risks in the ordinary course of our business. These risks primarily include interest rate and foreign exchange risks. We do not believe that we have any material exposure to inflationary risks.

Foreign Currency Risk

Our consolidated results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates. A substantial majority of our revenue and cost of revenue are denominated in U.S. Dollars, with the remainder in other currencies. Our operating expenses are generally denominated in the currencies in which our operations are located. A majority of our operating expenses are denominated in U.S. Dollars, with the remainder denominated primarily in New Israeli Shekels and to a lesser extent British pound sterling and Euros. We evaluate periodically the various currencies to which we are exposed and, from time to time, may enter into foreign currency forward exchange contracts to manage our foreign currency risk and reduce the potential adverse impact from the appreciation or the depreciation of our non-U.S. dollar-denominated operations, as appropriate.

The effect of a hypothetical 10% increase or decrease in our weighted-average exchange rates on our revenue, cost of revenue and operating expenses denominated in foreign currencies would result in a

\$2.5 million favorable or unfavorable change to our operating income for three months ended March 31, 2021, a \$5.4 million favorable or unfavorable change to our operating loss for the year ended December 31, 2020, and a \$3.6 million favorable or unfavorable change to our operating loss for the year ended December 31, 2019.

Interest Rate Risk

Our exposure to market risk for changes in interest rates relates primarily to our cash and cash equivalents and our outstanding debt obligations. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of the interest rates in the United States.

Our total indebtedness, including capital lease obligations was \$7.1 million and \$7.4 million as of March 31, 2021 and December 31, 2020, respectively. Our exposure to interest rates relates to the change in the amounts of interest we must pay on our borrowings, which bear both a fixed and variable rate of interest. The effect of a hypothetical 100 basis point change in our interest rate would not have a material impact on our interest income or interest expense in our consolidated financial statements.

JOBS Act Transition Period

We are an emerging growth company as defined in the JOBS Act. The JOBS Act provides that an emerging growth company may take advantage of an extended transition period for complying with new or revised accounting standards, delaying the adoption of some accounting standards until they would otherwise apply to private companies. We have elected to use the extended transition period under the JOBS Act for the adoption of certain accounting standards until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements may not be comparable to companies that have adopted new or revised accounting pronouncements as of public company effective dates.

Business

Our mission is to help digital media owners thrive by recommending content, products and services that users love.

Outbrain is a leading recommendation platform powering the open web. Founded in 2006, we pioneered the online content recommendation category. Today our platform enables over 7,000 online properties, including many of the world's most prestigious publications, helping them engage their users and monetize their visits. Fueled by over 1 billion data events gathered each minute, our platform matches audiences with personalized content and ads, driving quality engagement while delivering efficient, sustainable monetization.

Over the past decade, consumers have become increasingly accustomed to seeing highly curated digital content and ads that align with their unique interests. Similar to the way in which social media and search have simplified discovery by synthesizing billions of consumer data points to offer personalized feeds, we provide media partners with a platform that encompasses data scale as well as prediction and recommendation capabilities, helping them deliver a personalized feed of recommendations tailored to their users, based on user interests, preferences, and context. We are a mobile-first company and our Smartfeed technology and recommendations are highly effective on mobile devices. We generated over 66% of our revenue on mobile platforms in 2020.

Since inception, we have been guided by the same core principles pertaining to our three constituents: media partners, users, and advertisers.

Media Partners. We are committed to the long-term success of our media partners. Consistent with this philosophy, we focus on developing trusted, transparent, typically exclusive, multi-year partnerships with media partners, both traditional and in new and rapidly evolving categories.

Users. We believe that by focusing on improving the user experience we are able to cultivate user behavior patterns that compound engagement over time, delivering superior long-term monetization for ourselves and for our media partners.

Advertisers. We strive to grow our advertising business by increasing overall user engagement, rather than price per engagement. Our emphasis on user engagement helps us improve advertisers' return on ad spend ("ROAS") thus unlocking more advertising spend and attracting more advertisers. In turn this enables us to better match ads to users and further grows user engagement and overall monetization.

We have delivered over \$3 billion in direct revenue to our media partners, since inception. We partner with thousands of the world's most trusted digital media owners for which we believe we are an important technology partner. Some of our key media partners include Asahi Shimbun, CNN, Der Spiegel, Le Monde, MSN, Sky News and Sky Sports, and The Washington Post. The average tenure of our top 20 media partners, based on our 2020 revenue, is approximately seven years.

Through our relationships with media partners, we have become one of the largest online recommendation and advertising platforms on the open web. In 2020, we provided personalized content feeds and ads to approximately 1 billion monthly unique users, delivering on average over 10 billion recommendations per day, with over 20,000 advertisers using our platform. In the first quarter of 2021, our platform powered an average of over 100,000 ad campaigns per day.

Our platform is user engagement focused. A significant proportion of the engagement created by our recommendations is with the content of the media partner for which we are providing the platform, which we refer to as 'organic recommendations.' This provides the user with a personalized content experience, while increasing time spent and engagement on the media partner's digital properties. We believe this is crucial to increasing long-term loyalty and retention of users for media partners, while increasing the depth and value of user visits in the short term. Powering a curated feed of both organic recommendations and targeted ads creates significant proprietary, first-party data that enables us to continuously refine our prediction capabilities, supporting our efforts to further increase engagement.

Advertisers use our platform to reach consumers efficiently through various ad formats across thousands of premium digital media properties around the world. Our platform provides access to a significant volume of exclusive ad inventory within the content feeds of these premium digital media

properties. Advertisers primarily use our platform for performance driven campaigns, with measurable outcomes. Our ability to drive value and ROAS for advertisers, at scale, is highlighted in the growth of ad spend through our platform.

Data and algorithms are fundamental to everything we do. We process over 1 billion data signals per minute, powering up to 100 million Click Through Rate (“CTR”) predictions and over 100,000 recommendations per second. This drives our ability to deliver approximately 40 million engagements per day. Our ability to collect and synthesize large data sets into our real-time decisioning engine powers our recommendations, our feed experiences and our ad targeting, helping us optimize user engagement and monetization. As our platform grows, we are able to leverage our data scale in order to enhance our algorithms, enabling us to improve the efficacy of our platform. This, in turn, drives additional user engagement and thus more monetization for our partners and ourselves, which helps us further grow our business and scale our data. We refer to this phenomenon as our data flywheel. During 2020, we grew overall engagement with recommendations on our platform by 24% on a year over year basis. Engagements with recommendations include a user click on one of our recommendation links or a view of a video that we recommended. We believe engagements are an indicator of the value users find in our recommendations and the value we create for our media partners through increased monetization.

We are targeting a large, fragmented and growing market. Over four billion consumers access the Internet and, by 2022, the average person in the United States will spend more than eight hours a day consuming digital media, according to eMarketer. eMarketer also states that approximately \$378 billion was spent on global digital advertising in 2020. By 2024, this figure is expected to increase to \$646 billion. Approximately 40% of the world’s population has yet to gain access to the Internet. We believe a second factor will complement the increased activity of more people arriving online: the significant majority of consumption and economic activity, such as retail, still takes place offline. As the migration to online takes place, there remains significant future growth potential in eCommerce, given that just 14% of total retail sales in the United States in 2020 occurred online, according to the U.S. Department of Commerce. Online retail sales are both growing and fragmenting, with the leading eCommerce giant’s share of sales declining between 2019 and 2020 from around 44% to roughly 31% according to Digital Commerce 360 estimates. We believe this represents an opportunity as the broader ecosystem of retailers seek advertising and technology partners to support their continued online growth. Advertisers increasingly expect measurable impact from their digital advertising investment, often preferring to pay for outcomes rather than pay for media, according to a 2020 Jounce market outlook report. Within digital advertising, more engaging and user friendly formats, such as native and video, represent the fastest growing segments for ad spend, outgrowing search and traditional forms of display, according to eMarketer. Given our ability to deliver high impact and measurable performance to our advertisers, significant reach and unique inventory, we believe that we are well positioned to capture a significant share of this growing market.

We have a track record of consistently growing our business, and have achieved significant scale with \$767 million of revenue in 2020 and \$228 million of revenue for the quarter ended March 31, 2021. Our business is profitable and we are benefiting from strong operating leverage as we grow. Our net income was \$4.4 million in 2020, compared to a net loss of \$20.5 million in 2019. Our net income was \$10.7 million for the quarter ended March 31, 2021, up from a net loss of \$9.6 million in the prior year period. Our gross profit was \$165.1 million in 2020, up from \$141.8 million in 2019 representing year over year growth of 16.4%. In the second half of 2020, our gross profit grew by 36.0%, compared to the second half of 2019, highlighting the momentum in our business. Our gross profit was \$53.5 million for the quarter ended March 31, 2021, up 63.7% from \$32.7 million for the quarter ended March 31, 2020. Our Ex-TAC Gross Profit was \$194 million in 2020, up from \$170 million in 2019 representing year over year growth of 14.1%. In the second half of 2020, our Ex-TAC Gross Profit grew by 28.8%, as compared to the second half of 2019, highlighting the momentum in our business. Our Ex-TAC Gross Profit was \$60.4 million for the quarter ended March 31, 2021, up 49.1% from \$40.5 million from the quarter ended March 31, 2020. Our Adjusted EBITDA more than doubled to \$41.1 million in 2020, from \$19.3 million in 2019. In the three months ended March 31, 2021, our Adjusted EBITDA grew nearly tenfold to \$20.6 million, from \$2.2 million in the comparable prior year period. Adjusted EBITDA was 21.2% and 11.3% of Ex-TAC Gross Profit in 2020 and 2019, respectively. Adjusted EBITDA was 34.1% and 5.4% of Ex-TAC Gross Profit for the quarter ended March 31, 2021 and 2020, respectively.

Our Industry

Advertising is the primary business model for digital media on the open web. In addition, advertising is also increasingly used as a key revenue driver for other Internet based businesses, such as mobile gaming and eCommerce. As a result, digital advertising not only subsidizes media consumption for billions of consumers globally, but also finances the creation of journalism, news, and entertainment, while lowering the costs to consumers of various products and services.

We believe that the following industry trends are relevant to our business.

Proliferation of digital media, and digital advertising, particularly across mobile environments. According to eMarketer, by 2022 the average person in the United States will spend more than eight hours a day consuming digital media. In addition, the average U.S. consumer's mobile device use grew from 87 minutes per day in 2012 to 271 minutes per day in 2020, a 211% increase. In order to address this change in consumer usage patterns, most media providers have shifted their focus from traditional means of content delivery to digital ones, with new 'digital-native' providers increasingly gaining share of attention. Advertising spend follows time spent and engagement, and mobile ad spend is expected to increase at a faster pace than digital ad spend in total. According to eMarketer, by 2021 global digital ad spend will grow to \$455 billion, a 20.4% year over year increase, and mobile ad spend will grow to \$341 billion, a 23.5% year over year increase, with U.S. mobile ad spend surpassing \$130 billion in the same year. Of that, 40.2% is expected to go to search, with 55.2% expected to go to forms of display advertising, including native and video. The percentage of total media ad spending in digital is projected to be 60.9% in 2021, 63.6% in 2022, 65.9% in 2023, 67.8% in 2024 and 69.5% in 2025. Advertisers increasingly expect measurable impact from their digital advertising investment, often preferring to pay for outcomes rather than pay for media, according to a 2020 Jounce market outlook report. Within Digital Advertising, more engaging and user friendly formats such as Native and Video represent the fastest growing segments for ad spend, outgrowing Search and traditional forms of Display, according to eMarketer.

Consumer habits and expectations are changing. Consumers have grown accustomed to consuming engaging content that is personalized and curated across multiple digital formats, including social, entertainment, gaming and audio. On mobile environments, consumers habitually scroll through apps, mobile browsers and news feeds, such as those found on social media, providing continuous opportunities to deliver personalized advertising experiences. As a result, we believe that personalized and engaging digital content experiences, supported by non-intrusive ads, have become the expectation of media owners, rather than a consumer luxury.

Trusted editorial content is becoming increasingly important. The massive scale of content creation and distribution across social media has made it difficult to curb the creation and proliferation of factually inaccurate news and misinformation, leading to a growing distrust of user-generated social media content. In a Kantar Dimensions study published in May 2020, social media was ranked as the least trusted medium, with only 17% of consumers citing Facebook and Twitter as reputable sources of information. At the same time, advertisers are growing increasingly concerned about having their messages shown alongside unsavory user-generated content. According to the CMO Council, 72% of advertisers are concerned about brand integrity on social media. As a result, advertisers have become increasingly cognizant of where they spend ad dollars, seeking media environments that prioritize quality, transparency and brand safety.

Performance and ROAS are becoming increasingly important to advertisers. As digital advertising continues to consume a larger share of advertiser budgets, the ability to target advertising based on specific user interests and context, in real-time, has become increasingly important to advertisers, as it contributes to more efficient campaigns and improved ROAS. This creates demand for solutions that can adjust in real-time while measuring and optimizing for specific price and performance thresholds. As tools for targeting and tracking become more sophisticated and effective, advertisers are increasingly relying on performance pricing models to drive more measurable ROAS, for example, paying for a click (cost-per-click), lead, acquisition, download, install, or sale, instead of paying to simply display an ad which may or may not create value. According to a 2019 IAB report, approximately 63% of 2019 internet advertising revenues were priced on a performance basis. Many advertisers, including the largest brands, leverage third-party software and predictive data-driven models to meet their performance goals. In parallel, increasingly user friendly and

engagement-focused formats of digital advertising have evolved to better serve advertisers seeking performance and ROAS.

Data-driven decisioning delivers better experiences and outcomes. Advances in software and hardware along with the growing use of the Internet have made it possible to collect and rapidly process massive amounts of real-time data signals related to content, context and performance. Leveraging data at scale, advertising technology providers can dynamically serve content or ads that integrate seamlessly into user environments to deliver tailored, impactful experiences. The decisioning intelligence developed by leading technology providers and large Internet platforms has made advertising more engaging for users and more effective for advertisers. As a result, advertisers are increasingly focused on data-driven decisioning, making these capabilities critical for media partners, as they seek to deliver quality experiences to their users while maintaining their relevance with advertisers.

The Challenge for Digital Media Owners

As the pace of online content creation and consumption continues to accelerate, and competition for user attention intensifies, digital media owners must focus on their core strength: creating relevant, interesting, quality content. However, their success also depends on sustainably attracting, engaging, retaining and monetizing audiences while competing with the major social and aggregation platforms, known as the ‘walled gardens.’ These platforms, driven by the nature of their services and their scale, have significant resources to invest in technology and have amassed large volumes of coveted user data, enabling them to deliver highly targeted and thus effective ads alongside user generated or third-party content, helping them achieve an outsized share of the advertising market.

As a result, we believe that digital media owners, whose properties are often referred to as the ‘open web,’ face challenges in the following key areas:

User experience. In today’s dynamic, mobile-first environment, providing a high-quality user experience that addresses consumer habits and expectations is critical to attracting, engaging and retaining audiences. For example, over the past few years, consumers have grown accustomed to receiving personalized content recommendations, which are now common within the walled gardens. In addition, infinite scrolling feeds of content have also become popular, especially on mobile devices. Keeping pace with these changes, as well as other emerging products and features, represents a significant challenge to many digital media owners who lack the scale and resources required to compete.

Monetization. The fragmented ecosystem of digital advertising technology intermediaries, constantly evolving landscape of ad formats and the growing sophistication of advertisers seeking measurable ROAS makes it difficult for digital media owners to develop and maintain the technology required to optimize their monetization. In addition, digital media owners often lack access to a large and diverse advertiser base. As a result, they may not benefit from the variety of ads that are necessary in order to optimize consumer engagement and thus overall monetization.

Our Solution

We enable digital media owners to provide their users with an experience that is personalized and relevant to their interests while generating incremental revenue through highly engaging content recommendations and relevant advertisements. Our platform is informed by large, proprietary data sets. Our recommendation engine relies on advanced artificial intelligence technology and machine learning algorithms. We leverage our scale, gained through a large number of partners and advertisers, in order to grow and enhance our data and our technology continuously.

By delivering relevant content recommendations that personalize the user experience, alongside targeted ads, our platform increases and monetizes user engagement. Our technology platform forms the underlying “operating system” of our media partners’ content feeds, helping them manage and grow their business.



We focus on the long-term

- ***Our goal is to delight the user.*** We believe in the compounding value that is generated by increasing user engagement. As a result, we aim to delight users by recommending relevant content in order to deliver superior long-term monetization for our media partners and ourselves.
- ***Quality is fundamental.*** We partner with prestigious and trusted digital media owners around the world. Through our commitment to working with the most credible sources of digital media and content creators, we have created an ecosystem trusted by publishers, advertisers and users alike.
- ***Deep integrations are key.*** Our technology is deeply integrated with our partners' systems, enabling us to roll out new products and features at pace. As a result, our partners gain the flexibility to capitalize on new forms of content distribution and advertising, as well as shifting consumer preferences, empowering them to achieve their growth and monetization objectives.
- ***Transparency builds trust and alignment.*** By maintaining transparency on pricing, data collection and efficacy, we align our incentives with those of our partners and work to ensure their objectives are achieved, driving the long-term success of our business.

Our Offering for Media Partners

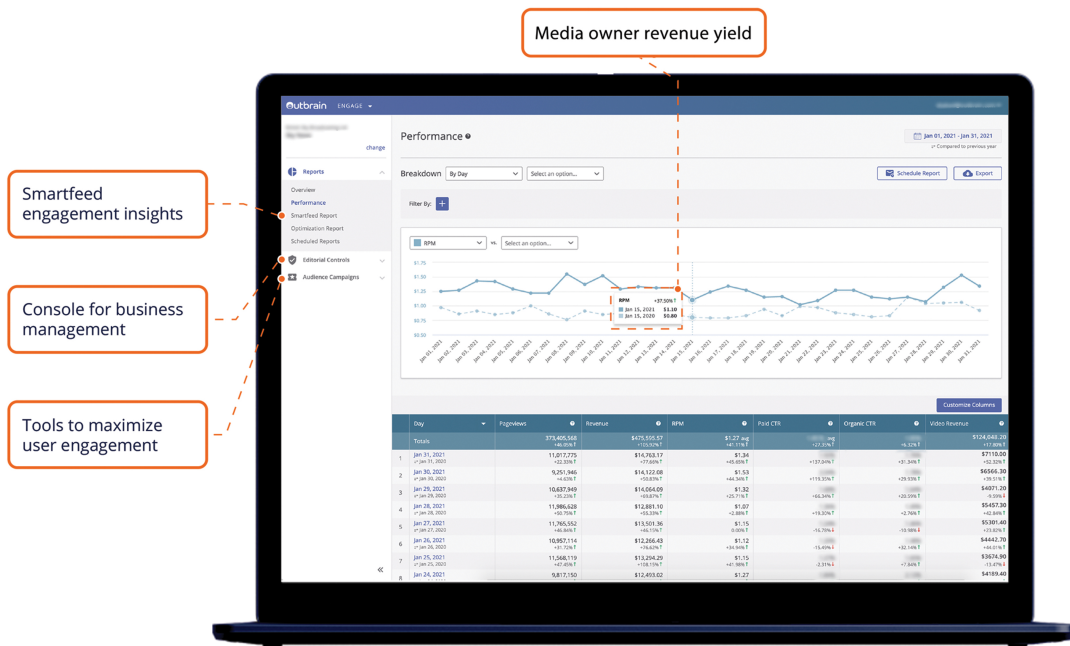
We provide media partners with an 'operating system' that helps them manage and grow their businesses. Our platform and products provide the data, scale, and technology capabilities to personalize the content experience, grow audiences, maximize user engagement and monetize content. We empower media partners, enabling them to innovate their user experience by continuously introducing new features, capabilities and technologies that help optimize content delivery through personalized recommendations. We aggregate advertiser demand on behalf of media partners, providing them with critical monetization. Media partners benefit from the combined scale of technology, data and users, which we derive from the large volume of partners and advertisers that use our platform.

Our product suite for media partners, Outbrain Engage, encompasses multiple key technologies, enabling media partners to:

- ***Delight users through personalized feeds and data-driven recommendations.*** Our platform synthesizes billions of data points, including context, user interests and behaviors to provide

customized recommendations to users. Our Smartfeed product is a powerful solution for media partners to personalize content recommendation for users. The modular format of the feed enables media partners to customize the order, layout, and composition of content based on consumers’ context, interests and preferences.

- Monetize content through customized, data-driven advertising.** We deliver critical revenue that media partners depend on to operate their business. Our platform and partner integrations supports a wide range of ad formats that leverage unique data insights in order to maximize revenue. Our algorithms balance revenue yields with overall user experience and can be harnessed to support additional revenue initiatives. Outbrain typically provides media partners with close to a 100% fill rate of the ad inventory managed by Outbrain; we believe that Outbrain’s role as an end-to-end solution, working directly with both media owners and advertisers, provides an economic advantage for our partners. It is estimated that media owners typically keep 40-50% of ad spend after it has passed through the variety of ad tech and programmatic point solutions, compared to around 70% of spend from Outbrain’s advertisers being passed on to our media partners.
- Maximize user engagement.** Our solution enables media partners to engage and retain their audience, helping them achieve multiple business outcomes such as time spent with their content, growth of digital subscriptions, app downloads, podcast engagement and more. In addition, our proprietary optimization engine is an always-on testing and optimization solution that continuously enhances page layouts for maximum engagement and value.
- Manage their business.** Outbrain Engage provides media partners with a web-based dashboard enabling them to manage and control various aspects of our platform including the content, formats, sources, frequency and categories of ads delivered on their properties. In addition, we provide precise advertiser and creative classification and filtering tools while strictly enforcing rigorous ad and content quality requirements. We operate at great scale, with an average of approximately 100,000 new ads uploaded to our platform daily in the fourth quarter of 2020. We review all ads before they go live on Amplify, our product suite for advertisers, either through our automated processes or manually, ensuring compliance with our strict content guidelines (which are available publicly on our website). We reject, on average, over 20% of new ads submitted. Our extensive content review processes and automated monitoring tools provide a further layer of quality control for media partners.



We have over 4,000 media partner arrangements. We document most of our media partner arrangements using standard contract terms, which are comprised of a partner enrollment form, completed by media partners seeking our services, that hyperlinks to our publicly available standard partner distribution terms. The partner enrollment form contains the commercial terms of our arrangements: term length (initial, auto-renewal and notice period), the specified percentage of the revenue earned from implementing our technology on the media partner pages, the payment terms, as well as any additional terms agreed upon by the parties. The hyperlinked standard partner distribution terms include terms related to the license and use of the platform and technology, limitations on use of similar technologies, and customary terms and conditions. Other media partner arrangements may also include a guaranteed minimum rate of payment if the media partner meets certain additional criteria, including the implementation of advertisements in defined placements.

In addition, certain media partner arrangements may have additional commercial terms such as variable revenue percentages based on page view volume or revenue, access to customized reporting, further detail around use or limitations of similar services, and additional termination rights. We also have arrangements with media partners on a programmatic basis such that the contract defines the mechanics to participate in the media partner's real-time auction for access to media partner's inventory, with neither party committing to provide or bid on inventory.

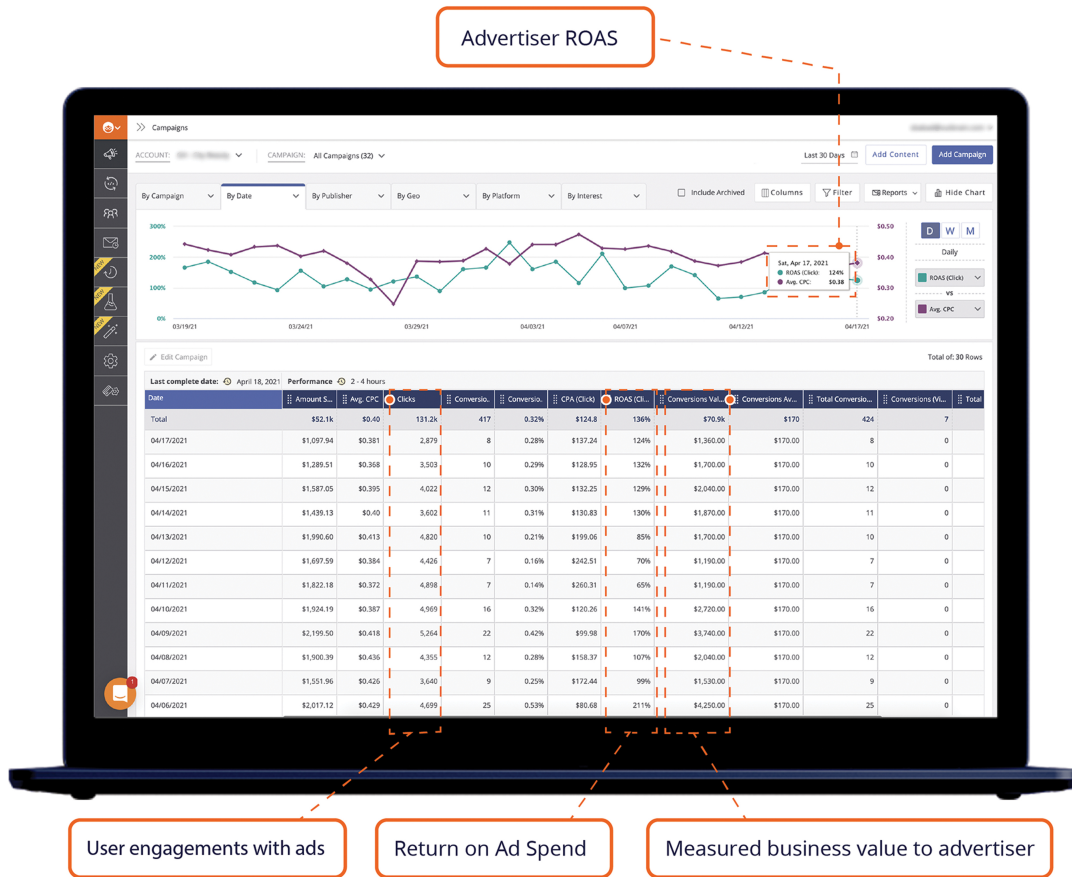
Our Offering for Advertisers

Our platform enables advertisers to have one-on-one interactions with consumers, at scale. We provide advertisers a powerful open web platform with significant reach and exclusive inventory, helping them connect with audiences on premium digital properties. Using Outbrain Amplify, our product suite for advertisers, we enable them to focus their campaigns on the users most likely to engage with their ads. Advertisers log into our platform directly to create campaigns, load or automatically generate creative assets, and manage their advertising activity on the open web, all while optimizing spend toward engagement and ROAS.

Outbrain Amplify provides advertisers with:

- ***Seamless and non-intrusive ads.*** We provide advertisers access to ad inventory that benefits from high user attention by delivering ads that are native to the user experience and are personalized based on our unique understanding of each user's context and interests. We call our ads Smartads™ because they are component-based and dynamically match the look and feel of the content where they are placed. Our Smartads support a variety of formats, including text and image, video, interactive carousel, app install and other forms of direct response.
- ***Ads optimized for engagement.*** Our deep and direct integration across the digital properties of thousands of media partners provides us with a wealth of proprietary data pertaining to user engagement and content consumption patterns. This enables us to deliver ads based on our user interest graph, as well as other unique data-driven tools and technologies. We believe that our direct integrations and exclusive partnerships are a differentiator when compared to most other online advertising solutions. Unlike other solutions, which often connect an advertiser to an available ad opportunity in a non-exclusive manner, typically mediated by other third-party platforms and technologies, our platform benefits from direct visibility into users' overall engagement.
- ***Results—optimize and pay for performance.*** Our platform enables advertisers to optimize to specific campaign goals, and buy on a Cost-per-Click basis, guaranteeing engagement and delivering other measurable business outcomes. We maintain transparent performance metrics, and advertisers are able to view progress, manage ongoing campaigns and maximize ROAS. Our autopilot feature enables advertisers to set their goals and key performance indicators and allows Amplify to automatically optimize bid prices and budget allocations to hit these goals. Advertisers and their agencies wishing to transact through programmatic channels can use Zemanta, our programmatic platform, as well as other third-party programmatic platforms.
- ***Quality.*** We work with established media partners, employing rigorous selection criteria, onboarding standards, controls, processes, and ongoing monitoring. As a result, our platform

provides predominantly exclusive access to engaged users in high quality content environments across many of the world’s most trusted media properties.

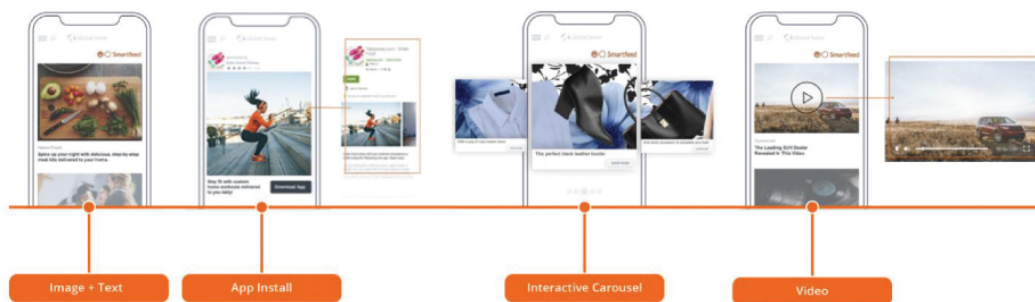


Our Personalized Feed Experience for Users—Smartfeed

Smartfeed is our personalized feed solution that drives deeper discovery of content, products and services, longer sessions and better user engagement. Smartfeed powers the content feeds of thousands of the world’s most prestigious digital media owners, combining highly engaging multimedia formats, such as text and image, or video, with a diverse range of experiences and dynamic optimizations, continuously improving a personalized user experience.



Our Smartfeed technology supports a wide variety of ad creative formats, including:



Our Strengths

- **Mission-critical partner for digital media owners.** We provide digital media partners with mission-critical technology, an “operating system,” that increases user engagement and content monetization. The capabilities and revenue we provide enable many of our partners to sustain their businesses and deliver quality journalism, in some cases as they continue a long-term transition away from historic reliance on offline ad revenue. We are a trusted partner for some of the world’s most prestigious publications, including The Asahi Shimbun, CNN, Der Spiegel, Le Monde, MSN, Sky News and Sky Sports, and The Washington Post. The average tenure of our top 20 media partners, based on 2020 revenue, is approximately seven years.
- **Unique, at-scale platform for advertisers.** Through our vast and predominantly exclusive relationships with media partners, we provide advertisers with access to approximately 1 billion

unique monthly users. The breadth of our audience reach enables advertisers to deliver at-scale campaigns and to optimize the performance of their advertising spend.

- **Unique proprietary data and algorithms driving a virtuous cycle.** Our direct integrations across our partners' properties provide us with a large volume of proprietary first-party engagement data, including context, user interest and behavioral signals. Leveraging our data, we continuously optimize our algorithms to improve CTR and ROAS. For the last six months ended December 31, 2020, CTR for ads on our platform improved by 25% relative to the second half of 2019. By delivering better results to advertisers we are able to grow our business and our platform, which, in turn, helps us collect more data and further enhance our algorithms, driving better results for our partners, helping us further grow our platform and our business.
- **Well positioned for a privacy-centric world.** By integrating directly with our media partners' properties we generate proprietary first-party data and are able to collect and infer valuable user related data and insights. In addition, our ability to use unique contextual signals enables us to deliver strong user engagement and advertiser ROAS without the need to rely solely on user-based targeting, typically enabled through user tracking technologies that may not be available in the future.
- **History of successful innovation.** We pioneered our category and have been focused on innovation since our founding. To ensure seamless product innovation we operate as a continuous deployment engineering organization, releasing an average of approximately 250 code deployments daily. We plan to continue investing in our platform and its features.
- **Scaled, profitable and diversified business.** We have grown our business rapidly while achieving profitability, demonstrating the power of our technology, the strength of our partner and advertiser relationships and the inherent operating leverage of our model. In 2020, we achieved \$767.1 million in revenue, \$165.1 million in gross profit, and \$194.3 million in Ex-TAC Gross Profit, reflecting year over year growth of 11.6%, 16.4% and 14.1%, respectively. In 2020, net income was \$4.4 million, or 2.6% of gross profit, compared to a net loss of \$20.5 million, or (14.5%) of gross profit, in 2019. Adjusted EBITDA more than doubled to \$41.1 million, or 21.2% of Ex-TAC Gross Profit, in 2020 from \$19.3 million, or 11.3% of Ex-TAC Gross Profit, in 2019. Our revenue, gross profit and Ex-TAC Gross Profit was \$228.0 million \$53.5 million, and \$60.4 million, respectively, for the quarter ended March 31, 2021, up from \$177.3 million and \$40.5 million, respectively, for the quarter ended March 31, 2020. Our business is well diversified. In 2020 our top twenty digital media partners accounted for approximately 49% of our revenue, with the largest accounting for 11% of our revenue. During the same year, our top twenty advertisers accounted for approximately 25% of our revenue, with the largest accounting for approximately 3% of our revenue.
- **Team and culture.** Companies cannot effect the change they aspire to achieve without passionate, innovative employees. We rely on a global and diverse team of highly capable employees to collaborate, innovate, and execute our vision—to empower high quality journalism and content creation. Outbrain routinely conducts anonymous employee engagement surveys; according to the survey in early 2021 which had a 91% employee participation rate, 93% of our employees responded that they would “recommend Outbrain as a great place to work.”

Our Growth Strategies

We believe that we are well positioned to capitalize on the continued growth of digital content consumption and digital advertising. We intend to continue investing in technology and innovation to improve our recommendation engine and product offering, support our efforts to grow relationships with existing and new media partners, and expand our advertiser footprint and share of wallet. We plan to pursue the following growth strategies:

- **Continuously improve user engagement.** Improving the quality of our recommendation engine has been an important driver of past growth and we expect it to remain a key driver of future growth. We believe that a great user experience drives engagement that compounds over time. Continued investment in our technology, artificial intelligence and machine learning capabilities

drives a better user experience, resulting in better CTR predictions and, in turn, higher monetization yield and revenue. We believe that we can significantly grow our business solely by improving user engagement.

- **Grow our ad inventory.** We have an extensive history of growing ad inventory by expanding our media partnerships and forming new ones.

Existing partners. We have a strong track record of growth through the continuous expansion of existing media partnerships, as we launched products, features and formats that improved user engagement and retention, grew audiences, and improved monetization. We plan to continue innovating as we seek to grow our ad inventory by implementing optimizations, creating new ad formats, seeking additional ad placements, and pursuing opportunities to manage a larger proportion of our media partners' digital properties. In addition, we plan to expand our partnerships with software and hardware providers, enabling us to offer personalized content feeds for browsers and mobile operating systems.

New partners. We plan to pursue new partnerships with media owners as well as integrations with programmatic platforms that will expand our reach to additional user segments, helping us grow our business.

- **Grow advertiser spend.** We plan to grow spend from existing, as well as new advertisers by pursuing the following initiatives:
 - *Further invest in our advertiser product suite.* In the past, improvements to our advertiser solutions have been a meaningful driver of growth for our business. We plan to continue investing in Amplify and Zemanta in order to deliver better tools and technologies for advertisers on our platform.
 - *Continuously improve ROAS.* We aim to deliver better results for advertisers through improved CTR, as well as automation in pricing and conversion optimization, helping us grow existing and new advertisers' share of wallet.
 - *Grow brand spend.* We plan to expand our existing suite of solutions aimed at brand advertisers. We believe that we will be able to capture significant spend from new and existing advertisers by providing new capabilities, such as additional exclusive ad placements, new optimization solutions, and unique ad formats, amongst others.
 - *Grow the number of advertisers.* In addition to investments in our advertiser product and technology, we plan to invest in sales and marketing initiatives aimed at attracting new advertisers to our platform. We believe Zemanta will continue to gain adoption amongst leading agencies and brands, and that new programmatic demand partners will enable us to continue to expand our advertiser footprint.
 - *Drive adoption of high impact ad formats.* High impact ad formats such as video, content highlight reels, and interactive carousel represent a significant opportunity to improve monetization of existing inventory. We plan to expand our offerings and capabilities in order to drive continued adoption by advertisers of these formats, helping them reach more of their target audience and achieve their campaign goals, enabling us to grow our business. The addition of video ad formats to our platform and advertiser offering is evidence of the significant opportunity for growth and has already delivered strong returns. From 2018 to 2020, we grew video revenues from approximately 2% to approximately 8% of our annual revenue.
 - *Acquisitions and strategic partnerships.* We have a track record of successfully executing a number of acquisitions and partnerships, helping us efficiently expand our offerings, grow our business and grow our talent. In 2017, we acquired Zemanta, providing us with advanced programmatic capabilities. In 2018, we acquired AdNgin, an advanced user interface optimization platform. We intend to continue pursuing partnership and acquisition opportunities that will enhance our technology or market presence and deliver more value to our partners and advertisers.

Our Competition

The digital advertising industry is highly competitive and fragmented. We compete for advertising dollars and media owner partnerships with advertising technology platforms such as Criteo, Magnite, PubMatic, Taboola, The Trade Desk, Viant and Xandr (AT&T), as well as large consumer-facing digital platforms with advertising technology capabilities, such as Amazon, Facebook, Google and Twitter. The key factors that enable us to compete effectively for inventory from digital media owners include:

- the ability to deliver competitive monetization and engagement on media partner properties;
- trust, transparency and long-term alignment; and
- differentiated feed technology.

The key factors that enable us to compete effectively for advertising dollars include:

- delivering high ROAS through our ability to identify and engage relevant users;
- massive audience reach;
- quality of inventory; and
- comprehensive range of inventory types, advertising formats and campaign tools.

Our Technology

We have designed our platform to process real-time content and advertising transactions quickly and efficiently at a massive scale. Our platform delivers on average over 10 billion recommendations daily, in 20 languages, and in the fourth quarter of 2020 we powered an average of over 100,000 ad campaigns per day. We designed our platform using a microservices-based architecture, which enables the rapid deployment of new features with high availability, reliability, and redundancy.

Our platform consists of the following key technology components:

- **Infrastructure.** To support our business needs, we operate our own proprietary cloud infrastructure. Our global infrastructure includes over 7,000 servers, with storage capacity exceeding several petabytes. Our servers are located in three third-party data centers, on a co-location basis, in Secaucus, NJ, Sacramento, CA, and Chicago, IL. Each of our data centers is operated by a different vendor, in order to minimize the impact of any outage on our platform. While all three data centers actively serve recommendations to users, we are able to serve all of our traffic from two of the three data centers if needed. We utilize a global content delivery network (CDN), and dynamic acceleration, for additional performance optimization and redundancy.

Our infrastructure is designed such that we do not have any known single point of failure at any level. Within each data center, we have load-balanced servers on each layer of the system, so that a failure in one server or component will not impact performance or availability. Some of these clusters are dedicated to handling incoming traffic and delivering content, including web servers, caches and real-time database applications. Other clusters are devoted to the data analytics and algorithm modeling involved in creating content recommendations. The design also includes load balancers, firewalls and routers that connect the components and provide connections to the Internet. In particular, we use software specifically designed for processing large data sets to provide real-time data analysis, the results of which are then fed back to refresh and improve our recommendation algorithms.

We monitor our system using several tools, both internal and external, to gauge our uptime and performance. We also use multiple layered security controls to protect our recommendation engine and our data assets, including software-based access controls for our source code and production systems, segregated networks for different components of our production systems and centralized production systems management. We believe that the failure of any individual component will not affect the overall availability of our platform, having maintained an uptime of 99.9% from 2018-2020.

- **Data.** One of the key benefits of our platform is the management, analysis, and structuring of valuable user engagement and advertising data.
 - *Our data scale:* We gather over 1 billion data events per minute delivering over 10 billion recommendations per day. On average, we collect in excess of 50 terabytes of data per day consisting of contextual signals, advertiser data, and user engagement data (typically clicks on recommendations). We leverage our data to improve our algorithms and prediction capabilities.
 - *Our automated content index:* To operate our platform, we have created our automated content index, comprising over 2 billion content elements. Our technology automatically classifies and analyzes content at a rate of over 1,500,000 pages a day in 20 different languages. We index content through RSS feeds and JavaScript triggers to continuously identify new content and changes to existing content. Our automated index deconstructs content into base elements including titles, images and topics in order to recombine the elements into targeting data and formatted recommendations and ads.
- **Artificial Intelligence and Machine Learning.** Our proprietary artificial intelligence and machine learning capabilities enable us to harness the vast volume of data we collect in order to effectively match users to relevant content and ads based on our content index. Our algorithms make over 1,000 click predictions, on average, before selecting each recommendation to present to a user. In the second half of 2020, CTR for ads on our platform improved 25% on a year to year basis.

Our Data Flywheel



Sales and Marketing

We focus our sales and marketing efforts on supporting, advising, and training our partners and advertisers, helping them optimize their use of our platform. We employ in-market sales teams across our markets, helping us attract premium digital media owners and advertisers to our platform. In addition, we have developed and currently utilize online acquisition channels to attract new advertisers, who we are able to onboard and serve in an automated manner, using self-serve tools and technologies.

Our sales teams educate prospective media owners, partners, and advertisers on the use, technical capabilities, and benefits of our platform. Our dedicated teams work with potential customers through the entire sale cycle, from initial contact to contract execution and implementation. Throughout the process, our teams provide guidance as to how our platform can optimize the value of a media partner's audience or how an advertiser can reach relevant users. Additionally, following contract execution and implementation, our account management teams guide media partners on how additional platform deployment and optimizations can deliver incremental monetization. We engage advertisers and their agencies in order to educate them on how to increase reach and ROAS using our solutions.

Our marketing team is focused on delivering strategies that drive efficient new partner and advertiser acquisition, enhancing our position as key industry thought leaders, supporting our sales teams, and increasing awareness of our brand.

Our Employees

Much of our success can be directly attributed to our global team of technology, business, and data science experts who work out of our 18 locations worldwide. Outbrain comprises a diverse, intelligent and driven group of individuals who are passionate and excited to be leading the way in which users discover things online.

Our culture and team are the most important asset in building and expanding our business. Our team identifies new problems to solve, builds solutions, optimizes and extends our infrastructure, and acquires and serves customers. We believe that strong and diverse teams deepen customer relationships, promote innovation, and increase productivity. Our Culture Manifesto, available publicly on the Outbrain website, is one of many important expressions of the values and principles that reflect how we behave, collectively and individually.

Our people strategy revolves around creating employee experiences. We strive to foster deep employee engagement built upon personal development and achievement that is supported by continuous feedback, learning, and team building. As we continue growing our team, and become more diverse culturally and geographically, we want to make sure we retain a shared mission among the people that become part of our company. In particular, there are certain characteristics that we seek out in our employees:

- **Intelligent and productive.** There are many great attributes companies can seek in the candidates they hire—academic degrees, deep industry expertise, hands-on work experience, etc. While these attributes are an important part of our screening process, we seek, above all else, a combination of smarts and a “get stuff done” attitude.
- **Collaborative.** We love hiring and nurturing professionals who are great at their craft. At the same time, we are cognizant that we are ultimately playing a team sport and we therefore look for people who strive to be amazing team players. A self-described “Superstar” or “Ninja” focused on personal status is not likely to fit our team, even if they might be very good at their profession.
- **Passionate.** People who have a passion for something typically have that spark in their eyes when they engage in the work they love. They bring their best self to work, possess the desire to improve and learn, and focus on opportunities rather than obstacles. Through their passion, they set the tone for the rest of the team and become excellent examples for everyone to follow.

We also strive to make Outbrain diverse at all levels of the company, and in all types of jobs. Our priority is to always hire and promote people based on qualifications and merit, and we believe that this approach does not conflict with the objectives of inclusion and empowerment. Our team consists of people from many different nationalities and cultures with different perspectives, opinions and ideas which we believe is undeniably powerful and ultimately drives shareholder value.

As of March 31, 2021, we had 863 employees and contractors, 54% of whom were male and 46% of whom were female. 41.4% of our workforce is located in Israel, 17.3% is located in the United States, and the remaining 41.3% is located in our other global offices.

Intellectual Property

The protection of our technology and intellectual property is an important component of our success. We protect our intellectual property rights by relying on federal and state statutory and common law rights, foreign laws where applicable, and contractual restrictions. We seek to control access to our proprietary technology by entering into non-disclosure agreements with third parties and disclosure and invention assignment agreements with our employees and contractors.

We consider our trademarks, patents, copyrights, trade secrets, and other intellectual property rights to be, in the aggregate, material to our business. In addition to our intellectual property rights, we also consider the skills and ingenuity of our employees and the functionality and frequent enhancements to our solutions

to be contributors to our success. We believe our platform would be difficult, time consuming, and costly to replicate. We protect our competitive technology position through innovation and by continually developing new intellectual property.

Outbrain has built an extensive intellectual property portfolio to date. This portfolio includes 17 granted U.S. utility patents, 34 granted U.S. design patents and nine European registered community designs.

Regulatory Environment

We are subject to privacy laws and regulations governing the collection, use, and sharing of consumer data. Interest-based advertising, or the use of data to draw inferences about a consumer's interests and deliver relevant advertising to that consumer, has come under increasing scrutiny by legislative bodies, regulatory bodies, self-regulatory bodies, privacy advocates, and academics in the United States and abroad. In particular, much of this scrutiny has focused on the use of cookies and other tracking technologies that collect or aggregate information regarding consumers' online browsing and mobile app activity. Because both our company and our media partners and advertisers rely upon large volumes of such data collected primarily through cookies and other tracking technologies it is essential that we monitor legal requirements and other developments in this area, both domestically and globally, maintain a robust privacy and security compliance program, and engage in responsible privacy practices, including providing consumers with notice of the types of data we collect, how we collect it, with whom we share it, how we use that data to provide our solutions, and the applicable choices we offer consumers. We provide notice through our privacy policies and notices, which can be found on our website.

We typically collect IP addresses and device identifiers that are considered to be personal data or personal information under the privacy laws of some jurisdictions or otherwise may be the subject of current or future data privacy legislation or regulation. The definition of personally identifiable information, personal information, or personal data varies by jurisdiction and continues to evolve in ways that may require us to adapt our practices to comply with laws and regulations related to the collection, storage, use, and sharing of consumer data. As a result, our technology platform and business practices must be assessed regularly against a continuously evolving legal, regulatory, and technology landscape.

A growing set of privacy regulations have introduced complexity regarding the collection, use, and transmission of consumer data to the digital advertising ecosystem. We have implemented a number of technology innovations, process enhancements, and industry solutions in response to increased obligations, including adopting the advertising industry's technical and policy solutions that form compliance standards. Some of the specific measures we have taken include:

- **User Consent.** Working with our media partners to ensure appropriate consent is being obtained, recorded, and transmitted as applicable. Specifically, through the TCF and other frameworks, we can identify, receive and pass user consent parameters.
- **Increased Data Transparency.** Creating an infographic accessible to all consumers to provide insight into Outbrain's inferences about individual interests and preferences.
- **Data Minimization.** Establishing mechanisms to collect only the data that is needed and converting it to pseudonymized data wherever possible.
- **Data Retention.** Implementing data retention periods across our technology platform so that we delete, aggregate, or anonymize consumer data per best practices.
- **Partner Agreements.** Monitoring and updating our agreements with our partners, as applicable, to address privacy and regulatory compliance.

We may use various third-party service providers to help us market or advertise. We require that these third parties agree to comply with all applicable data privacy and security laws and regulations, keep all shared information confidential, and use the information only to perform their obligations. We do this by entering into agreements with all third parties who process personal data on our behalf.

There are also a number of specific laws and regulations governing the collection and use of certain types of consumer data relevant to our business. For example, the Children's Online Privacy Protection Act

(COPPA) imposes restrictions on the collection and use of data provided by children under the age of 13 by child-directed websites or online services. We do not market to media partners that market to children, and contractually prohibit the use of our technology on websites targeting children.

Additionally, compliance with our privacy policy, privacy notices and our general consumer data privacy and security practices are subject to review by the Federal Trade Commission, which may bring enforcement actions to challenge allegedly unfair and deceptive trade practices, including the violation of privacy policies and misrepresentations or material omissions therein.

Certain State Attorneys General in the United States may also bring enforcement actions based on applicable state laws or federal laws that permit state-level enforcement. In California, for example, the Attorney General may bring enforcement actions for violations of the CCPA. We have registered as a data broker in California with the California Attorney General. When we receive an opt-out signal, we will not share the personal data that corresponds to such signal with our trusted partners. We are able to honor signals from the IAB CCPA Compliance Framework, which includes a technical specification to identify consumer signals to opt-out of the transfer of their data. These IAB frameworks are designed to facilitate compliance with the CCPA, although the California Attorney General's office has not yet approved such frameworks. The CCPA sets forth high potential liabilities for violations of the act where businesses may be fined up to \$2,500 for each violation and up to \$7,500 for each intentional violation.

Adding further complexity to the legal and regulatory landscape in the United States are the CPRA, which amends the CCPA, and the recently enacted CDPA. Both the CPRA and CDPA will take effect in January 2023. The CPRA will impose additional data protection obligations on companies subject to the CPRA, including providing additional consumer rights and limiting the use and processing of personal data including sensitive data. In addition, the CPRA explicitly requires businesses to provide consumers with the right to opt-out of the sharing of personal data with third parties for cross-context behavioral advertising. The CDPA, similar to the CCPA and CPRA, provides various consumer rights to Virginia residents concerning the processing of their personal data by businesses subject to the CDPA. The CDPA imposes additional obligations on businesses, including the requirements to obtain consent to process sensitive data, to implement and maintain reasonable security requirements, and to conduct and document data protection assessments concerning the processing of personal data for purposes of targeted advertising. Under the CDPA, similar to the CPRA, businesses must provide consumers with the right to opt-out of the processing of their personal data for targeted advertising. The Virginia Attorney General may bring an action and seek an injunction to restrain any violations, with civil penalties of up to \$7,500 for each violation. The industry faces an uncertain compliance burden as we and our partners work to become compliant with these laws.

Outside of the United States, our privacy and data practices are subject to regulation by data protection authorities and other regulators in the countries in which we do business. The use and transfer of personal data in member states of the European Union is currently governed under the GDPR, which grants additional data protection rights to consumers, such as deletion and portability, and generally prohibits the transfer of personal data of EU subjects outside of the EU, unless the party exporting the data from the EU implements a compliance mechanism designed to ensure that the receiving party will adequately protect such data. The GDPR sets out higher potential liabilities for certain data protection violations, which may result in fines up to the greater of €20 million or 4% of an enterprise's global annual revenue. Despite GDPR purportedly harmonizing data protection laws across the European Union, continuously evolving interpretation and enforcement by member states requires regular review of the legal and regulatory landscape.

We previously relied upon the EU-U.S. Privacy Shield framework (the "Privacy Shield framework") to transfer personal data of EU subjects to the United States. The Privacy Shield framework was declared invalid by the CJEU on July 16, 2020, and in the same judgement, while the CJEU upheld the adequacy of the standard contractual clauses, a standard form of contract approved by the European Commission as an adequate personal data transfer mechanism, and potential alternative to the Privacy Shield framework, both of which were used by Outbrain, it made clear that reliance on the standard contractual clauses alone may not necessarily be sufficient in all circumstances and cast doubt on their future use. The use of standard contractual clauses for the transfer of personal data specifically to the United States remains under review by a number of European data protection supervisory authorities.

Furthermore, the EU is currently in discussions to replace the ePrivacy Directive (commonly called the “Cookie Directive”) with the ePrivacy Regulation that governs the use of technologies that collect, access, and store consumer information and may create additional compliance burdens for us in Europe.

Other states in the United States have proposed consumer data privacy bills similar to the CCPA, CPRA, and CDPA. Further, other jurisdictions have proposed or enacted legislation that closely track the concepts, obligations, and consumer rights described in the GDPR, including Brazil’s General Data Protection Law and Singapore’s Personal Data Protection Act 2020. The laws that have passed are being enforced by local authorities. The enactment of new proposed laws is gaining momentum and adds additional complexity to our and our partners’ compliance programs.

Beyond laws and regulations, we are also members of self-regulatory bodies that impose additional requirements related to the collection, use, and disclosure of consumer data. We are members in good standing of the Network Advertising Initiative (“NAI”), an association dedicated to responsible data collection and its use for digital advertising. We adhere to the NAI Code of Conduct for Web and Mobile, along with the IAB Self-Regulatory Principles for Online Behavioral Advertising, and the IAB Europe OBA Framework. We are also JICWEBS DTSG Brand Safety Certified. We are members of, and adhere to, the Self-Regulatory Principles set forth by the Digital Advertising Alliance and the European Interactive Digital Advertising Alliance.

Under the requirements of these self-regulatory bodies, in addition to other compliance obligations, we provide consumers with notice via our privacy policies about our use of cookies and other tracking technologies to collect consumer data, our use of consumer data to deliver interest-based ads, and consumers’ opt-out choices. We also allow consumers to opt-out from the use of data we collect for purposes of interest-based advertising through mechanisms described in our privacy policies available on our website. Some of these self-regulatory bodies have the ability to review or sanction members or participants, which could result in penalties and cause reputational harm. Additionally, some of these bodies might refer violations of their requirements to the Federal Trade Commission or other regulators.

Security

Being a trusted partner is a key value for us and, as such, cyber security is an ongoing commitment. Our dedicated cyber security team ensures that we follow industry best practices and standards including, but not limited to, ISO 27001, Cloud Security Alliance Star level 1, and PCI-DSS SAQ A-EP, SOC 2 data centers.

Our products are designed with security and privacy at the forefront. We maintain tight controls over the personal data we collect, retaining it in firewalled and secured databases with strictly limited and controlled access rights, to ensure it is secure while utilizing advanced monitoring over our environment. All traffic to and between our data centers is encrypted, along with all sensitive configurations, while our users and customers have their passwords hashed.

Secure advertising is a building block of user trust. In order to provide secure ads we integrated an advanced industry leading third-party technology to scan live ads looking for potential security violations either in the ads themselves or on the pages to which they directly link. Combined with internally developed capabilities and our content review process we are tackling both malicious ads and the bad actors behind them.

We constantly strive to understand what we have yet to discover by running an exhaustive security testing framework, including scanning all internal and external assets for vulnerabilities, utilizing multiple third-party security testing teams every year, and running a bug bounty program with more than 300 security researchers.

Providing a clean, non-fraudulent premium network for publishers, advertisers and consumers is a top priority at Outbrain. Our dedicated anti-fraud team monitors our platform to identify and investigate unusual web traffic patterns. We detect, block and prevent fraudulent web traffic by using both internal and external third-party Trustworthy Accountability Group (“TAG”) Anti-Fraud certified solutions. As a TAG-verified member since 2018 we are adopting the Media Rating Council Invalid Traffic Detection and Filtration Standards in our efforts and fraud detection technological ecosystem.

Facilities

Prior to COVID-19, our corporate headquarters were located in New York, NY. Since March 2020, all headquarters personnel have been working remotely. We decided not to renew our headquarters lease, which expired in February 2021. We intend to move to a new headquarters in 2021.

Since 2007, we have maintained a presence in Netanya, Israel, which is overseen by one of our founders, where we occupy space consisting of approximately 44,000 square feet under a lease that expires in 2023. We use this facility primarily for technology and development, and, to a lesser extent, for general administration and sales and marketing. We maintain a regional office in London for general administration and sales and marketing. We also have sales offices in several locations, including Amsterdam, Brussels, Chicago, Cologne, Ljubljana, Madrid, Milan, Mumbai, Munich, Paris, San Francisco, Sao Paulo, Singapore, Sydney, and Tokyo.

We believe that our current facilities are adequate to meet our needs for the immediate future, and that, should it be needed, suitable additional space will be available to accommodate any expansion of our operations.

Legal Proceedings

From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. We are not a party to any legal proceeding that, if determined adversely to us, would have a material adverse effect on our business, operating results, financial condition, or cash flows. However, regardless of outcome, litigation can have adverse impacts on us such as defense and settlement costs, diversion of management resources, negative publicity, reputational harm, and other factors.

Management

Executive Officers and Directors

We are currently reviewing the composition of our board of directors, our committees and our corporate governance practices in light of this offering and applicable requirements of the SEC and the Nasdaq. In subsequent filings with the SEC, we will update any relevant disclosure as appropriate. The following table sets forth the name, age and position of each of our executive officers and directors as of the date of this prospectus:

Name	Age	Position
Executive officers		
Yaron Galai	50	Co-Founder, Co-Chief Executive Officer and Chairman of the Board
David Kostman	56	Co-Chief Executive Officer and Director
Ori Lahav	50	Co-Founder, Chief Technology Officer and General Manager, Israel
Elise Garofalo	47	Chief Financial Officer
Directors		
Shlomo Dovrat ⁽¹⁾⁽²⁾⁽⁴⁾	61	Director
Jonathan (Yoni) Cheifetz ⁽¹⁾⁽⁴⁾	61	Director
Dominique Vidal ⁽²⁾⁽⁴⁾	56	Director
Arne Wolter ⁽⁴⁾	46	Director
Jonathan Klahr ⁽⁵⁾	48	Director
Ziv Kop	50	Director
Yoseph (Yossi) Sela ⁽¹⁾⁽⁴⁾	69	Director

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- (1) Member of our audit committee.
 - (2) Member of our compensation committee.
 - (3) Member of our nominating and corporate governance committee.
 - (4) Independent director under the Nasdaq requirements.
 - (5) Mr. Klahr will resign as a member of our board of directors effective immediately prior to the effectiveness of the registration statement of which this prospectus is a part.

Executive Officers

Yaron Galai co-founded Outbrain Inc. in 2006 and has served as our Chief Executive Officer since inception in 2006 and then as Co-Chief Executive Officer since 2017. Mr. Galai was the co-founder of Quigo Technologies, Inc., a provider of performance based marketing solutions for advertisers and premium publishers, and served as its Chief Executive Officer from 2000 to 2003 and as its Senior Vice President from 2003 until it was acquired by AOL Time Warner in December 2007. Since February 2020, Mr. Galai has served as executive chairman of Listory Corp. and previously served on the board of HopStop.com, Inc., until its acquisition by Apple Inc. Mr. Galai studied industrial design at the Holon Institute of Technology in Holon, Israel. Mr. Galai is a Lieutenant Commander Officer (reserve) in the Israel Navy.

Mr. Galai was selected to serve as chairman of our board of directors because of his extensive experience working with publishers and in the Internet advertising industry, and the unique perspective that he brings as our co-founder and co-Chief Executive Officer.

David Kostman has served as a director of our company since July 2014 and as our Co-Chief Executive Officer since November 2017. Mr. Kostman also serves as the chairman of the board of NICE Ltd. (Nasdaq: NICE) since February 2013, serves as director of ironSource Ltd. (“iron Source”) (NYSE: IS), and has served as a director of NICE Ltd. since 2001 (with the exception of the period between June 2007 and July 2008). Additionally, Mr. Kostman is currently a director of privately held TIVIT S.A. Mr. Kostman also

is the Chairman of the Board of the American Friends of NATAL, Israel Trauma and Resiliency Center, a non-profit assisting individuals with traumatic events. Previously he served on the board of directors of Nasdaq-listed Retalix Ltd and of several other private companies. From 2006 until 2008, Mr. Kostman was a Managing Director in the investment banking division of Lehman Brothers, where he worked from 1994 to 2000, heading the Global Internet Group. From April 2003 until July 2006, Mr. Kostman was Chief Operating Officer and then Chief Executive Officer of Delta Galil USA Inc., a subsidiary of publicly traded Delta Galil Industries Ltd. From 2000 until 2002, Mr. Kostman was President of the International Division and then Chief Operating Officer of Nasdaq-listed Verticalnet Inc. Mr. Kostman holds a BA in Law from Tel Aviv University and an MBA from INSEAD.

Mr. Kostman was selected to serve on our board of directors because of his extensive experience serving on the boards of public companies in the technology and Internet industries, and his knowledge and expertise in our industry and his role as co-Chief Executive Officer.

Ori Lahav co-founded Outbrain Inc. in 2006 and has served as our Chief Technology Officer since May 2017 and as the General Manager, Israel since 2006. He is a practical engineer from the Rupin Academic Center as well as a Lieutenant Commander Officer (reserve) in the Israel Navy. Prior to co-founding Outbrain Inc., Mr. Lahav led the R&D groups in Search and Classification at Shopping.com, which was acquired by eBay, Inc. Mr. Lahav also previously led the Video Streaming Server Group at technology company Vsoft Corporation.

Elise Garofalo has served as our Chief Financial Officer since April 2014. From February 2010 to April 2014, Ms. Garofalo served as Senior Vice President, Treasurer and Investor Relations at Revlon, Inc. Prior to that, Ms. Garofalo held various senior financial roles at Trinsum Group, Inc. and GrafTech International Ltd. (NYSE: GTI). Ms. Garofalo is a CPA and previously worked at KPMG LLP. Ms. Garofalo holds a BS in Accounting from the University of Connecticut School of Business and an MBA from Vanderbilt University.

Directors

Shlomo Dovrat has served as a director of our company since 2009. Mr. Dovrat is a co-founder of the Viola Group, a technology investment group, and co-founder and General Partner of Viola Ventures, a venture capital firm, both of which were founded in 2000. Mr. Dovrat currently serves as a member of the board of directors of ironSource, ProteanTecs Ltd., Worthy, Inc., Cellwize Wireless Technologies Pte. Ltd. and other early stage technology companies. Mr. Dovrat served as Chairman of ECI Telecom Ltd from 2002 to 2007. Prior to founding Viola, Mr. Dovrat founded and served as Chief Executive Officer of Oshap Technologies Ltd and Tecnomatix Technologies, Ltd., Israeli technology companies that were traded on Nasdaq and subsequently sold in 1998 and 2005, respectively. Mr. Dovrat has been and continues to be active in various NGOs and serves as the Chairman of the Aaron Institute for Economic Policy and as chairman of “Pnima,” an Israeli social movement. Mr. Dovrat served as the Chairman of the Israel Democracy Institute from 2008 to 2012 and as the Chairman of the National Taskforce for the Advancement of Education in Israel from 2003 to 2005.

Mr. Dovrat was selected to serve on our board of directors because of his extensive financial and operational expertise, his extensive experience in the venture capital industry and his knowledge of high-growth technology companies, and because of his perspective as the representative of a significant stockholder.

Jonathan (Yoni) Cheifetz has served as a director of our company since 2008. Mr. Cheifetz has served as a Partner at Lightspeed Venture Partners, a venture capital firm, since June 2006, where he focuses on investment activity in Israel in areas of interest, including the Internet, media, mobile, communications, software, semiconductors and cleantech. Prior to joining Lightspeed Venture Partners, Mr. Cheifetz was a partner with Star Ventures from 2003 to 2006. Before joining Star Ventures, Mr. Cheifetz co-founded several privately held software companies. Mr. Cheifetz serves as a director of Alooma, Inc., At-Bay, Inc., BlueVine Inc., Cato Networks Ltd., Epsagon Ltd., FeeX Inc., Personetics Technologies Ltd., Scodix Ltd., SolarEdge Technologies Inc. (Nasdaq: SEDG), Teads SA, Theranica Bio-Electronics Ltd., Ultima Genomics, Inc, and El-Mul Technologies, Ltd.. Mr. Cheifetz holds a BS in Applied Mathematics and Computer Science from the Tel Aviv University and an M.Sc. in Computer Science and Applied Mathematics from the Weizmann Institute of Science.

Mr. Cheifetz was selected to serve on our board of directors because of his extensive experience in the venture capital industry and his knowledge of high-growth technology companies, and because of his perspective as the representative of a significant stockholder.

Dominique Vidal has served as a director of our company since 2012. From September 2007 to July 2019, Mr. Vidal served as a Partner of Index Ventures (UK) LLP (formerly Index Venture Management LLP), a venture capital advisory firm which provides advice to Index Ventures. He retired in July 2019. Mr. Vidal serves on the board of directors of several private companies in the technology sector. Prior to joining Index Ventures (UK) LLP, Mr. Vidal was the Managing Director of Yahoo! Europe Ltd. from 2004 to 2007. Mr. Vidal holds a BS in Engineering from École Supérieure d'Electricité, or Supelec, in Gif-Sur—Yvette, France.

Mr. Vidal was selected to serve on our board because of his strong financial and operational expertise in the Internet sector generally and the Internet display and advertising industries specifically.

Arne Wolter has served as a director of our company since April 2019. Mr. Wolter was Chief Digital Officer at G+J from October 2015 until April 2021 and was in charge of G+J's digital business and further digital transformation. He served as Chief Executive Officer of Ligatus from September 2008 until May 2019. Mr. Wolter also served as Chairman of the Supervisory Board of trnd AG from July 2014 until June 2016. Mr. Wolter holds an MBA from the University of Rhode Island and a joint master's degree in civil engineering and business administration from Technische Universität Braunschweig, in Germany.

Mr. Wolter was selected to serve on our board of directors because of extensive experience with publishers.

Jonathan Klahr has served as a director of our company since February 2015. Mr. Klahr has served as a Managing Director at Susquehanna Growth Equity, LLC since August 2007, where he focuses on investments in the software, security, e-commerce and payments sectors. Mr. Klahr also serves as a director of Board Intelligence Ltd., CallApp Software Ltd., Cymulate Ltd., and nDevor Systems Ltd (d/b/a Phorest Salon Software). Mr. Klahr holds an MBA from the Hebrew University of Jerusalem and a BA in War Studies from Kings College, London.

Mr. Klahr was selected to serve on our board of directors because of his extensive experience in the venture capital industry and his knowledge of high-growth technology companies, and because of his perspective as the representative of a significant stockholder.

Ziv Kop has served as a director of our company since 2006 and served as our Chief Operating Officer from 2014 to 2015. Since 2019 he has been a Managing Partner of O.G. Tech Partners, a growth-stage VC focusing on fast growing early growth investments, and from 2016 to 2018 he was a Partner at Innovation Endeavors / Marker, a multistage VC. Previously, from its inception in 2003 until June 2013, Mr. Kop was a Managing Partner at Glenrock Israel, a private equity firm, where he managed a portfolio of growth companies in the fields of advanced technologies and healthcare, and served on the board of a number of private and public companies. Prior to his role at Glenrock Israel, Mr. Kop served as Chief Executive Officer of POC Management Consulting, an Israeli consultancy in the field of strategic planning. Mr. Kop also currently serves as a director of Evogene Ltd. (NYSE: EVGN), Lendbuzz, Inc. and Elementor Ltd. and Mobilesson Ltd. (d/b/a Connecteam). Between 2017 and 2019, Mr. Kop served as a director of Dynamic Yield Ltd. and OwnBackup, Inc. Mr. Kop holds an LLB and a BA in business administration, each from Tel Aviv University, and is a graduate of INSEAD's Young Managers Program.

Mr. Kop was selected to serve on our board of directors because of his extensive experience in the venture capital industry and his knowledge of high-growth technology companies, his experience with public companies and because of his perspective as the representative of a significant stockholder.

Yoseph (Yossi) Sela has served as a director of our company since 2013. Mr. Sela has been with Gemini Israel Ventures, a venture capital fund, since January 1993 and Managing Partner since 1999 and the Chairman of Bridges Israel, an impact investment fund, since March 2018. Mr. Sela currently serves on the board of directors of JFrog Ltd. (Nasdaq: FROG), along with several privately held companies. He holds a BS in Electrical Engineering from the Technion—Israel Institute of Technology, Israel and an MBA from Tel Aviv University, Israel.

Mr. Sela was selected to serve on our board of directors because of his extensive experience in the venture capital industry and his knowledge of high-growth technology companies, and because of his perspective as the representative of a significant stockholder.

Board Composition

Our business affairs are managed under the direction of our board of directors. The number of directors will be fixed by our board of directors, subject to the terms of our amended and restated certificate of incorporation and bylaws that will become effective upon the closing of this offering.

Upon the closing of this offering, our board of directors will consist of seven directors, five of whom will qualify as “independent” under the Nasdaq listing standards. Immediately prior to this offering, our board of directors will be divided into three staggered classes of directors. At each annual meeting of stockholders, a class of directors will be elected for a three-year term to succeed the same class whose terms are then expiring. The terms of the directors will expire upon the election and qualification of successor directors at the annual meeting of stockholders to be held during the year 2022 for the Class I directors, 2023 for the Class II directors and 2024 for the Class III directors.

- Our Class I directors will be and
- Our Class II directors will be and
- Our Class III directors will be and

The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change of control. See “Description of Capital Stock—Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws” for a discussion of other anti-takeover provisions found in our certificate of incorporation.

Our amended and restated certificate of incorporation and bylaws will provide that the number of our directors shall be fixed from time to time by a resolution of our board of directors.

Each of our executive officers serves at the discretion of our board of directors and holds office until his or her successor is duly appointed and qualified or until his or her earlier resignation or removal. There are no family relationships among any of our directors or executive officers.

Director Independence

Under the rules of the Nasdaq, independent directors must comprise a majority of a listed company’s board of directors. In addition, the rules of the Nasdaq require that, subject to specified exceptions, each member of a listed company’s audit, compensation and nominating and corporate governance committees must be independent. Under the rules of the Nasdaq, a director is independent only if our board of directors makes an affirmative determination that the director has no material relationship with the company. Although the Nasdaq permits certain phase-ins with respect to board and committee independence requirements following the completion of an initial public offering for compliance with these independence requirements, we will comply with all of them immediately following the listing of our common stock in connection with this offering.

Prior to this offering, our board of directors undertook a review of its composition, the composition of its committees and the independence of each director. Our board of directors has undertaken a review of the independence of each director. Based on information provided by each director concerning his background, employment and affiliations, including family relationships, our board of directors has determined that Shlomo Dovrat, Jonathan (Yoni) Cheifetz, Dominique Vidal, Arne Wolter, and Yoseph (Yossi) Sela do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is “independent” as that term is defined under the Nasdaq listing standards. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director, and the transactions involving them described in the section titled “Certain Relationships and Related Party Transactions.”

Board Committees

Our board of directors has the authority to appoint committees to perform certain management and administration functions. Upon the closing of this offering, our board of directors will have an audit committee, a compensation committee, and a nominating and corporate governance committee. The composition and responsibilities of each committee are described below. Members will serve on these committees until their resignation or until otherwise determined by the board of directors.

Audit Committee

Our audit committee oversees our accounting and financial reporting process and the audit of our financial statements and assists our board of directors in monitoring our financial systems and our legal and regulatory compliance. Our audit committee is responsible for, among other things:

- appointing, compensating and overseeing the work of our independent auditors, including resolving disagreements between management and the independent registered public accounting firm regarding financial reporting;
- approving engagements of the independent registered public accounting firm to render any audit or permissible non-audit services;
- reviewing the qualifications and independence of the independent registered public accounting firm;
- reviewing our financial statements and related disclosures and reviewing our critical accounting policies and practices;
- reviewing the adequacy and effectiveness of our internal control over financial reporting;
- establishing procedures for the receipt, retention and treatment of accounting and auditing related complaints and concerns;
- preparing the audit committee report required by the SEC rules to be included in our annual proxy statement; and
- reviewing and discussing with management and the independent registered public accounting firm the results of our annual audit, our quarterly financial statements and our publicly filed reports.

Upon the closing of this offering, our audit committee shall consist of Shlomo Dovrat, and , with serving as the committee’s chairperson. Each member of the committee is “independent” as defined under the Nasdaq listing standards and Rule 10A-3(b)(1) of the Exchange Act. Each member of the audit committee will meet the requirements for financial literacy under the applicable rules and regulations of the SEC and the Nasdaq. In addition, our board of directors has determined that is an audit committee financial expert within the meaning of Item 407(d) of Regulation S-K under the Securities Act of 1933, as amended, or the Securities Act. Our audit committee operates under a written charter that satisfies the applicable standards of the SEC and the Nasdaq.

Compensation Committee

Our compensation committee oversees our compensation policies, plans and programs. Our compensation committee charter provides that our compensation committee has responsibility for, among other things:

- reviewing and recommending policies, plans and programs relating to the compensation and benefits of our directors, officers and employees;
- reviewing and recommending compensation and the corporate goals and objectives relevant to the compensation of our Co-Chief Executive Officers;
- reviewing and approving compensation and corporate goals and objectives relevant to compensation for executive officers other than our Chief Executive Officer;
- evaluating the performance of our Chief Executive Officer and other executive officers in light of established goals and objectives; and

- administering our equity compensations plans for our employees and directors.

Upon the closing of this offering, our compensation committee shall consist of _____, _____ and _____, with _____ serving as the committee’s chairperson. Our board of directors has considered the independence and other characteristics of each member of our compensation committee. Compensation committee members must satisfy the Nasdaq independence requirements and additional independence criteria set forth under Rule 10C-1 of the Exchange Act, or Rule 10C-1. In order to be considered independent for purposes of Rule 10C-1, our board of directors must consider whether the director has accepted, other than in his or her capacity as a member of the board, consulting, advisory or other fees from us or whether he or she is an affiliated person of us. Each of the members of our compensation committee qualifies as an independent director pursuant to the Nasdaq rules and Rule 10C-1. Each member of our compensation committee is also a non-employee director, as defined pursuant to Rule 16b-3 promulgated under the Exchange Act, or Rule 16b-3, and an outside director, as defined pursuant to Section 162(m) of the Code, or Section 162(m).

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee oversees and assists our board of directors in reviewing and recommending corporate governance policies and nominees for election to our board of directors and its committees. Our nominating and corporate governance committee charter provides that our nominating and corporate governance committee has responsibility for, among other things:

- evaluating and making recommendations regarding the organization and governance of our board of directors and its committees;
- assessing the performance of board members and making recommendations regarding committee and chair assignments and the composition and size of our board of directors and its committees;
- recommending desired qualifications for board and committee membership and conducting searches for potential members of our board of directors;
- reviewing and making recommendations with regard to our corporate governance guidelines and compliance with laws and regulations;
- reviewing succession planning for our executive officers and evaluating potential successors; and
- reviewing and approving conflicts of interest of our directors and corporate officers.

Upon the closing of this offering, our nominating and corporate governance committee shall consist of _____, _____ and _____, with _____ serving as the committee’s chairperson. Our board of directors has determined that each member of the committee is “independent” as defined under the Nasdaq listing standards.

Our board of directors may from time to time establish other committees.

Corporate Governance Guidelines and Code of Business Conduct and Ethics

We have adopted corporate governance guidelines and a code of business conduct and ethics that is applicable to all of our employees, officers and directors, including our chief executive and senior financial officers. The corporate governance guidelines and code of business conduct and ethics will be available on our website. We expect that any amendment to the guidelines or code, or any waivers of their requirements, will be disclosed on our website. The inclusion of our website in this prospectus does not include or incorporate by reference the information on our website into this prospectus.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee is an officer or employee of our company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Director Compensation

Historically, we have not compensated our directors for their board service.

In 2021, in connection with this offering, we will implement a compensation structure for our non-employee directors that will include a mix of cash retainer fees and equity awards including:

- upon commencement of service on the board, a RSU award under our LTIP at a value of \$250,000, vesting over a period of three years on a quarterly basis;
- an annual RSU award of \$175,000, which will vest over a period of three years on a quarterly basis;
- an annual \$40,000 cash retainer, with an additional \$80,000 cash retainer payable to the board chairman;
- an annual, additional \$10,000 cash retainer payable to audit committee members, with an additional \$10,000 cash retainer payable to the audit committee chairman;
- an annual, additional \$7,500 cash retainer payable to compensation committee members, with an additional \$7,500 cash retainer payable to the compensation committee chairman; and
- an annual, additional \$3,000 cash retainer payable to nominating and corporate governance committee members, with an additional \$3,500 cash retainer payable to the nominating and corporate governance committee chairman.

Executive Compensation

We are providing compensation disclosure that satisfies the requirements applicable to emerging growth companies, as defined in the JOBS Act.

Summary Compensation Table

As an emerging growth company, we have opted to comply with the executive compensation rules applicable to “smaller reporting companies,” as such term is defined under the Securities Act, which require compensation disclosure for our principal executive officer and our next two most highly-compensated executive officers other than our principal executive officer (collectively, the “named executive officers”). The table below sets forth the annual compensation awarded or paid to our named executive officers for the years ended December 31, 2020 and 2019.

Name and Principal Position	Year	Salary	Bonus ⁽¹⁾	Stock Awards ⁽²⁾	Option Awards ⁽³⁾	Non-Equity Incentive Plan Compensation ⁽⁴⁾	All Other Compensation ⁽⁵⁾	Total
Yaron Galai	2020	\$400,000	\$515,775	\$644,000	\$ 678,000	\$ 0	\$4,275	\$2,242,050
<i>Co-Chief Executive Officer</i>	2019	\$400,000	\$255,000	\$ 0	\$ 0	\$ 0	\$4,200	\$ 659,200
David Kostman	2020	\$400,000	\$515,775	\$966,000	\$1,017,000	\$2,058,500	\$ 0	\$4,957,275
<i>Co-Chief Executive Officer</i>	2019	\$400,000	\$255,000	\$ 0	\$ 0	\$1,069,850	\$ 0	\$1,724,850
Elise Garofalo	2020	\$400,000	\$951,350	\$483,000	\$ 576,300	\$ 0	\$4,275	\$2,414,925
<i>Chief Financial Officer</i>	2019	\$400,000	\$500,000	\$ 0	\$ 0	\$ 0	\$4,200	\$ 904,200

- (1) The amounts listed in the Bonus column represent the amount of the annual bonus earned for the year listed for each of the named executive officers. Additionally, Ms. Garofalo earned and was paid retention and special bonuses in 2019 and 2020 with respect to a potential transaction that did not materialize and in consideration of modifications to Ms. Garofalo’s 2014 employment agreement, including to eliminate certain required severance benefits. Such amounts are also included in the amounts listed in the Bonus column for Ms. Garofalo.
- (2) These amounts represent the aggregate grant date fair value for restricted stock unit (“RSU”) awards granted in 2020 as computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718 (“ASC 718”). The vesting terms of the RSUs are described below in “Equity Compensation.”
- (3) These amounts represent the aggregate grant date fair value for option awards granted in 2020 as computed in accordance with ASC 718. A discussion of our methodology for determining grant date fair value may be found in Note 10 to our audited consolidated financial statements for the year ended December 31, 2020. Excluding the exercise price per the award agreement, the assumptions used in determining grant date fair value are as follows: risk free interest rate: 0.52%; expected dividend yield: 0%; expected term: 6.021 years; common stock fair value: \$6.44; and expected volatility: 44.16%. The vesting terms of the options are described below in “Equity Compensation.”
- (4) Mr. Kostman’s 2017 employment agreement included a conditional long-term cash incentive plan from 2017 through the end of 2021. This incentive plan was terminated as of December 31, 2020, and amounts earned and accrued from 2017 through 2020 were subsequently paid in full. The amounts in the table indicate the portion of the overall amount that was earned under this long-term cash incentive plan for 2019 and 2020.
- (5) All other compensation includes the amount contributed to our tax qualified plan (401k) as a matching contribution available to all U.S. employees.

Narrative Disclosure to the Summary Compensation Table

Employment Agreements

We intend to enter into new employment agreements with each of our named executive officers prior to the effectiveness of the registration statement, as described below. These new employment agreements replace existing employment agreements.

Yaron Galai and David Kostman

The employment agreements for Mr. Galai and Mr. Kostman, our Co-Chief Executive Officers, will have annual base salaries of \$400,000. Pursuant to the terms of the employment agreement, Mr. Galai and Mr. Kostman will be entitled to a target annual bonus equal to 80% of their base salary. In the event that Mr. Kostman remains employed through the earlier to occur of a change in control or public offering, he shall be entitled to a lump-sum transaction bonus equal to a minimum of \$750,000.

Subject to the signing of a release and compliance with the terms of the employment agreements, in the event of a termination of the executive's employment without cause or for good reason, the executive will be entitled to (i) "Severance Pay" equal to _____ of his annual base salary, (ii) a "Pro-Rata Bonus for Year of Termination" equal to the target annual bonus multiplied by a fraction, the numerator of which equals the number of days during the calendar year prior to the termination date and the denominator of which equals 365 (paid on the 60-day anniversary of the termination date), and (iii) a "Health Care Continuation" lump sum cash payment equal to the applicable percentage of the monthly COBRA coverage in connection with his termination multiplied by 12 (with the applicable percentage equal to the percentage of the executive's health care premium costs covered by us as of the termination date) (paid on the 60-day anniversary of the termination date); and in the event of a termination of the executive's employment without cause or for good reason during the period beginning three months prior to a change in control and ending 24-months after a change in control, the executive will be entitled to (i) "Severance Pay" equal to the sum of his (a) _____ of his base salary plus (b) an amount equal to the target annual bonus, (ii) a "Pro-Rata Bonus for Year of Termination" as defined above, (iii) a "Health Care Continuation" multiplied by 18 months, and (iv) full vesting of his equity awards.

Additionally, the executive agrees to provide six months of notice prior to a termination without good reason, and the Company agrees to provide six months of notice prior to a termination without cause. Following a termination without good reason, subject to the signing of a release and compliance with the terms of the employment agreements (including the restricted covenants), the executive will be entitled to exercise any stock options that became vested prior to such termination until the earlier to occur of the end of the _____-month restricted period for the restricted covenants described below or the end of the term of the option.

Finally, in the event of a termination due to death or disability, in addition to receiving any accrued benefits as of the date of such termination, the executive shall be entitled to a payment equal to the "Pro-Rata Bonus for the Year of Termination".

Under the terms of the employment agreements, the executive will be subject to an ongoing confidentiality obligation, a _____-month non-competition covenant, a _____-month non-solicitation of our employees covenant (including former employees or consultants within the _____-month period prior to the executive's termination date), and a _____-month non-solicitation of our customers covenant (including prospective customers within the _____-month period prior to the executive's termination date).

Elise Garofalo

The employment agreement for Ms. Garofalo, our Chief Financial Officer, will have an annual base salary of \$400,000. Pursuant to the terms of her employment agreement, Ms. Garofalo will be entitled to a target annual bonus equal to 60% of her base salary. Ms. Garofalo will be entitled to 12 months' subsidized COBRA premiums for health insurance upon her resignation or termination (other than for cause).

Additionally, in order to provide strong retention incentives to Ms. Garofalo, the Company agreed to provide the following benefits to Ms. Garofalo. In the event that she remains employed through the earlier to occur of a change in control or public offering, she shall be entitled to a lump-sum transaction bonus equal to a minimum of \$250,000. In the event that she remains employed through the earliest to occur of the 12-month anniversary of a public offering, the 6-month anniversary of a change in control and June 30, 2022 (or if she is terminated without cause prior to such date), then, to the extent not previously satisfied, she shall be deemed to have satisfied the service-based vesting requirements with respect to 75% of her equity awards granted in 2020, and 75% of the stock options granted to her on September 30, 2014 that remain unvested shall become vested and exercisable. She also shall be entitled to a pro-rata bonus payment for the year in which she incurs a termination for any reason (other than cause). Finally, Ms. Garofalo will be entitled to exercise any stock options that were granted prior to the date of her agreement and that became vested

prior to such termination until the earlier to occur of the end of the 36-month period following such termination or the end of the term of the option.

Ms. Garofalo's employment agreement prohibits competition and solicitation of our employees, suppliers, vendors and customers during her employment and for 12 months thereafter. The agreement also provides for confidentiality of our information and assignment of inventions and intellectual property rights.

Bonus and Non-Equity Incentive Plan Compensation

In 2019 and 2020, our Co-Chief Executive Officers and Chief Financial Officer were eligible to earn a target annual cash bonus of 75% and 50% of their base salary, respectively. In 2019, for our Chief Executive Officers, 70% of such bonuses was tied to financial metrics including Revenue, Ex-TAC Gross Profit and Adjusted EBITDA, with the other 30% based on achievement of qualitative objectives set by the compensation committee. In 2019, our Chief Financial Officer's bonus was 70% tied to the CEO performance and other financial metrics and 30% was tied to personal metrics. In 2020, our Co-Chief Executive Officers and Chief Financial Officer bonuses were 85% tied to financial metrics and 15% tied to personal qualitative metrics.

For 2021, our Co-Chief Executive Officers and Chief Financial Officer are eligible to earn a target annual cash bonus of 80% and 60% of their base salary, respectively, which will continue to be substantially tied to financial metrics.

Equity Compensation

We have made equity grants to the named executive officers pursuant to the 2007 Plan. The 2007 Plan is described in greater detail below in "Equity Compensation Plans."

We have granted equity awards to certain employees, including the named executive officers, to recognize performance, to align equity participants with the interests of our stockholders and to retain top talent.

The named executive officers have historically been granted two types of equity awards, stock options and RSUs. The stock options entitle the named executive officer to purchase our shares after vesting at a price equal to the fair market value of a share on the date of grant. The options vest generally in installments over a four-year period following the date of grant. The specific amounts of options held by the named executive officers and any specific vesting terms are described below in "Outstanding Equity Awards at Fiscal Year-End."

The RSUs entitle the named executive officer to one share for each RSU after vesting conditions have been satisfied. The vesting conditions for the RSUs require both that the employee satisfy service-based vesting over a four-year period following the date of grant and the occurrence of an event, either a change in control or the end of a lock-up period following an initial public offering within a certain period of time following vesting and any termination for such RSUs to become vested (or such earlier date as determined by the compensation committee). In the event that the named executive officer voluntarily resigns prior to satisfying the service-based vesting requirements, any RSUs that have not become vested will be forfeited. The service-based vesting of the RSUs are not accelerated on the IPO and will continue to vest to the extent not previously satisfied prior to the IPO over such four-year period following the date of grant. The specific amounts of the RSUs held by the named executive officers and any specific vesting terms are described below in "Outstanding Equity Awards at Fiscal Year-End."

In December 2020, the Board granted various key personnel, including the named executive officers, RSUs subject to vesting as described above to align long-term incentives with our stockholders and to provide a strong incentive for the long-term retention of such key employees. In addition, senior executives, including named executive officers, received grants of stock options with an exercise price equal to the fair market value of a share on the date of grant subject to vesting as described above to incentivize such senior executives to create growth in the value of our company over a period of years while such options remain subject to vesting. The amount of such grants for the named executive officers are listed below in "Outstanding Equity Awards at Fiscal Year-End."

No equity grants have been made to the named executive officers in 2019 or in 2021.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth certain information concerning unexercised options outstanding as of December 31, 2020, for each named executive officer.

Name	Grant Date	Number of securities underlying unexercised options exercisable	Number of securities underlying unexercised options un-exercisable	Equity incentive plan awards: number of securities underlying unexercised unearned options	Option exercise price	Option expiration date	Number of shares or units of stock that have not vested	Market value of shares or units of stock that have not vested	Equity incentive plan awards: number of unearned shares, units or other rights that have not vested ⁽¹⁾	Equity incentive plan awards: market or payout value of unearned shares, units or other rights that have not vested ⁽²⁾
Yaron Galai	07/25/2011	500,000	—	—	\$0.58	7/25/2021	—	—	—	\$ —
	09/30/2014	—	—	—	\$ —	—	—	78,125 ⁽³⁾	\$ 503,125	
	06/07/2017	—	—	—	\$ —	—	—	9,375 ⁽⁴⁾	\$ 60,375	
	12/24/2020	—	250,000 ⁽⁵⁾	—	\$6.44	12/24/2030	—	—	—	\$ —
	12/24/2020	—	—	—	\$ —	—	—	100,000 ⁽⁶⁾	\$ 644,000	
David Kostman	11/13/2017	—	—	—	\$ —	—	—	1,000,000 ⁽⁷⁾	\$ 6,440,000	
	12/24/2020	—	375,000 ⁽⁵⁾	—	\$6.44	12/24/2030	—	—	\$ —	
	12/24/2020	—	—	—	\$ —	—	—	150,000 ⁽⁶⁾	\$ 966,000	
Elise Garofalo	09/30/2014	300,000 ⁽⁸⁾	50,000	—	\$4.50	9/30/2024	—	—	—	\$ —
	09/30/2014	—	—	—	\$ —	—	—	67,709 ⁽⁹⁾	\$ 436,046	
	06/07/2017	—	—	—	\$ —	—	—	300,000 ⁽¹⁰⁾	\$ 1,932,000	
	06/07/2017	—	—	—	\$ —	—	—	8,334 ⁽¹¹⁾	\$ 53,671	
	06/05/2018	—	—	—	\$ —	—	—	165,000 ⁽¹²⁾	\$ 1,062,600	
	12/24/2020	—	212,500 ⁽¹³⁾	—	\$6.44	12/24/2030	—	—	—	\$ —
12/24/2020	—	—	—	\$ —	—	—	75,000 ⁽¹⁴⁾	\$ 483,000		

(1) The RSUs listed in this table will become vested as described above in “Equity Compensation” unless otherwise noted in the footnotes to this table.

(2) Fair market value of our common stock on December 31, 2020 is \$6.44, which is the value used to determine the value of such awards listed in the table.

(3) Represents 78,125 RSUs that remain unvested of the 250,000 originally granted on September 30, 2014. Such RSUs have fully satisfied their service-based vesting condition.

(4) Represents 9,375 RSUs granted on June 7, 2017, all of which remain unvested. The service-based vesting condition has been satisfied with respect to 87.5% of the RSUs as of December 31, 2020 and, subject to continued employment through the applicable date, with approximately 2% satisfying such service-based condition monthly thereafter.

(5) Represents an option to purchase shares of our common stock granted on December 24, 2020. The options listed in this table will become vested as described above in “Equity Compensation” unless otherwise noted.

(6) Represents RSUs granted on December 24, 2020 all of which remain unvested. For the RSUs granted on December 24, 2020, in addition to an initial public offering and a change in control, a business combination with a special purpose acquisition company also constitutes a corporate event that will trigger vesting of RSUs for which the service-based vesting conditions have been satisfied.

(7) Represents 1,000,000 RSUs granted on November 13, 2017, all of which remain unvested. The service-based vesting condition has been satisfied with respect to 79% of the RSUs as of December 31, 2020 and, subject to continued employment through the applicable date, with 2.1% satisfying such service-based condition monthly thereafter. This grant was made to Mr. Kostman on the start of his employment with us.

- (8) Represents an option to purchase 350,000 shares of our common stock granted on September 30, 2014. 300,000 shares underlying this option have vested. 50,000 shares underlying this option vest, subject to continued service, on the date of consummation of an initial public offering. As described above, in the event she remains employed through the earlier to occur of June 30, 2022 and the six-month anniversary of a change in control or if she incurs a termination without cause prior to such date, and such options have not yet vested as a result of the IPO, then she shall become vested on such date in 37,500 of the remaining 50,000 unvested options.
- (9) Represents 67,709 RSUs that remain unvested of the 250,000 originally granted on September 30, 2014. Such RSUs have fully satisfied their service-based vesting condition.
- (10) Represents 300,000 RSUs granted on June 7, 2017. Such RSUs have fully satisfied their service-based vesting condition.
- (11) Represents 8,334 RSUs granted on June 7, 2017, all of which remain unvested. The service-based vesting condition has been satisfied with respect to 87.5% of the RSUs as of December 31, 2020 and, subject to continued employment through the applicable date, with approximately 2% satisfying such service-based condition monthly thereafter.
- (12) Represents 165,000 RSU granted on June 5, 2018, all of which remain unvested. The service-based vesting condition has been satisfied with respect to 68.75% of the RSUs as of December 31, 2020, and, subject to continued employment through the applicable date, with 6.25% satisfying such service-based condition quarterly thereafter.
- (13) Represents 212,500 options granted on December 24, 2020, all of which remain unvested. As described above, if Ms. Garofalo remains employed through June 30, 2022, at the latest, she shall become vested in 75% of such options on June 30, 2022, and she shall continue to vest in the remaining 25% pursuant to the original vesting schedule.
- (14) Represents 75,000 RSUs granted on December 24, 2020, all of which remain unvested. As described above, if Ms. Garofalo remains employed through June 30, 2022, at the latest, she shall be deemed to have satisfied 75% of the service-based vesting requirements on June 30, 2022, and she shall continue to vest in the remaining 25% pursuant to the original vesting schedule. For the RSUs granted on December 24, 2020, in addition to an initial public offering and a change in control, a business combination with a special purpose acquisition company also constitutes a corporate event that will trigger vesting of RSUs for which the service-based vesting conditions have been satisfied.

Equity Compensation Plans

2007 Plan

Our 2007 Omnibus Securities and Incentive Plan, as amended and restated (our “2007 Plan”) became effective October 24, 2007 and was approved by our stockholders and amended and restated on January 21, 2009. Our 2007 Plan allows for the grant of distribution equivalent rights, incentive stock options, or ISOs, non-qualified stock options, performance share awards, performance unit awards, restricted stock awards, stock appreciation rights, or SARs, tandem stock appreciation rights, or tandem SARs, and unrestricted stock awards to our employees, officers, directors and consultants of ours and our affiliates.

Authorized Shares. The maximum aggregate number of shares of our common stock that may be issued pursuant to awards under the 2007 Plan is 25,578,296 shares, however the maximum number of shares that may be subject to option or SAR awards granted to any one employee in any one calendar year is 500,000. As of March 31, 2021, 1,130,194 shares remained available for future issuance under the 2007 Plan. To the extent that any award under the 2007 Plan lapses, expires, is canceled, is terminated unexercised or ceases to be exercisable for any reason, or the rights of the award-holder terminate, the shares underlying such award will be available for new grants under the 2007 Plan. As of March 31, 2021, (i) options to purchase 8,636,999 shares of our common stock remained outstanding under our 2007 Plan at a weighted-average exercise price of approximately \$3.84 per share, (ii) RSUs covering 6,404,423 shares of our common stock remained outstanding under our 2007 Plan at a weighted-average grant-date fair value of approximately \$5.49 per share, (iii) RSAs covering 190,245 shares of our common stock remained outstanding under our 2007 Plan at a weighted-average exercise price of approximately \$2.22 per share, and (iv) SARs covering 5,764 shares of our common stock remained outstanding under our 2007 Plan at a weighted-average grant date fair value of approximately \$4.50 per share.

Plan Administration. The compensation committee currently administers our 2007 Plan. Subject to the provisions of our 2007 Plan, the compensation committee has the sole authority, in its discretion, to make all determinations under the 2007 Plan, including determining which employees, directors or consultants will receive an award, the time or times when an award will be made, what type of award will be granted, the terms and conditions of an award, the restrictions applicable to a RSA, and the number of shares of common stock that may be issued under an award.

Eligibility. The 2007 Plan provides for granting awards under various tax regimes, including, without limitation, in compliance with Section 102 of the Israeli Income Tax Ordinance (New Version), 5721-1961 (the “Ordinance” and “102 Awards,” respectively), and Section 3(i) of the Ordinance and for awards granted to our and our affiliates’ United States employees or service providers, including those who are deemed to be residents of the United States for tax purposes, in compliance with Sections 422 and 409A of the Code..

Section 102 of the Ordinance allows employees, directors and officers who are not controlling shareholders and are considered Israeli residents to receive favorable tax treatment for compensation in the form of shares, options or certain other types of equity awards. Our non-employee service providers and controlling shareholders may only be granted options under section 3(i) of the Ordinance, which does not provide for similar tax benefits.

Options. Stock options may be granted under our 2007 Plan. The exercise price per share of all options is determined by the compensation committee and may not be less than the fair market value per share of our common stock on the date of grant. The compensation committee determines the methods of payment of the exercise price of an option, which are set forth in the option agreement. After a holder’s termination of service, the holder generally may exercise his or her options, to the extent exercisable as of such date of termination, for 90 days after termination. If termination is due to death or disability, the option generally will remain exercisable, to the extent exercisable as of such date of termination, until the one-year anniversary of such termination. If termination is for cause, then an option automatically expires upon termination.

Restricted Stock. Restricted stock may be granted under our 2007 Plan. Restricted stock awards are grants of shares of our common stock that are subject to various restrictions, including restrictions on transferability and forfeiture provisions. Shares of restricted stock will vest, and the restrictions on such shares will lapse, in accordance with terms and conditions established by the compensation committee. Generally, upon a holder’s termination for any reason, any portion of a restricted stock award that is still subject to restrictions will be forfeited.

Unrestricted Stock. Shares of common stock that are not subject to restrictions may be awarded or sold at a discount under our 2007 Plan.

Performance Unit Awards. Performance unit awards may be granted under our 2007 Plan. Performance units give the holder the right to obtain a cash payment equal to the dollar value assigned to such unit if the holder satisfies the performance goals and objectives determined by the compensation committee.

Performance Share Awards. Performance shares may be granted under our 2007 Plan. Performance shares entitle the holder to an award of common stock if the holder satisfies the performance goals and objectives determined by the compensation committee. The holder of performance shares has no rights as a stockholder until the holder receives the shares of common stock.

Distribution Equivalent Rights. Distribution equivalent rights may be granted under our 2007 Plan. A distribution equivalent right entitles the holder to receive amounts equal to distributions that would have been made on a specified number of shares of common stock if the holder has actually held those shares. The compensation committee establishes the terms and conditions, if any, including whether the holder is to receive credits currently in cash, is to have such credits reinvested in additional shares of common stock or is to be entitled to choose among such alternatives. Distribution equivalent rights awards may be settled in cash or in shares of common stock.

SARs. Ordinary SARs and tandem SARs may be granted under our 2007 Plan. Ordinary and tandem SARs entitle the holder to receive a payment in cash, shares of common stock or a combination of

both, as determined by the compensation committee. The compensation committee may also grant ordinary or tandem SARs that provide the holder with the option to settle in cash or equity. Ordinary SARs follow the terms and conditions established by the compensation committee, including the base value, exercise period and any other requirements. Tandem SARs are granted at the same time as the related option, the exercise of which results in termination of the otherwise entitlement to purchase some or all of the shares of common stock under the related option. Tandem SARs must expire before or on the same date as the related option and the base value cannot be less than the exercise price of the related option, nor can the value of the payment exceed the difference between the exercise price of the related option and the fair market value of shares of common stock at the time of exercise.

Transferability or Assignability of Awards; Lock-Up. Our 2007 Plan generally does not allow for the transfer or assignment of awards, other than by will or descent. Each award agreement provides for a lock-up covenant by the holder, pursuant to which the holder agrees not to offer, sell, pledge or otherwise dispose of, any of our common stock received pursuant to such award, to be effective for a period not to exceed one year, upon our request or the request of our principal underwriters in connection with an underwritten public offering of our common stock. However, awards other than ISOs may be transferred by gift to a family member. Generally only the holder of an award may exercise such an award during his or her lifetime.

Adjustments; Recapitalization. In the event of a stock dividend or certain changes in our capitalization, the price per share of and the number and class of shares subject to outstanding options and other awards, as well as the aggregate number of shares available for issuance pursuant to awards under the 2007 Plan, will be proportionately and correspondingly adjusted.

Merger/Sale. Our 2007 Plan provides that, in the event of a merger or sale, as defined under our 2007 Plan, each outstanding award may be assumed or substituted for an equivalent award by a successor corporation or its affiliate. In the event that awards are not assumed or substituted, then the compensation committee may (but is not obligated to) (1) provide the holders the right to exercise their outstanding and vested awards, including the cancellation of all unexercised awards upon the closing of the merger or sale or provide for another arrangement as the compensation committee may decide and/or (2) provide for the cancellation of each outstanding award in exchange for a cash payment to the holder.

Amendment and Termination. Our board in its discretion may terminate the 2007 Plan at any time with respect to shares for which awards have not yet been granted. However, no termination of the 2007 Plan will materially impair the rights under outstanding awards without the holder's consent. Our board may amend our 2007 Plan from time to time, but no change in any outstanding award may be made which will materially impair the rights under outstanding awards without the holder's consent.

2021 Long-Term Incentive Plan

In connection with this offering, we will adopt the 2021 Long-Term Incentive Plan ("LTIP") and will reserve _____ shares of common stock for issuance pursuant to the LTIP. The LTIP is intended to promote the long-term financial interest of our company and its subsidiaries, including the growth in value of our company's equity and enhancement of long-term stockholder return. The LTIP provides for the grant of non-qualified and incentive stock options, full value awards, and cash incentive awards. The 2021 Plan provides for granting awards under various tax regimes, including, without limitation, in compliance with Section 102 of the Ordinance, and Section 3(i) of the Ordinance.

Plan Administration. The LTIP will be administered by the compensation committee. The compensation committee selects the participants, the time or times of receipt of awards, the types of awards to be granted and the applicable terms, conditions, performance targets, restrictions and other provisions of such awards, to cancel or suspend awards and to accelerate the exercisability or vesting of any award under circumstances designated by it. The compensation committee may delegate all or any portion of its responsibilities or powers under the LTIP to persons selected by it. If the compensation committee does not exist or for any other reason determined by the board of directors, and to the extent not prohibited by applicable law or the applicable rules of any stock exchange, the board of directors may take any action under the LTIP that would otherwise be the responsibility of the compensation committee.

The LTIP contains an "evergreen" provision, which allows for an automatic annual increase in the number of shares of common stock available under the LTIP on the first day of each fiscal year, in an

amount equal to 5% of the then-outstanding shares of common stock (the “Annual Increase”); provided, that the compensation committee may take action prior to such annual increase to lower the amount of such increase.

If an award of common stock is settled in cash, the total number of shares with respect to which such payment is made shall not be considered to have been delivered. However, (i) if shares covered by an award are used to satisfy the applicable tax withholding obligation, the number of shares held back by the company to satisfy such withholding obligation shall be considered to have been delivered; (ii) if the exercise price of any option granted under the LTIP is satisfied by tendering shares of common stock to us (including shares of common stock that would otherwise be distributable upon the exercise of the option), the number of shares of common stock tendered to satisfy such exercise price shall be considered to have been delivered; and (iii) if we repurchase shares of common stock with proceeds received from the exercise of an option issued under the LTIP, the total number of shares repurchased shall be deemed delivered.

The following additional limits apply to awards under the LTIP:

- the maximum number of shares of common stock that may be delivered to participants with respect to incentive stock options shall be _____ shares of common stock; provided that the limitation provides for an automatic annual increase in the number of shares of common stock available for grant as incentive stock options on the first day of each fiscal year, in an amount equal to 5% of the total outstanding shares of common stock on the effective date of the LTIP.

The shares of common stock with respect to which awards may be made under the LTIP shall be:

- shares currently authorized but unissued;
- to the extent permitted by applicable law, currently held or acquired by the company as treasury shares, including shares purchased in the open market or in private transactions; or
- shares purchased in the open market by a direct or indirect wholly-owned subsidiary of the company, and we may contribute to the subsidiary an amount sufficient to accomplish the purchase of the shares to be so acquired.

At the discretion of the compensation committee, an award under the LTIP may be settled in cash, shares of common stock, the granting of replacement awards, or a combination thereof; provided, however, that if a cash incentive award is settled in shares of common stock, it must satisfy the minimum vesting requirements related to full value awards.

The compensation committee may use shares of common stock available under the LTIP as the form of payment for compensation, grants or rights earned or due under any other compensation plans or arrangements of our company or a subsidiary, including the plans and arrangements of our company or a subsidiary assumed in business combinations.

In the event of a corporate transaction involving the company (including, without limitation, any share dividend, share split, extraordinary cash dividend, recapitalization, reorganization, merger, amalgamation, consolidation, share exchange, split-up, spin-off, sale of assets or subsidiaries, combination or exchange of shares), the compensation committee shall adjust outstanding awards to preserve the benefits or potential benefits of the awards. Action by the compensation committee may include:

- adjustment of the number and kind of shares which may be delivered under the LTIP;
- adjustment of the number and kind of shares subject to outstanding awards;
- adjustment of the exercise price of outstanding options; and
- any other adjustments that the compensation committee determines to be equitable, which may include, without limitation:
 - replacement of awards with other awards which the compensation committee determines have comparable value and which are based on stock of a company resulting from the transaction; and

- cancellation of the award in return for cash payment of the current value of the award, determined as though the award is fully vested at the time of payment, provided that in the case of an option, the amount of such payment will be the excess of value of the shares of common stock subject to the option at the time of the transaction over the exercise price.

Except as otherwise provided by the compensation committee, awards under the LTIP are not transferable except as designated by the participant by will or by the laws of descent and distribution.

Eligibility. All employees and directors of, and consultants and other persons providing services to, the Company or any of its subsidiaries (or any parent or other related company, as determined by the compensation committee) are eligible to become participants in the LTIP, except that non-employees may not be granted incentive stock options.

Options. The compensation committee may grant an incentive stock option or non-qualified stock option to purchase shares of common stock at an exercise price determined by the compensation committee. Each option shall be designated as an incentive stock option or non-qualified stock option when granted. An incentive stock option is a stock option intended to satisfy additional requirements required by federal tax rules in the United States as specified in the LTIP (and any incentive stock option granted that does not satisfy such requirements shall be treated as a non-qualified stock option).

Except as described below, the exercise price for an option shall not be less than the fair market value of a share of common stock at the time the option is granted; provided that the exercise price of an incentive stock option granted to any employee who owns more than 10% of the voting power of all classes of stock in our company or a subsidiary shall not be less than 110% of the fair market value of a share of common stock at the time of grant. The exercise price of an option may not be decreased after the date of grant nor may an option be surrendered to the company as consideration for the grant of a replacement option with a lower exercise price, except as approved by our board or as adjusted for corporate transactions described above.

No option shall be surrendered to the company in consideration for a cash payment or grant of any other award if at the time of such surrender the exercise price of such option is greater than the then-current fair market value of a share of common stock, except as approved by our stockholders. In addition, the compensation committee may grant options with an exercise price less than the fair market value of the shares of common stock at the time of grant in replacement for awards under other plans assumed in connection with business combinations if the compensation committee determines that doing so is appropriate to preserve the benefit of the awards being replaced. No dividend equivalents may be granted under the LTIP with respect to any option.

The option shall be exercisable in accordance with the terms established by the compensation committee.

The full purchase price of each share of common stock purchased upon the exercise of any option shall be paid at the time of exercise of an option. Except as otherwise determined by the compensation committee, the purchase price of an option shall be payable in cash, by promissory note, or by shares of common stock (valued at fair market value as of the day of exercise), including shares of stock otherwise distributable on the exercise of the option, or a combination thereof. If the shares remain publicly traded, the compensation committee may permit a participant to pay the exercise price by irrevocably authorizing a third party to sell shares of common stock (or a sufficient portion of the shares of common stock) acquired upon exercise of the option and remit to the company a sufficient portion of the sale proceeds to pay the entire exercise price and any tax withholding resulting from such exercise. The compensation committee, in its discretion, may impose such conditions, restrictions and contingencies on shares of common stock acquired pursuant to the exercise of an option as the compensation committee determines to be desirable. In no event will an option expire more than ten years after the grant date; provided that an incentive stock option granted to any employee who owns more than 10% of the voting power of all classes of stock in the company or a subsidiary shall not be more than five years.

Full Value Awards. The following types of “full value awards” may be granted, as determined by the compensation committee:

- the compensation committee may grant awards in return for previously performed services or in return for the participant surrendering other compensation that may be due;

- the compensation committee may grant awards that are contingent on the achievement of performance or other objectives during a specified period; and
- the compensation committee may grant awards subject to a risk of forfeiture or other restrictions that lapse upon the achievement of one or more goals relating to completion of service by the participant, achievement of performance or other objectives.

Any such awards shall be subject to such conditions, restrictions and contingencies as the compensation committee determines.

Dividends or dividend equivalents settled in cash or shares of common stock may be granted to a participant in relation to a full value award with payments made either currently or credited to an account. No dividend or dividend equivalents granted in relation to a full value award that is subject to vesting shall be settled prior to the date such full value award (or applicable portion thereof) becomes vested and is settled.

Change in Control. A change in control shall have such effect on an award as is provided in the applicable award agreement, or, to the extent not prohibited by the LTIP or the applicable award agreement, as provided by the compensation committee. In the event of a change in control, the compensation committee may cancel any outstanding awards in return for cash payment of the current value of the award, determined with the award fully vested at the time of payment, provided that in the case of an option, the amount of such payment will be the excess of value of the shares of common stock subject to the option at the time of the transaction over the exercise price (and the option will be cancelled with no payment if the value of the shares at the time of the transaction are equal to or less than the exercise price). For the purposes of the LTIP, a “change in control” is generally deemed to occur when:

- any person becomes the beneficial owner of 50% or more of the company’s voting stock;
- the consummation of a reorganization, merger, consolidation, acquisition, share exchange or other corporate transaction involving our company where, immediately after the transaction, the company stockholders immediately prior to the combination hold, directly or indirectly, 50% or less of the voting stock of the combined company;
- the consummation of any plan of liquidation or dissolution providing for the distribution of all or substantially all of the assets of the company and its subsidiaries or the consummation of a sale of substantially all of the assets of the company and its subsidiaries; or
- at any time during any period of two consecutive years, individuals who at the beginning of such period were members of the Board of Directors, who we refer to as incumbent directors, cease for any reason to constitute at least a majority thereof (unless the election, or the nomination for election by the company’s stockholders, of each new director was approved by a vote of at least two-thirds of the incumbent directors).

Amendment and Termination. The Board of Directors may amend or terminate the LTIP at any time, and the Board of Directors or the compensation committee may amend any award granted under the LTIP, but no amendment or termination may adversely affect the rights of any participant without the participant’s written consent. The Board of Directors may not amend the provision of the LTIP related to re-pricing without approval of stockholders or make any material amendments to the LTIP without stockholder approval. The LTIP will remain in effect as long as any awards under the LTIP remain outstanding, but no new awards may be granted after the tenth anniversary of the date on which the stockholders approve the LTIP.

2021 Employee Share Purchase Plan

We expect to adopt a new 2021 Employee Share Purchase Plan (the “ESPP”) effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part. We believe that allowing our employees to participate in our ESPP will provide them with a further incentive towards promoting our success and accomplishing our corporate goals.

Authorized Shares. A total of _____ shares of our common stock will be available for sale under our ESPP. The number of shares of common stock that will be available for sale under our ESPP also includes

an annual increase on the first day of each fiscal year beginning with our 2022 fiscal year, equal to the least of: 1% of the outstanding shares as of the last day of the immediately preceding fiscal year, determined on a fully diluted basis; or such lesser amount as our board of directors may determine.

ESPP Administration. We expect that the compensation committee will administer our ESPP and will have full and exclusive discretionary authority to construe, interpret and apply the terms of the ESPP, delegate ministerial duties to any of our employees, designate separate offerings under the ESPP, designate our subsidiaries and affiliates as participating in the ESPP, determine eligibility, adjudicate all disputed claims filed under the ESPP and establish procedures that it deems necessary for the administration of the ESPP, including, but not limited to, adopting such procedures and sub-plans as are necessary or appropriate to permit participation in the ESPP by employees who are foreign nationals or employed outside the United States. The administrator's findings, decisions and determinations are final and binding on all participants to the full extent permitted by law.

Eligibility. Generally, all of our employees will be eligible to participate if they are customarily employed by us, or any participating subsidiary or affiliate, except that the following persons may be excluded from an offering period in the ESPP as determined by the administrator:

- An employee who has been employed less than two years.
- An employee whose customary employment is 20 hours or less per week.
- An employee whose customary employment is for not more than five months in any calendar year.
- An employee who is a citizen or resident of a foreign jurisdiction (without regard to whether they are also citizens of the United States or resident aliens (within the meaning of Section 7701(b)(1) (A) of the Code)) with respect to whom either one or both of the following apply: (i) the grant of an option under the ESPP or an offering to a citizen or resident of the foreign jurisdiction is prohibited under the laws of such jurisdiction; or (ii) compliance with the laws of the foreign jurisdiction would cause the ESPP or offering to violate the requirements of Section 423 of the Code.

For offerings intended to qualify under Section 423 of the Code, an employee who owns, or who would own upon the exercise of any rights extended under the ESPP and the exercise of any other option held by the employee (whether qualified or non-qualified), shares possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or of any parent or subsidiary shall not be eligible.

Offering Periods. For offerings intended to qualify under Section 423 of the Code, our ESPP will provide for offering periods, not to exceed 27 months each, during which we will grant options to purchase our shares of common stock to our employees. The timing of the offering periods will be selected by the administrator. The terms and conditions applicable to each offering period will be set forth in an offering document adopted by the administrator for the particular offering period. The provisions of offerings during separate offering periods under the ESPP need not be identical. Our ESPP will include a component that allows us to make offerings intended to qualify under Section 423 of the Code, and a component that allows us to make offerings that are not intended to qualify under Section 423 of the Code.

Contributions. Our ESPP will permit participants to purchase our shares of common stock through contributions (in the form of payroll deductions, or otherwise, to the extent permitted by the administrator). The percentage of compensation designated by an eligible employee as payroll deductions for participation in an offering may not be less than 1% and may not be more than the maximum percentage specified by the administrator in the applicable offering document (up to 20%).

Exercise of Purchase Right. Amounts contributed and accumulated by the participant will be used to purchase our shares of common stock at the end of each offering. For offerings intended to qualify under Section 423 of the Code, a participant may purchase a maximum \$25,000 of our shares of common stock during any calendar year. The purchase price of the shares will be 85% of the lower of the fair market value of our shares of common stock on (i) the first trading day of the offering period or (ii) the last trading day of the offering period (or such higher price as determined by the administrator). Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase our shares of common stock. Participation ends automatically upon termination of employment with us.

Non-Transferability. A participant may not transfer contributions credited to his or her account nor any rights granted under our ESPP other than by will, the laws of descent and distribution or as otherwise provided under our ESPP.

Merger or Corporate Transaction. In the event of a merger or other corporate transaction in which the shareholders of the Company receive any shares of stock or other securities or property, or the Company shall distribute securities of another corporation to its shareholders, then, subject to the requirements of Section 423, there shall be substituted for the shares subject to outstanding rights to purchase shares under the ESPP an appropriate number of shares of each class of stock or amount of other securities or property which were distributed to the shareholders of the Company in respect of such shares.

Other Countries. The Committee may adopt, amend and terminate one or more sub-plans to the ESPP to permit employees in a country other than the United States to participate in the ESPP on the terms described in the applicable sub-plan, in compliance with that country's securities, tax and other laws (including, but not limited to, a sub-plan complying with the requirements of Schedule 2 (share incentive plans) or Schedule 3 (SAYE option plans) to the Income Tax Earnings and Pensions Act 2003 of the United Kingdom); provided, however, that such sub-plans shall be a separate offering from any offering intended to comply with the requirements of Section 423 and in no event shall the provisions of such sub-plans cause the Plan to fail to satisfy the requirements of Section 423. In the event that employees in a country other than the United States participate in an offering that is intended to comply with the requirements of Section 423, the terms of the offering may be changed for such employees by the Committee if, in order to comply with the laws of a foreign jurisdiction, the terms for such employees are less favorable than the terms of the offering to employees resident in the United States.

Amendment; Termination. The administrator will have the authority to amend, suspend or terminate our ESPP. Our ESPP is not subject to a specific termination date.

Certain Relationships and Related Party Transactions

In addition to the compensation arrangements, including employment, termination of employment and change in control arrangements, discussed in the sections titled “Management” and “Executive Compensation” and the registration rights described in the section titled “Description of Capital Stock—Registration Rights,” the following is a description of each transaction since January 1, 2018 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeded or exceeds \$120,000; and
- any of our directors, executive officers or holders of more than 5% of our outstanding capital stock, or any immediate family member of, or person sharing the household with, any of these individuals or entities, had or will have a direct or indirect material interest.

Indemnification Agreements

We will enter into indemnification agreements with each of our directors and officers. The indemnification agreements and our amended and restated certificate of incorporation and amended and restated bylaws in effect upon the completion of this offering will require us to indemnify our directors and officers to the fullest extent permitted by Delaware law.

Family Relationships

Our Co-Founder and Co-Chief Executive Officer, Yaron Galai, is the brother of Eytan Galai, who serves as Chief Revenue Officer. Eytan Galai has reported directly to co-Chief Executive Officer Mr. David Kostman since October 2017 and has received customary compensation for his role, all as approved by the compensation committee. Aside from this relationship, we are not aware of any other familial relationships between our directors, officers and employees.

Other

In March 2020, we sold the assets underlying our Listory division for \$1,117,000, representing the amount we had invested in the division at the time of sale, to Listory Inc. Our Co-Founder and Co-Chief Executive Officer, Yaron Galai, owns approximately 20% of the stock of Listory Inc. and has served as its executive chairman since February 2020.

We are also party to a transition services agreement with Listory Inc., pursuant to which we have incurred expenses totaling \$266,090 in the year ended December 31, 2020 and \$86,449 in the three months ended March 31, 2021. The transition services agreement is terminable at any time by either party.

On April 1, 2019, we completed the acquisition of all the outstanding shares of Ligatus, a German-based native advertising company, pursuant to a share purchase agreement with Gruner + Jahr GmbH. The acquisition date fair value of the consideration transferred was approximately \$40.1 million, which consisted of 6,125,404 shares of our common stock.

Policies and Procedures for Related Person Transactions

We intend to adopt a written related person transactions policy that our executive officers, directors, nominees for election as a director, 5% stockholders, and any members of the immediate family of and any entity affiliated with any of the foregoing persons, are not permitted to enter into a transaction with us without the prior consent of our audit committee, or other independent members of our board of directors in the event it is inappropriate for our audit committee to review such transaction due to a conflict of interest. Any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, 5% stockholder or any of their immediate family members or affiliates, in which the amount involved exceeds \$120,000 must first be presented to our audit committee for review, consideration and approval. In approving or rejecting any such proposal, our audit committee will consider all facts and information that is available and deemed relevant by the audit committee, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person’s interest in the transaction.

Although we have not previously had a written policy for the review and approval of transactions with related persons in place, our board of directors has historically reviewed and approved any transaction where a director or officer had a financial interest, including all of the transactions described above. Prior to approving such a transaction, all material facts with respect to a director's or officer's relationship or interest in the agreement or transaction were disclosed to our board of directors. Our board of directors took this information into account when evaluating the transaction and when determining whether such transaction was fair to us and in the best interest of all of our stockholders.

Principal Stockholders

The following table sets forth certain information with respect to the beneficial ownership of our capital stock as of June 30, 2021, both prior to and as adjusted to reflect the sale of our common stock offered by us in this offering for:

- each of our named executive officers;
- each of our directors;
- all of our current directors and executive officers as a group; and
- each person known by us to be the beneficial owner of more than 5% of the outstanding shares of our common stock.

Beneficial ownership is determined in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. Shares of common stock issuable upon the exercise of stock options that are immediately exercisable or exercisable within 60 days after June 30, 2021 are deemed to be outstanding and to be beneficially owned by the person holding the stock option for the purpose of computing the ownership and percentage ownership of that person and the ownership and percentage ownership of all executive offices and directors as a group. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person. Except as otherwise indicated, all of the shares reflected in the table are shares of common stock and all persons listed below have sole voting and investment power with respect to the shares beneficially owned by them, subject to applicable community property laws. The information is not necessarily indicative of beneficial ownership for any other purpose.

Percentage ownership calculations for beneficial ownership prior to this offering are based on 77,201,907 shares outstanding as of June 30, 2021, assuming the conversion of all of our outstanding preferred stock. Percentage ownership calculations for beneficial ownership after this offering are based on shares outstanding after this offering, assuming no exercise of the underwriters' option to purchase additional shares and no purchase of shares in the offering by any existing stockholders. Except as otherwise indicated in the table below, addresses of named beneficial owners are care of Outbrain Inc., 222 Broadway, 19th Floor, New York, NY 10038.

Name of Beneficial Owner	Shares Beneficially Owned Prior to Offering		Shares Beneficially Owned After Offering	
	Number	%	Number	%
5% Stockholders:				
LSVP VII Trust ⁽¹⁾	10,657,992	13.8%		
Viola Ventures, III L.P. ⁽²⁾	10,746,015	13.9%		
Entities affiliated with Gemini Israel Ventures ⁽³⁾	8,314,716	10.8%		
Entities affiliated with Index Ventures ⁽⁴⁾	4,158,824	5.4%		
Gruner + Jahr GmbH ⁽⁵⁾	6,125,404	7.9%		
Named Executive Officers and Directors:				
Yaron Galai ⁽⁶⁾	6,014,818	7.7%		
David Kostman ⁽⁷⁾	121,485	*		
Elise Garofalo ⁽⁸⁾	444,683	*		
Ori Lahav ⁽⁹⁾	1,490,414	1.9%		
Ziv Kop ⁽¹⁰⁾	350,000	*		
Jonathan (Yoni) Cheifetz ⁽¹⁾	10,657,992	13.8%		
Shlomo Dovrat ⁽²⁾	10,746,015	13.9%		
Yossi Sela ⁽³⁾	8,314,716	10.8%		
Dominique Vidal ⁽⁴⁾	4,158,824	5.4%		
Jonathan Klahr ⁽¹¹⁾	1,903,821	2.5%		
Arne Wolter ⁽⁵⁾	6,125,404	7.9%		
All executive officers and directors as a group (11 persons)	<u>50,328,172</u>	<u>65.1%</u>		

* Less than 1%.

- (1) Consists of 10,657,992 shares held by LSVP VII Trust (“LSVP VII”). Lightspeed Trustee VII, LLC (“Lightspeed Trustee”) is the liquidating trustee of LSVP VII. Barry Eggers, Ravi Mhatre and Peter Nieh, as the members of Lightspeed Trustee, share voting and dispositive power with respect to the shares held by LSVP VII. Each individual disclaims beneficial ownership of these securities except to the extent of his pecuniary interest therein. Jonathan (Yoni) Cheifetz, a member of our board of directors, is a Partner of Lightspeed Venture Partners. Mr. Cheifetz disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein. The business address of LSVP VII is 2200 Sand Hill Road, Menlo Park, California 94025.
- (2) Consists of 10,746,015 shares held by Viola Ventures III, L.P., or Viola Ventures. Viola [3] Ltd., or Viola, is the general partner of Viola Ventures (together with Viola, the “Viola Entities”) and possesses sole voting and dispositive power over these shares. Shlomo Dovrat, a member of our board of directors, Harel Beit-On, Avi Zeevi, Ori Bendori and Rina Shainski, as directors of Viola, share voting and dispositive power with respect to the shares held by Viola Ventures. Each individual disclaims beneficial ownership of these securities except to the extent of his or her pecuniary interest therein. The business address of each of the Viola Entities is 16 Abba Eban Avenue, Herzeliya 46725 Israel.
- (3) Consists of (i) 6,583,750 shares held by Gemini Israel IV L.P., or Gemini LP, (ii) 1,606,030 shares held by Gemini Israel IV (Annex Fund) L.P., or Gemini LP Annex, (iii) 58,433 shares held by Gemini Partners Investors IV L.P., or Gemini Partners, and (iv) 66,503 shares held by Gemini Partners Investors IV (Annex Fund) L.P., or Gemini Partners Annex (together with Gemini LP, Gemini LP Annex and Gemini Partners, the “Gemini Entities”). Gemini Israel Funds Ltd., or Gemini Israel, is the general partner and/or controlling partner of each of the Gemini Entities. Yossi Sela, a member of our board of directors, is managing partner and a shareholder of Gemini Israel. The board of directors of Gemini Israel has sole investment control with respect to these entities and is comprised of Mr. Yossi Sela and Mr. Menashe Ezra. These individuals share voting power over the shares held by the Gemini Entities and may be deemed to be the beneficial owners of the securities held thereby. Each individual disclaims beneficial ownership of these securities except to the extent of his pecuniary interest therein. The business address of each of the Gemini Entities is Gemini Israel Funds, 1 Abba Eban Ave., Herzliya Pituach 4672519 Israel.
- (4) Consists of (i) 4,047,054 shares held by Index Ventures Growth II (Jersey) L.P., or Index Jersey, (ii) 59,783 shares held by Index Ventures Growth II Parallel Entrepreneur Fund (Jersey) L.P., or Index PEF, (iii) 51,987 shares held by Yucca (Jersey) S.L.P., or Yucca, (together with Index Jersey, and Index PEF the “Index Entities”). Index Venture Growth Associates II Limited, or Index Associates, is the managing general partner of Index Jersey and Index PEF and may be deemed to have voting and dispositive over the shares held by Index Jersey and Index PEF. Yucca is the administrator of the Index co-investment vehicles that are contractually required to mirror the relevant Index Funds’ investment, and Index Associates may be deemed to have voting and dispositive power over the shares held by Yucca. The members of the board of directors of Index Associates, David Hall, Nigel Greenwood, Philip Balderson and Brendan Boyle collectively may be deemed to have voting and dispositive over the shares held by Index Jersey and Index PEF. Dominique Vidal, a member of our board of directors, has served as a Partner of Index Venture Management LLP. Index Venture Management LLP advises Index Jersey and Index PEF but does not have voting, investment or dispositive power with respect to the shares held by these entities. Mr. Vidal disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein. The principal address of Index Associates and each of the Index Entities is 5th Floor, 44 Esplanade, St. Helier, Jersey JE1 3FG, Channel Islands.
- (5) Consists of 6,125,404 shares held by Gruner + Jahr GmbH pursuant to the acquisition of Ligatus on April 1, 2019. The shares of Gruner +Jahr GmbH are held by Bertelsmann SE & Co. KGaA a privately held Kommanditgesellschaft auf Aktien (KGaA; a partnership limited by shares), and 80.9 percent of the capital shares in Bertelsmann SE & Co. KGaA are held indirectly by foundations (Bertelsmann Stiftung, Reinhard Mohn Stiftung, BVG-Stiftung), and 19.1 percent are held indirectly by the Mohn family. All voting rights at the General Meeting of Bertelsmann SE & Co. KGaA and Bertelsmann Management SE (general partner) are controlled by Bertelsmann Verwaltungsgesellschaft (BVG). BVG

controls 100 percent of the voting rights in the annual general meeting of Bertelsmann SE & Co. KGaA, which it exercises for these purposes, as well as 100 percent of the voting rights in the annual general meeting of Bertelsmann Management SE. Elisabeth Mohn has voting control of Bertelsmann Verwaltungsgesellschaft mbH (a veto right) and therefore exercises voting and dispositive power with respect to such shares. The business address of Bertelsmann is Carl-Bertelsmann-Strasse 270, 33311 Gütersloh, Germany.

- (6) Consists of 5,467,943 shares and outstanding options to purchase 546,875 shares that are exercisable within 60 days of June 30, 2021 (which includes 500,000 options that expire on July 25, 2021). Does not include 106,250 RSUs that will vest in connection with this offering, none of which will have voting or dispositive power until the expiration of the lockup period.
- (7) Consists of 51,172 shares and outstanding options to purchase 70,313 shares that are exercisable within 60 days of June 30, 2021. Does not include 1,007,292 RSUs that will vest in connection with this offering, none of which will have voting or dispositive power until the expiration of the lockup period.
- (8) Consists of 104,834 shares and outstanding options to purchase 389,844 shares that are exercisable within 60 days of June 30, 2021. Does not include 534,481 RSUs that will vest in connection with this offering, none of which will have voting or dispositive power until the expiration of the lockup period.
- (9) Consists of 966,976 shares and outstanding options to purchase 523,438 shares that are exercisable within 60 days of June 30, 2021 (which includes 500,000 options that expire on July 25, 2021).
- (10) Held for the benefit of Ziv Kop under the 2004 IBI Capital Trust. IBI Capital Trust offers supervising trustee services in accordance with relevant income tax regulations in Israel. The Chairman of Outbrain's Board of Directors has discretionary voting power over these shares, which arrangement will terminate upon the consummation of the offering. The business address of IBI Capital Trust is Migdal Shalom, 9 Ahad Ha'am St. Floor 26, Tel Aviv, Israel.
- (11) Consists of 1,903,821 shares held by Susquehanna Growth Equity Fund IV, LLLP, or SGE. Susquehanna Growth Equity, LLC, or SGE LLC, is the investment manager of SGE and has discretionary voting and dispositive power over these shares. Amir Goldman and Arthur Dantchik, in their positions as members of the investment committee of SGE LLC, may also be deemed to have investment discretion over the shares held by SGE. The business address of SGE is One Commercial Center, 251 Little Falls Drive, Wilmington, DE 19801, and the business address of SGE LLC is 401 City Ave., Bala Cynwyd, PA 19004.

Description of Capital Stock

The following descriptions are summaries of the material terms of our amended and restated certificate of incorporation and amended and restated bylaws, which will be effective upon the closing of this offering. These descriptions are qualified in their entirety by reference to the amended and restated certificate of incorporation and amended and restated bylaws, copies of which will be filed with the SEC as exhibits to the registration statement of which this prospectus is a part, and applicable law. The descriptions of the common stock and preferred stock give effect to changes to our capital structure that will be in effect upon the closing of this offering. We refer in this section to our amended and restated certificate of incorporation as our certificate of incorporation, and we refer to our amended and restated bylaws as our bylaws.

General

Upon completion of this offering, our authorized capital stock will consist of shares of common stock, par value \$0.001 per share, and shares of preferred stock, par value \$0.001 per share, all of which shares of preferred stock will be undesignated.

As of June 30, 2021, 77,201,907 shares of our common stock were outstanding on an as-converted basis and held by approximately 570 stockholders of record. This amount assumes the conversion of all outstanding shares of our preferred stock into common stock, which will occur immediately prior to the closing of this offering.

Common Stock

Dividend Rights

Subject to preferences that may be applicable to any then outstanding preferred stock, holders of our common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds. We have never declared or paid cash dividends on any of our capital stock and currently do not anticipate paying any cash dividends after the offering or in the foreseeable future.

Voting Rights

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our stockholders do not have cumulative voting rights in the election of directors. Accordingly, holders of a majority of the voting shares are able to elect all of the directors.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock.

Rights and Preferences

Holders of our common stock have no preemptive, conversion, subscription or other rights, and there are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock that we may designate in the future.

The shares to be issued by us in this offering will be, when issued and paid for, validly issued, fully paid and non-assessable.

Preferred Stock

Our board of directors is authorized, subject to any limitations prescribed by law, without stockholder approval, to issue from time to time up to shares of preferred stock, in one or more series, each series

to have such rights and preferences, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences as our board of directors determines. The rights of the holders of common stock will be subject to, and may be adversely affected by, the rights of holders of any preferred stock that may be issued in the future. Following completion of this offering, we will have no shares of preferred stock outstanding, and we have no present plans to issue any shares of preferred stock.

Warrants

As of June 30, 2021, we had outstanding warrants to purchase up to 1,055,852 shares of our common stock with a weighted-average exercise price of \$2.92 per share.

Options

As of June 30, 2021, we had outstanding options to purchase 8,134,850 shares of our common stock under our equity incentive plans at a weighted-average exercise price of \$3.91 per share, 6,083,294 shares of which were exercisable.

RSUs

As of June 30, 2021, we had outstanding RSUs under our equity incentive plans with respect to 6,578,232 shares of our common stock.

RSAs

As of June 30, 2021, we have outstanding RSAs under our equity incentive plans with respect to 190,245 shares of our common stock.

SARs

As of June 30, 2021, we have outstanding SARs under our equity incentive plans with respect to 5,764 shares of our common stock.

Registration Rights

Our investors' rights agreement entitles our stockholders to certain registration rights following the closing of this offering. In accordance with this agreement, and subject to conditions listed below, the following entities that each beneficially own more than 5% of our outstanding stock or are our directors or executive officers are among those entitled to registration rights under the agreement: Lightspeed, Viola Ventures, entities affiliated with Gemini Israel, entities affiliated with Index Ventures, G+J, and our Co-Founder and Co-Chief Executive Officer, Yaron Galai, and our Co-Founder and General Manager, Israel, Ori Lahav.

Form S-1 Demand Rights. Beginning six months following the closing of this offering and until the fifth anniversary thereafter, upon the written request of the holders of more than 35% of the common stock issued upon conversion of the convertible preferred stock and held by our former preferred stockholders, we are required to file a registration statement in respect of the common stock held by our former preferred stockholders. Following a request to effect such a registration, we are required to give written notice of the request to the other holders of registrable securities and offer them an opportunity to include their stock in the registration statement. We are not required to effect more than two registrations on Form S-1 and we are only required to do so if the minimum aggregate offering price stated in any such demand is at least \$5.0 million.

Form S-3 Demand Rights. Upon the written request of any former preferred stockholder holding common stock issued upon conversion of the convertible preferred stock, we are required to file a registration statement on Form S-3 in respect of the common stock held by our former preferred stockholders. Following a request to effect such a registration, we are required to give written notice of the request to the other holders of registrable securities and offer them an opportunity to include their stock in the registration statement. We are not required to effect a registration on Form S-3 if we have already effected a registration on Form S-3 within the nine month period preceding the date of such request and are only required to do

so if the aggregate price to the public, net of any underwriters' discounts or commissions, from any such registration is estimated to be at least \$1.0 million.

Piggyback registration rights. Following this offering, stockholders holding registrable securities will also have the right to request that we include their registrable securities in any registration statement filed by us in the future for the purposes of a public offering for cash, subject to specified exceptions. Holders of registrable securities continue to have the right to include any registrable securities in subsequent piggyback registration statements regardless of whether the holder has opted out of such past registration statements.

Cutback. In the event that the managing underwriter advises us in writing that marketing factors require a limitation on the number of shares that can be included in a registered offering, the shares will be included in the registration statement in an agreed order of preference among the holders of registration rights. We have first preference but the aggregate amount of registrable securities registered for our stockholders may not be reduced below 25% of the aggregate amount of securities included in the offering.

Termination. With respect to any of our holders of registrable securities that hold less than 1% of our outstanding equity securities, registration rights terminate when the shares held by such stockholder can be sold within a three-month period under Rule 144.

Expenses. We will pay all expenses in carrying out the foregoing registrations other than any underwriting discounts and commissions.

Forum Selection Clause

Unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or (iv) any action asserting a claim governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock of the corporation will be deemed to have notice of and consented to the forum selection clause.

The exclusive forum provision does not apply to suits brought to enforce any duty or liability created by the Securities Act or the Exchange Act. Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all claims brought to enforce any duty or liability created by the Securities Act and Section 27 of the Exchange Act creates exclusive federal jurisdiction over all claims brought to enforce any duty or liability created by the Exchange Act.

Anti-Takeover Effects of our Certificate of Incorporation and Bylaws and Delaware Law

Our certificate of incorporation and bylaws include a number of provisions that may have the effect of delaying, deferring or preventing another party from acquiring control of us and encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include the items described below.

Board Composition and Filling Vacancies. Our certificate of incorporation provides for the division of our board of directors into three classes serving staggered three-year terms, with one class being elected each year. Our certificate of incorporation also provides that directors may be removed only for cause and then only by the affirmative vote of the holders of 75% or more of the shares then entitled to vote at an election of directors. Furthermore, any vacancy on our board of directors, however occurring, including a vacancy resulting from an increase in the size of our board, may only be filled by the affirmative vote of a majority of our directors then in office even if less than a quorum, unless otherwise determined by our board to be filled by stockholders. The classification of directors, together with the limitations on removal of directors and treatment of vacancies, has the effect of making it more difficult for stockholders to change the composition of our board of directors.

Undesignated Preferred Stock. Our certificate of incorporation provides for authorized shares of preferred stock. The existence of authorized but unissued shares of preferred stock may enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, our board of directors were to determine that a takeover proposal is not in the best interests of our stockholders, our board of directors could cause shares of preferred stock to be issued without stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent stockholder or stockholder group. In this regard, our certificate of incorporation grants our board of directors broad power to establish the rights and preferences of authorized and unissued shares of preferred stock. The issuance of shares of preferred stock could decrease the amount of earnings and assets available for distribution to holders of shares of common stock. The issuance may also adversely affect the rights and powers, including voting rights, of these holders and may have the effect of delaying, deterring or preventing a change in control of us.

No Written Consent of Stockholders. Our certificate of incorporation provides that all stockholder actions are required to be taken by a vote of the stockholders at an annual or special meeting, and that stockholders may not take any action by written consent in lieu of a meeting. This limit may lengthen the amount of time required to take stockholder actions and would prevent the amendment of our bylaws or removal of directors by our stockholders without holding a meeting of stockholders.

Meetings of Stockholders. Our certificate of incorporation and bylaws provide that only the chairperson of our board, the lead independent director, if any, the chief executive officer, the president or a majority of the total authorized number of directors may call special meetings of stockholders and only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders. Our bylaws limit the business that may be conducted at an annual meeting of stockholders to those matters properly brought before the meeting.

Advance Notice Requirements. Our bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures provide that notice of stockholder proposals must be timely given in writing to our corporate secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 75 days nor more than 105 days prior to the first anniversary date of the annual meeting for the preceding year. Our bylaws specify the requirements as to form and content of all stockholders' notices. These requirements may preclude stockholders from bringing matters before the stockholders at an annual or special meeting.

Amendment to Certificate of Incorporation and Bylaws. Any amendment of our certificate of incorporation must first be approved by a majority of our board of directors, and if required by law or our certificate of incorporation, must thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment and, if applicable, by a majority of the outstanding shares of each class entitled to vote thereon as a class, except that the amendment of the provisions relating to stockholder action, the amendment of our bylaws, board composition, director liability and the amendment of our certificate of incorporation must be approved by not less than 75% of the outstanding shares entitled to vote on the amendment voting together as a single class. Our bylaws may be amended by the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws, and may also be amended by the affirmative vote of at least 75% of the outstanding shares entitled to vote on the amendment, or, if our board of directors recommends that the stockholders approve the amendment, by the affirmative vote of the majority of the outstanding shares entitled to vote on the amendment, in each case voting together as a single class.

Section 203 of the Delaware General Corporation Law

Upon completion of this offering, we will be subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a three-year period following the time that this stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner.

Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions:

- before the stockholder became interested, our board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances, but not the outstanding voting stock owned by the interested stockholder; or
- at or after the time the stockholder became interested, the business combination was approved by our board of directors and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, lease, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance of transfer by the corporation of any stock of the corporation to the interested stockholder;
- subject to exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Market Listing

We have applied to have our common stock authorized for listing on the Nasdaq under the symbol "OB."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company. The transfer agent and registrar's address is 6201 15th Avenue, 3rd Floor, Brooklyn, NY 11219.

Shares Eligible for Future Sale

Immediately prior to this offering, there was no public market for our common stock. Future sales of substantial amounts of common stock in the public market, or the perception that such sales may occur, could adversely affect the market price of our common stock. Although we have applied to have our common stock approved for listing on the Nasdaq, we cannot assure you that there will be an active public market for our common stock.

Upon completion of this offering and based upon _____ shares outstanding as of June 30, 2021, on an as-converted basis, we will have outstanding an aggregate of _____ shares of common stock, assuming no exercise of the underwriters' option to purchase additional shares and no exercise of outstanding stock options or warrants. An additional _____ RSUs will vest upon the completion of this offering and settle into shares upon the expiration of the lock up period. Of these shares, the shares sold in this offering by us will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased in this offering by our "affiliates," as that term is defined in Rule 144 under the Securities Act, whose sales would be subject to certain limitations and restrictions described below. The remaining shares of common stock held by existing stockholders will be restricted securities as that term is defined in Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if registered or if they qualify for exemption under Rules 144 or 701 under the Securities Act, which rules are summarized below, or another exemption.

As a result of the lock-up agreements described below and the provisions of Rule 144 and Rule 701 under the Securities Act, the shares of our common stock (excluding the shares sold in this offering) that will be available for sale in the public market are as follows:

Date of Availability of Sale	Approximate Number of Shares Eligible for Sale
On the date of this prospectus	
Between 90 and 180 days from the date of this prospectus	
At various times after 180 days from the date of this prospectus (subject, in some cases, to volume limitations)	

Equity Compensation Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of our common stock issuable or reserved for issuance under our equity incentive plans. This amounted to _____ shares as of June 30, 2021. The first such registration statement is expected to be filed soon after the date of this prospectus and will automatically become effective upon filing with the SEC. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described below.

As of June 30, 2021, there are 6,578,232 RSUs outstanding, of which 2,978,522 are vested, and immediately upon expiration of the 180-day lock-up period, will be delivered and available for sale.

Lock-Up Agreements

We, our officers, directors and holders of substantially all of our common stock and securities convertible into, or exercisable for, common stock, have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of Citigroup Global Markets Inc. This consent may be given at any time. The Baupost Investors have agreed to be bound by the same lock-up agreement; however, following expiration of the 180-day period, the Convertible Notes held by the Baupost Investors may be converted into shares of our common stock at the discretion of such holders and may be resold subject to certain securities law restrictions. In addition, the 180-day restrictions will no longer apply to 25% of the shares subject to each lock-up agreement if, at any time beginning 90 days after the date of the underwriting agreement, (i) we have filed at least one quarterly report on Form 10-Q or annual

report on Form 10-K and (ii) the last reported closing price per share of our shares of common stock is at least 25% greater than the initial public offering price per share of our shares of common stock for 10 out of any 15 consecutive trading days, including the last day, ending on or after the 90th day after the date of the underwriting agreement (which 15-day trading period may begin prior to the 90th day after the date of the underwriting agreement). If the conditions for early lock-up termination described in the preceding sentence are met when our trading window is closed, the lock-up restriction will continue to apply until the opening of trading on the second business day following the date that (i) we are no longer in a closed trading window and (ii) the reported closing price per share of our shares of common stock on such date is at least 25% greater than the initial public offering price per share of our shares of common stock. There are no agreements among Citigroup Global Markets Inc., us and any of our security holders or affiliates releasing them from these lock-up agreements prior to the expiration of the 180-day period.

Rule 144

In general, under Rule 144, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not our affiliate and has not been our affiliate at any time during the preceding three months and who is not a party to a lock-up agreement as described above will be entitled to sell any shares of our common stock that such person has beneficially owned for at least six months, including the holding period of any prior owner other than one of our affiliates, without regard to volume limitations. Sales of our common stock by any such person would be subject to the availability of current public information about us if the shares to be sold were beneficially owned by such person for less than one year.

In addition, under Rule 144, a person may sell shares of our common stock acquired from us immediately upon the closing of this offering, without regard to volume limitations or the availability of public information about us, if:

- the person is not our affiliate and has not been our affiliate at any time during the preceding three months; and
- the person has beneficially owned the shares to be sold for at least one year, including the holding period of any prior owner other than one of our affiliates.

Beginning 90 days after the date of this prospectus, our affiliates who have beneficially owned shares of our common stock for at least six months, including the holding period of any prior owner other than one of our affiliates, will be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; and
- the average weekly trading volume in our common stock on the Nasdaq during the four calendar weeks preceding the date of filing of a Notice of Proposed Sale of Securities Pursuant to Rule 144 with respect to the sale.

Sales under Rule 144 by our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 701

In general, under Rule 701, any of our employees, directors, officers, consultants or advisors who purchase shares from us in connection with a compensatory stock or option plan or other written agreement before the effective date of this offering is entitled to sell such shares 90 days after the effective date of this offering in reliance on Rule 144, without having to comply with the holding period requirements of Rule 144 and, in the case of non-affiliates, without having to comply with the holding period, public information, volume limitation or notice filing provisions of Rule 144. The SEC has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, as amended, along with the shares acquired upon exercise of such options, including exercises after the date of this prospectus.

Registration Rights

Upon completion of this offering, the holders of _____ shares of our common stock have certain rights with respect to the registration of such shares under the Securities Act. A demand for registration may not be effected until 180 days after the completion of this offering unless waived by us. Upon the effectiveness of a registration statement covering these shares, the shares would become freely tradable. See “Description of Capital Stock—Registration Rights.”

Certain U.S. Federal Income Tax Considerations

The following is a summary of certain U.S. federal income tax considerations relevant to holders (as defined below) with respect to the purchase, ownership and disposition of our common stock but does not purport to be a complete analysis of all potential tax effects. The following summary is based on current provisions of the Code, U.S. Department of the Treasury (“Treasury”) regulations and judicial and administrative authority, all of which are subject to change and differing interpretations, possibly with retroactive effect. State, local, estate and foreign tax consequences are not summarized, nor are tax consequences to special classes of investors including, but not limited to, tax-exempt organizations, insurance companies, banks or other financial institutions, dealers in securities or currencies, regulated investment companies, real estate investment trusts, U.S. holders (as defined below) whose functional currency is not the U.S. dollar, persons liable for the alternative minimum tax, certain former citizens and former long-term residents of the United States, certain persons that are “controlled foreign corporations,” or “passive foreign investment companies”, persons that will hold the common stock as a part of a broader transaction, or partnerships (as described below), traders in securities that elect to use a mark-to-market method of accounting for their securities holdings, accrual method taxpayers that file applicable financial statements (as described in section 451(b) of the Code) and persons that will hold our common stock as a position in a hedging transaction, “straddle,” “conversion transaction” or other risk reduction transaction, all of whom may be subject to tax rules that differ materially from those summarized below. Tax consequences may vary depending upon the particular status of an investor. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position regarding the tax consequences of the purchase, ownership and disposition of our common stock.

The summary is limited to holders who will hold our common stock as “capital assets” (generally, property held for investment) and who purchase our common stock in the initial offering. Each potential investor should consult with its own tax advisor as to the U.S. federal, state, local, foreign and any other tax consequences of the purchase, ownership and disposition of our common stock.

For purposes of this discussion a “U.S. holder” means a beneficial owner of our common stock that is, for U.S. federal income tax purposes:

- (1) an individual who is a citizen or resident of the United States;
- (2) a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of any state thereof or the District of Columbia;
- (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- (4) a trust if it (i) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (ii) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

A “non-U.S.” holder means a beneficial owner of our common stock that is neither a U.S. holder nor a partnership (including any entity or arrangement treated as a partnership for U.S. federal income tax purposes) that is for U.S. federal income tax purposes, an individual, corporation, estate or trust.

If a partnership (including any entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. If you are treated as a partner in such an entity holding our common stock, you should consult your own tax advisor as to the particular U.S. federal income tax consequences applicable to you.

This summary is for general information only and is not intended to constitute a complete description of all tax consequences for holders relating to the purchase, ownership and disposition of our common stock. You should consult your tax advisor concerning the particular U.S. federal income tax consequences to you of the purchase, ownership and disposition of our common stock, as well as the consequences to you arising under the

U.S. federal estate or gift tax laws or under the laws of any state, local or non-U.S. taxing jurisdiction or under any applicable income tax treaty, in light of your particular circumstances.

U.S. Holders

Dividends. Distributions with respect to our common stock will be taxable as dividend income when paid to the extent of our current and accumulated earnings and profits as determined for U.S. federal income tax purposes. To the extent that the amount of a distribution with respect to our common stock exceeds our current and accumulated earnings and profits, such distribution will be treated first as a tax-free return of capital to the extent of the U.S. holder's adjusted tax basis in such common stock, and thereafter as capital gain.

Distributions constituting dividend income received by an individual U.S. holder in respect of our common stock will generally represent "qualified dividend income" that is taxable at the preferential rates applicable to long-term capital gains, provided that certain holding period requirements are met and certain other conditions are satisfied.

Sale, Exchange, or Certain Other Taxable Dispositions of Our Common Stock. A U.S. holder will generally recognize capital gain or loss on a sale or exchange of our common stock equal to the difference between the amount realized upon the sale or exchange and such U.S. holder's adjusted tax basis in the common stock sold or exchanged. Such capital gain or loss will be long-term capital gain or loss if the U.S. holder's holding period for the common stock sold or exchanged is more than one year. Long-term capital gains of non-corporate taxpayers are generally taxed at a lower tax rate than the maximum marginal tax rate applicable to ordinary income. The deductibility of net capital losses is subject to limitations.

Information Reporting and Backup Withholding. Certain U.S. holders may be subject to backup withholding with respect to the payment of dividends on our common stock and to certain payments of proceeds on the sale, exchange or other dispositions of our common stock unless such U.S. holders provide proof of an applicable exemption or a correct taxpayer identification number, and otherwise comply with applicable requirements of the backup withholding rules.

Any amount withheld under the backup withholding rules from a payment to a U.S. holder is allowable as a credit against such holder's U.S. federal income tax, which may entitle the U.S. holder to a refund, provided that the U.S. holder provides the required information to the IRS in a timely manner. Moreover, certain penalties may be imposed by the IRS on a U.S. holder who is required to furnish information but does not do so in the proper manner.

Information returns will generally be filed with the IRS in connection with the payment of dividends on our common stock to U.S. holders and certain payments of proceeds to U.S. holders on the sale, exchange or other dispositions of our common stock, unless the U.S. holder is an exempt recipient, such as a corporation.

Medicare Tax. A U.S. holder that is an individual, an estate or a trust may be subject to a 3.8% Medicare tax on the lesser of (1) the U.S. holder's "net investment income" (or "undistributed net investment income" in the case of an estate or trust) for the relevant taxable year and (2) the excess of the U.S. holder's modified adjusted gross income for the taxable year over a certain threshold. A holder's net investment income will generally include its dividend income and its net gains from the disposition of our common stock, unless such dividend income or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). If you are a U.S. holder that is an individual, estate, or trust, you are urged to consult your tax advisor regarding the applicability of the Medicare tax to your income and gains in respect of your investment in our common stock.

Non-U.S. Holders

Distributions. Distributions with respect to our common stock will be treated as dividends to the extent paid from our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. To the extent those distributions exceed both our current and our accumulated earnings and profits, they will constitute a return of capital and will first reduce a non-U.S. holder's basis in our common

stock (determined on a share by share basis), but not below zero, and then will be treated as gain from the sale of stock subject to the rules discussed below under “—Dispositions.” Generally, distributions treated as dividends paid to a non-U.S. holder with respect to our common stock will be subject to a 30% U.S. withholding tax, or such lower rate as may be specified by an applicable income tax treaty.

Subject to the discussions below under “Information Reporting and Backup Withholding” and “FATCA,” dividends that are effectively connected with a non-U.S. holder’s conduct of a trade or business within the United States (and, if a tax treaty applies, are attributable to a U.S. permanent establishment of such non-U.S. holder) are generally subject to U.S. federal income tax on a net income basis in the same manner as if the non-U.S. holder were a United States person, as defined under the Code, and are exempt from the 30% withholding tax (assuming compliance with certain certification requirements). Any such effectively connected dividends received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to an additional “branch profits tax” at a rate of 30% (or lower applicable treaty rate). A non-U.S. holder who claims the benefit of an applicable tax treaty generally will be required to satisfy applicable certification and other requirements. Non-U.S. holders should consult their own tax advisors regarding their entitlement to benefits under a relevant tax treaty. A non-U.S. holder can generally meet the relevant certification requirement by providing a properly executed IRS Form W-8BEN (if the holder is claiming the benefits of an income tax treaty) or IRS Form W-8ECI (if the dividends are effectively connected with a trade or business in the United States) or suitable substitute form to the applicable withholding agent prior to the payment of dividends. Non-U.S. holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld under these rules by timely filing an appropriate claim for refund with the IRS. Special certification and other requirements apply to certain non-United States holders that are pass-through entities rather than corporations or individuals.

Dispositions. Subject to the discussions below concerning “Information Reporting and Backup Withholding” and “FATCA,” a non-U.S. holder generally will not be subject to U.S. federal income or withholding tax with respect to gain realized on the sale, exchange or other disposition of our common stock unless (i) the gain is effectively connected with such non-U.S. holder’s conduct of a trade or business within the United States (and, if a tax treaty applies, is attributable to a U.S. permanent establishment of such non-U.S. holder), (ii) in the case of a non-U.S. holder that is a non-resident alien individual, such non-U.S. holder is present in the United States for 183 or more days in the taxable year of disposition, and certain other conditions are met or (iii) our stock constitutes a U.S. real property interest by reason of our status as a “United States real property holding corporation” for U.S. federal income tax purposes.

In the case described above in (i), the gain on the disposition of our common stock will be recognized in an amount equal to the difference between the amount of cash and the fair market value of any other property received for the common stock and the non-U.S. holder’s basis in the common stock. Such gain or loss will generally be subject to U.S. federal income tax on a net income basis in the same manner as if the non-U.S. holder were a United States person, as defined under the Code. In the case of a non-U.S. holder that is a foreign corporation, such gain may also be subject to an additional branch profits tax at a rate of 30% (or a lower applicable treaty rate). In the case described above in (ii), the non-U.S. holder generally will be subject to a flat tax at a rate of 30% (or lower applicable treaty rate) on any capital gain recognized on the disposition of our common stock, which may be offset by certain U.S. source capital losses.

We believe we are not and do not anticipate becoming a “United States real property holding corporation” for U.S. federal income tax purposes. If, however, we are or become a “United States real property holding corporation,” so long as our common stock is regularly traded on an established securities market, only a non-United States holder who actually or constructively holds or held (at any time during the shorter of the five-year period ending on the date of disposition or the non-United States holder’s holding period) more than 5% of our common stock generally will be subject to United States federal income tax on the disposition of our common stock as a result of our being a United States real property holding corporation. You should consult your own advisor about the consequences that could result if we are, or become, a “United States real property holding corporation.”

Non-U.S. holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding. Payment of dividends, and the tax withheld with respect thereto, is subject to information reporting requirements. These information reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable income tax treaty. Under the provisions of an applicable income tax treaty or agreement, copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides. U.S. backup withholding will generally apply on payment of dividends to non-U.S. holders unless such non-U.S. holders furnish to the payor an IRS Form W-8BEN (or other applicable form), or otherwise establish an exemption and the payor does not have actual knowledge or reason to know that the holder is a United States person, as defined under the Code, that is not an exempt recipient.

Payment of the proceeds of a sale of our common stock within the United States or conducted through certain U.S.-related financial intermediaries is subject to information reporting and, depending on the circumstances, backup withholding, unless the non-U.S. holder, or beneficial owner thereof, as applicable, certifies that it is a non-U.S. holder on IRS Form W-8BEN-E or W-8BEN (or other applicable form), or otherwise establishes an exemption and the payor does not have actual knowledge or reason to know the holder is a United States person, as defined under the Code, that is not an exempt recipient.

Any amount withheld under the backup withholding rules from a payment to a non-U.S. holder is allowable as a credit against such non-U.S. holder's U.S. federal income tax, which may entitle the non-U.S. holder to a refund, provided that the non-U.S. holder timely provides the required information to the IRS. Certain penalties may be imposed by the IRS on a non-U.S. holder who is required to furnish information but does not do so in the proper manner. Non-U.S. holders should consult their own tax advisors regarding the application of backup withholding in their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding.

Foreign Account Tax Compliance Act

Withholding taxes may be imposed under the Foreign Account Tax Compliance Act and related IRS guidance concerning foreign account tax compliance rules ("FATCA") on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Withholding at a rate of 30% will generally be required on dividends in respect of, or gross proceeds from the sale or other disposition of, our common stock held by or through certain foreign financial institutions (including investment funds), unless such institution enters into an agreement with the Secretary of the Treasury to report, on an annual basis, information with respect to shares in, and accounts maintained by, the institution to the extent such shares or accounts are held by certain United States persons or by certain non-U.S. entities that are wholly or partially owned by United States persons and to withhold on certain payments. An intergovernmental agreement between the United States and an applicable foreign country, or future United States Treasury regulations, may modify these requirements. Accordingly, the entity through which our common stock is held will affect the determination of whether such withholding is required. Similarly, dividends in respect of, and gross proceeds from the sale of, our common stock held by an investor that is a non-financial non-U.S. entity that does not qualify under certain exemptions will be subject to withholding at a rate of 30%, unless such entity either (i) certifies to us that such entity does not have any "substantial United States owners" or (ii) provides certain information regarding the entity's "substantial United States owners," which we will in turn provide to the Secretary of the Treasury. We will not pay any additional amounts to holders in respect of any amounts withheld.

Pursuant to recently proposed regulations, the Treasury Department intends to eliminate FATCA requirements to withhold on gross proceeds from the sale or other disposition of certain financial instruments (which would include our stock). The Treasury Department has indicated that taxpayers may rely on these proposed regulations pending their finalization.

Prospective investors are encouraged to consult their own tax advisors regarding the potential imposition of withholding tax under FATCA on their investment in our common stock.

Underwriting

We and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Citigroup Global Markets Inc. and Jefferies LLC are the representatives of the underwriters.

Underwriters	Number of Shares
Citigroup Global Markets Inc.	
Jefferies LLC	
Barclays Capital Inc.	
Evercore Group L.L.C.	
JMP Securities LLC	
Needham & Company, LLC	
LUMA Securities LLC	
Total	

The underwriters are committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

The underwriters have an option to buy up to an additional _____ shares from us to cover sales by the underwriters of a greater number of shares than the total number set forth in the table above. They may exercise that option for 30 days. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by us. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	No Exercise	Full Exercise
Per Share	\$	\$
Total	\$	\$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$ _____ per share from the initial public offering price. After the initial offering of the shares, the representatives may change the offering price and the other selling terms. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We and our officers, directors, and the holders of substantially all of our common stock and securities convertible into or exchangeable for shares of common stock, have agreed with the underwriters not to dispose of or hedge any of their common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus subject to customary exceptions. In addition, the 180-day restrictions will no longer apply to 25% of the shares subject to each lock-up agreement if, at any time beginning 90 days after the date of the underwriting agreement, (i) we have filed at least one quarterly report on Form 10-Q or annual report on Form 10-K and (ii) the last reported closing price per share of our shares of common stock is at least 25% greater than the initial public offering price per share of our shares of common stock for 10 out of any 15 consecutive trading days, including the last day, ending on or after the 90th day after the date of the underwriting agreement (which 15-day trading period may begin prior to the 90th day after the date of the underwriting agreement). If the conditions for early lock-up termination described in the preceding sentence are met when our trading window is closed, the lock-up restriction will continue to apply until the opening of trading on the second business day following the date that (i) we are no longer in a closed trading window and (ii) the reported closing price per share of our shares of common stock on such date is at least

25% greater than the initial public offering price per share of our shares of common stock. See “Shares Eligible for Future Sale” for a discussion of certain transfer restrictions.

Prior to the offering, there has been no public market for the shares. The initial public offering price has been negotiated among us and the representatives. Among the factors to be considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be our historical performance, estimates of our business potential and earnings prospects, an assessment of our management and the consideration of the above factors in relation to market valuation of companies in related businesses.

An application has been made to list the common stock on the Nasdaq under the symbol “OB.” In order to meet one of the requirements for listing the common stock on the Nasdaq, the underwriters have undertaken to sell lots of 100 or more shares to a minimum of 400 beneficial holders.

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering, and a short position represents the amount of such sales that have not been covered by subsequent purchases. A “covered short position” is a short position that is not greater than the amount of additional shares for which the underwriters’ option described above may be exercised. The underwriters may cover any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to cover the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase additional shares pursuant to the option described above. “Naked” short sales are any short sales that create a short position greater than the amount of additional shares for which the option described above may be exercised. The underwriters must cover any such naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of our common stock, and together with the imposition of the penalty bid, may stabilize, maintain or otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. The underwriters are not required to engage in these activities and may end any of these activities at any time. These transactions may be effected on the Nasdaq, in the over-the-counter market or otherwise.

We estimate that our share of the total expenses of the offering, excluding underwriting discounts and commissions, will be approximately \$, which includes an amount not to exceed \$ that we have agreed to reimburse the underwriters for certain FINRA-related expenses incurred by them in connection with the Offering.

We have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

Notice to Investors in the European Economic Area

In relation to each Member State of the European Economic Area (the “EEA”) (each, a “Relevant State”), no securities have been offered or will be offered to the public in that Relevant State in connection with this offering prior to the publication of a prospectus in relation to our securities which has been approved by the competent authority in that Relevant State or, where appropriate, approved by the competent authority in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that an offer to the public in that Relevant State of our securities may be made at any time:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of the Representative for any such offer; or
- (c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of our securities shall require us or any underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to our securities in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and our securities to be offered so as to enable an investor to decide to purchase our securities, the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

This selling restriction is in addition to any other selling restrictions set out below.

Notice to Investors in the United Kingdom

No securities have been offered or will be offered to the public in the United Kingdom in connection with this offering prior to the publication of a prospectus in relation to our securities which either (i) has been approved by the Financial Conduct Authority or (ii) is to be treated as if it had been approved by the Financial Conduct Authority in accordance with the transitional provisions in Regulation 74 of the Prospectus (Amendment etc.) (EU Exit) Regulations 2019, except that an offer to the public in the United Kingdom of our securities may be made at any time:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), subject to obtaining the prior consent of the Representative for any such offer; or
- (c) in any other circumstances falling within section 86 of the Financial Services and Markets Act 2000 (as amended, the “FSMA”),

provided that no such offer of our securities shall require us or any underwriters to publish a prospectus pursuant to section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to our securities in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and our securities to be offered so as to enable an investor to decide to purchase our securities, the expression “UK Prospectus Regulation” means Regulation (EU) 2017/1129 as it forms part of domestic law in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018.

This selling restriction is in addition to any other selling restrictions set out below.

The underwriters severally represent, warrant and agree as follows:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) to persons who have professional experience in matters relating to investments falling with Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 or in circumstances in which section 21 of FSMA does not apply to the company; and
- (b) it has complied with, and will comply with all applicable provisions of FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.

Notice to Residents of the State of Israel

This prospectus does not constitute a prospectus under the Israeli Securities Law, 5728-1968, as amended (the “Israel Securities Law”), and has not been filed with or approved by the Israel Securities Authority. In the State of Israel, this prospectus is being distributed only to, and is directed only at, and any offer of the securities offered hereby is directed only at, (i) a limited number of persons in accordance with the Israeli Securities Law and (ii) investors listed in the first addendum (the “Addendum”), to the Israeli Securities Law, consisting primarily of joint investment in trust funds, provident funds, insurance companies, banks, portfolio managers, investment advisors, members of the Tel Aviv Stock Exchange, underwriters, venture capital funds, entities with equity in excess of NIS 50 million and “qualified individuals”, each as defined in the Addendum (as it may be amended from time to time), collectively referred to as “qualified investors” (in each case purchasing for their own account or, where permitted under the Addendum, for the accounts of their clients who are investors listed in the Addendum). Qualified investors will be required to submit a written confirmation that they fall within the scope of the Addendum, are aware of the meaning of the same and agree to it.

Notice to Residents of Japan

Our shares have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended) (the “EIEA”). The underwriters will not offer or sell any of our shares directly or indirectly in Japan or to, or for the benefit of any Japanese person or to others, for re-offering or re-sale directly or indirectly in Japan or to any Japanese person, except in each case pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the EIEA of Japan and any other applicable laws and regulations of Japan. For purposes of this paragraph, “Japanese person” means any person resident in Japan, including any corporation or other entity organized under the laws of Japan.

Notice to Residents of Hong Kong

The underwriters and each of their affiliates have not (1) offered or sold, and will not offer or sell, in Hong Kong, by means of any document, our shares other than (A) to “professional investors” as defined in the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made under that Ordinance or (B) (Winding Up and Miscellaneous Provisions) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies Ordinance (Cap. 32, Laws of Hong Kong) or which do not constitute an offer to the public within the meaning of that Ordinance or (2) issued

or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere any advertisement, invitation or document relating to our shares which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to our securities which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” as defined in the Securities and Futures Ordinance and any rules made under that Ordinance. The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.

Notice to Residents of Singapore

This prospectus or any other offering material relating to our shares has not been and will not be registered as a prospectus with the Monetary Authority of Singapore, and the shares will be offered in Singapore pursuant to exemptions under Section 274 and Section 275 of the Securities and Futures Act, Chapter 289 of Singapore (the “Securities and Futures Act”). Accordingly our shares may not be offered or sold, or be the subject of an invitation for subscription or purchase, nor may this prospectus or any other offering material relating to our shares be circulated or distributed, whether directly or indirectly, to the public or any member of the public in Singapore other than (a) to an institutional investor or other person specified in Section 274 of the Securities and Futures Act, (b) to a sophisticated investor, and in accordance with the conditions specified in Section 275 of the Securities and Futures Act or (c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the Securities and Futures Act.

Notice to Residents of Germany

Each person who is in possession of this prospectus is aware that no German sales prospectus (Verkaufsprospekt) within the meaning of the Securities Sales Prospectus Act (Wertpapier-Verkaufsprospektgesetz, the “Act”) of the Federal Republic of Germany has been or will be published with respect to our shares. In particular, the underwriters have represented that they have not engaged and have agreed that they will not engage in a public offering (öffentliches Angebot) within the meaning of the Act with respect to any of our shares otherwise than in accordance with the Act and all other applicable legal and regulatory requirements.

Notice to Residents of France

The shares are being issued and sold outside the Republic of France and that, in connection with their initial distribution, it has not offered or sold and will not offer or sell, directly or indirectly, any shares to the public in the Republic of France, and that it has not distributed and will not distribute or cause to be distributed to the public in the Republic of France this prospectus or any other offering material relating to the shares, and that such offers, sales and distributions have been and will be made in the Republic of France only to qualified investors (investisseurs qualifiés) in accordance with Article L.411-2 of the Monetary and Financial Code and décret no. 98-880 dated October 1, 1998.

Notice to Residents of the Netherlands

Our shares may not be offered, sold, transferred or delivered in or from the Netherlands as part of their initial distribution or at any time thereafter, directly or indirectly, other than to, individuals or legal entities situated in The Netherlands who or which trade or invest in securities in the conduct of a business or profession (which includes banks, securities intermediaries (including dealers and brokers), insurance companies, pension funds, collective investment institution, central governments, large international and supranational organizations, other institutional investors and other parties, including treasury departments of commercial enterprises, which as an ancillary activity regularly invest in securities; hereinafter, “Professional Investors”); provided that in the offer, prospectus and in any other documents or advertisements in which a forthcoming offering of our shares is publicly announced (whether electronically or otherwise) in The Netherlands it is stated that such offer is and will be exclusively made to such Professional Investors. Individual or legal entities who are not Professional Investors may not participate in the offering of our shares, and

this prospectus or any other offering material relating to our shares may not be considered an offer or the prospect of an offer to sell or exchange our shares.

Notice to Prospective Investors in the Cayman Islands

No offer or invitation, whether directly or indirectly, may be made to the public in the Cayman Islands to subscribe for our securities.

Notice to Canadian Residents

Resale Restrictions

The distribution of shares in Canada is being made only in the provinces of Ontario, Quebec, Alberta and British Columbia on a private placement basis exempt from the requirement that we prepare and file a prospectus with the securities regulatory authorities in each province where trades of these securities are made. Any resale of the shares in Canada must be made under applicable securities laws which may vary depending on the relevant jurisdiction, and which may require resales to be made under available statutory exemptions or under a discretionary exemption granted by the applicable Canadian securities regulatory authority. Purchasers are advised to seek legal advice prior to any resale of the securities.

Representations of Canadian Purchasers

By purchasing shares in Canada and accepting delivery of a purchase confirmation, a purchaser is representing to us and the dealer from whom the purchase confirmation is received that:

- the purchaser is entitled under applicable provincial securities laws to purchase the shares without the benefit of a prospectus qualified under those securities laws as it is an “accredited investor” as defined under National Instrument 45-106-Prospectus Exemptions;
- the purchaser is a “permitted client” as defined in National Instrument 31-103-Registration Requirements, Exemptions and Ongoing Registrant Obligations;
- where required by law, the purchaser is purchasing as principal and not as agent; and
- the purchaser has reviewed the text above under Resale Restrictions.

Conflicts of Interest

Canadian purchasers are hereby notified that the underwriters are relying on the exemption set out in section 3A.3 or 3A.4, if applicable, of National Instrument 33-105-Underwriting Conflicts from having to provide certain conflict of interest disclosure in this document.

Statutory Rights of Action

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the prospectus (including any amendment thereto) such as this document contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser of these securities in Canada should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory for particulars of these rights or consult with a legal advisor.

Enforcement of Legal Rights

All of our directors and officers as well as the experts named herein may be located outside of Canada and, as a result, it may not be possible for Canadian purchasers to effect service of process within Canada upon us or those persons. All or a substantial portion of our assets and the assets of those persons may be located outside of Canada and, as a result, it may not be possible to satisfy a judgment against us or those persons in Canada or to enforce a judgment obtained in Canadian courts against us or those persons outside of Canada.

Taxation and Eligibility for Investment

Canadian purchasers of shares should consult their own legal and tax advisors with respect to the tax consequences of an investment in the shares in their particular circumstances and about the eligibility of the shares for investment by the purchaser under relevant Canadian legislation.

Notice to persons in the onshore United Arab Emirates (UAE)

In accordance with the 2017 Promotion and Introduction Regulations (as amended) of the UAE Securities and Commodities Authority (SCA), our shares may only be promoted and offered in the UAE (excluding the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM)) without the prior approval of SCA where the promotion is directed to: (i) the UAE federal government and local governments, governmental institutions and authorities; (ii) companies fully owned by any of the aforementioned; (iii) international bodies and organizations; (iv) entities licensed by the SCA or equivalent regulatory authority; (v) a corporate person who meets, at the date of its last financial statements, at least two of the following requirements: (1) total assets of AED (75) million; (2) net annual revenues of AED (150) million; and (3) has net owner equity or paid-up capital of AED (7) million; or (vi) following a 'reverse' (i.e. unsolicited) enquiry by an investor. Further, this document does not constitute a public offer of our shares in the UAE (excluding the DIFC and the ADGM) and is not intended to be a public offer. The SCA has not verified this document or other documents in connection with our shares and the SCA may not be held liable for the accuracy or completeness of the information in this document. Our shares may be illiquid or subject to restrictions on their resale. Prospective investors should conduct their own due diligence on our shares. If you do not understand the contents of this document you should consult an authorized financial advisor.

Notice to persons in the Abu Dhabi Global Market (ADGM) in the UAE

This offer document is an 'Exempt Offer', in accordance with the 'Market Rules' of the ADGM Financial Services Regulatory Authority. This 'Exempt Offer' document is intended for distribution only to persons of a type specified in the Market Rules. It must not be delivered to, or relied on by, any other person. The ADGM Financial Services Regulatory Authority has no responsibility for reviewing or verifying any documents in connection with 'Exempt Offers'. The ADGM Financial Services Regulatory Authority has not approved this 'Exempt Offer' document nor taken steps to verify the information set out in it, and has no responsibility for it. The shares to which this Exempt Offer relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the securities. If you do not understand the contents of this 'Exempt Offer' document you should consult an authorized financial advisor. For the purposes of the financial-promotion restriction in the Financial Services and Markets Regulation of the ADGM, this offer document constitutes an 'Exempt Communication' or is not otherwise subject to that restriction. Where applicable, it is intended for distribution only to persons of a type specified in the relevant 'Exempt Communication'. It must not be delivered to, or relied on by, any other person.

Notice to persons in the Dubai International Financial Centre (DIFC) in the UAE

This document relates to an 'Exempt Offer', in accordance with the Markets Rules of the Dubai Financial Services Authority. This document is intended for distribution only to persons of a type specified in the Market Rules. It must not be delivered to, or relied on, by any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with 'Exempt Offers'. The DFSA has not approved this document nor taken steps to verify the information set out in it, and has no responsibility for it. Our shares may be illiquid and/or subject to restrictions on their re-sale. Prospective purchasers of our shares should conduct their own due diligence on them. If you do not understand the contents of this document you should consult an authorized financial adviser. For the purposes of the financial-promotion restriction in the Regulatory Law 2004 (as amended) of the DIFC, this offer document constitutes an 'exempt Financial Promotion' or is not otherwise subject to that restriction. Where applicable, it is intended for distribution only to persons of a type specified in the relevant 'Exempt Communication'. It must not be delivered to, or relied on by, any other person.

Notice to Prospective Investors in Australia

No prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission (“ASIC”) in relation to the offering. This document does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (Cth) (the “Corporations Act”), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons who are “sophisticated investors” (within the meaning of section 708(8) of the Corporations Act), to “professional investors” (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

In addition, the securities must not be offered for sale in Australia in the period of 12 months after their respective date of issue, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring the securities must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Legal Matters

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Mayer Brown LLP, New York, New York. Skadden, Arps, Slate, Meagher & Flom LLP is representing the underwriters in this offering.

Experts

The consolidated financial statements of Outbrain Inc. as of December 31, 2020 and 2019, and for each of the years in the two-year period ended December 31, 2020 have been included herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

Where You Can Find Additional Information

We filed a registration statement on Form S-1 with the SEC with respect to the registration of the common stock offered for sale with this prospectus. This prospectus does not contain all of the information set forth in the registration statement and the exhibits to the registration statement. For further information about us, the common stock we are offering by this prospectus and related matters, you should review the registration statement, including the exhibits filed as a part of the registration statement.

Statements made in this prospectus concerning the contents of any contract, agreement or other document are not complete descriptions of all terms of these documents. If a document has been filed as an exhibit to the registration statement, we refer you to the copy of the document that has been filed for a complete description of its terms. Each statement in this prospectus relating to a document filed as an exhibit is qualified in all respects by the filed exhibit. You should read this prospectus and the documents that we have filed as exhibits to the registration statement of which this prospectus forms a part completely.

As a result of this offering, we will become subject to the information and periodic reporting requirements of the Exchange Act, as amended, and, in accordance with such requirements, will file periodic reports, proxy statements, and other information with the SEC.

Our filings with the SEC, including the registration statement of which this prospectus forms a part, periodic reports, proxy statements, and other information will be available for inspection at the website of the SEC. The address of the website is <http://www.sec.gov>. We intend to furnish our stockholders with annual reports containing consolidated financial statements audited by our independent registered accounting firm.

OUTBRAIN INC.
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OUTBRAIN INC.

Condensed Consolidated Balance Sheets
(In thousands, except for number of shares and par value)

	<u>March 31, 2021</u>	<u>December 31, 2020</u>
	<u>(Unaudited)</u>	
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 95,042	\$ 93,641
Accounts receivable, net of allowances	150,739	165,449
Prepaid expenses and other current assets	19,093	18,326
Total current assets	264,874	277,416
Property, equipment and capitalized software, net	24,071	24,756
Intangible assets, net	9,064	9,812
Goodwill	32,881	32,881
Other assets	11,075	11,621
TOTAL ASSETS	<u>\$ 341,965</u>	<u>\$ 356,486</u>
LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
CURRENT LIABILITIES:		
Accounts payable	\$ 116,733	\$ 118,491
Accrued compensation and benefits	16,841	23,000
Accrued and other current liabilities	90,065	109,747
Deferred revenue	5,945	5,512
Total current liabilities	229,584	256,750
Other liabilities	15,949	17,105
TOTAL LIABILITIES	<u>\$ 245,533</u>	<u>\$ 273,855</u>
Commitments and Contingencies (Note 8)		
Convertible preferred stock, par value of \$0.001 per share, Series A, B, C, D, E, F, G and H — aggregate of 47,203,157 shares authorized as of March 31, 2021 and December 31, 2020; and aggregate of 47,009,166 shares issued and outstanding as of March 31, 2021 and December 31, 2020	162,444	162,444
STOCKHOLDERS' DEFICIT:		
Common stock, par value of \$0.001 per share — 110,812,435 shares authorized as of March 31, 2021 and December 31, 2020; 29,523,983 and 29,169,963 shares issued and outstanding as of March 31, 2021 and December 31, 2020, respectively	30	29
Additional paid-in capital	94,527	92,693
Accumulated other comprehensive loss	(3,070)	(4,290)
Accumulated deficit	(157,499)	(168,245)
TOTAL STOCKHOLDERS' DEFICIT	<u>(66,012)</u>	<u>(79,813)</u>
TOTAL LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT	<u>\$ 341,965</u>	<u>\$ 356,486</u>

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.
Condensed Consolidated Statements of Operations
(In thousands)

	Three Months Ended March 31,	
	2021	2020
	(Unaudited)	
Revenue	\$228,024	\$177,332
Cost of revenue:		
Traffic acquisition costs	167,613	136,806
Other cost of revenue	6,942	7,873
Total cost of revenue	<u>174,555</u>	<u>144,679</u>
Gross profit	53,469	32,653
Operating expenses:		
Research and development	8,428	6,982
Sales and marketing	19,868	20,295
General and administrative	10,393	14,893
Total operating expenses	<u>38,689</u>	<u>42,170</u>
Income (loss) from operations	14,780	(9,517)
Other income (expense), net:		
Interest expense	(170)	(165)
Interest income and other income (expense), net	<u>(2,253)</u>	<u>1,241</u>
Total other income (expense), net	<u>(2,423)</u>	<u>1,076</u>
Income (loss) before provision for income taxes	12,357	(8,441)
Provision for income taxes	<u>1,611</u>	<u>1,129</u>
Net income (loss)	<u>\$ 10,746</u>	<u>\$ (9,570)</u>
Net income (loss) per common share:		
Basic	\$ 0.14	\$ (0.34)
Diluted	\$ 0.12	\$ (0.34)
Pro forma net income (loss) per common share:		
Basic	\$ —	
Diluted	\$ —	

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.
Condensed Consolidated Statements of Comprehensive Income (Loss)
(In thousands)

	Three Months Ended March 31,	
	2021	2020
	(Unaudited)	
Net income (loss)	\$10,746	\$ (9,570)
Other comprehensive income (loss):		
Foreign currency translation adjustments	1,220	(1,837)
Comprehensive income (loss)	\$11,966	\$(11,407)

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.

Condensed Consolidated Statements of Convertible Preferred Stock and Stockholders' Deficit
(In thousands, except for number of shares)
(Unaudited)

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount				
Balance—December 31, 2020	47,009,166	\$162,444	29,169,963	\$29	\$92,693	\$ (4,290)	\$ (168,245)	\$ (79,813)
Issuance of common stock upon exercise of employee stock option	—	—	175,349	—	296	—	—	296
Issuance of common stock upon vesting of restricted stock units	—	—	178,671	1	(1)	—	—	—
Stock-based compensation	—	—	—	—	1,539	—	—	1,539
Other comprehensive loss	—	—	—	—	—	1,220	—	1,220
Net profit	—	—	—	—	—	—	10,746	10,746
Balance—March 31, 2021	47,009,166	\$162,444	29,523,983	\$30	\$94,527	\$ (3,070)	\$ (157,499)	\$ (66,012)
	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount				
Balance—December 31, 2019	47,009,166	\$162,444	28,193,335	\$28	\$88,435	\$ (5,523)	\$ (172,602)	\$ (89,662)
Issuance of common stock upon exercise of employee stock option	—	—	99,002	—	323	—	—	323
Issuance of common stock upon vesting of restricted stock units	—	—	126,039	—	—	—	—	—
Other comprehensive loss	—	—	—	—	—	(1,837)	—	(1,837)
Stock-based compensation	—	—	—	—	830	—	—	830
Net loss	—	—	—	—	—	—	(9,570)	(9,570)
Other	—	—	—	—	—	—	(8)	(8)
Balance—March 31, 2020	47,009,166	\$162,444	28,418,376	\$28	\$89,588	\$ (7,360)	\$ (182,180)	\$ (99,924)

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.

Condensed Consolidated Statements of Cash Flows
(In thousands)

	Three Months Ended	
	March 31, 2021	March 31, 2020
	(Unaudited)	
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	\$ 10,746	\$ (9,570)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization of property and equipment	1,604	1,652
Amortization of capitalized software development costs	1,997	1,790
Amortization of intangible assets	926	1,207
Loss (gain) on sale of assets	9	(1,114)
Stock-based compensation	1,487	916
Provision for doubtful accounts	653	336
Deferred income taxes	(385)	(307)
Other	2,392	(638)
Changes in operating assets and liabilities:		
Accounts receivable	13,916	13,845
Prepaid expenses and other current assets	(1,495)	(2,432)
Other assets	197	(1,470)
Accounts payable	(1,791)	626
Accrued and other current liabilities	(25,400)	9,587
Deferred revenue	440	(271)
Other	110	179
Net cash provided by operating activities	<u>5,406</u>	<u>14,336</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(239)	(1,010)
Capitalized software development costs	(2,529)	(2,201)
Proceeds from sale of assets	—	1,117
Other	(19)	(27)
Net cash used in investing activities	<u>(2,787)</u>	<u>(2,121)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from exercise of common stock options and warrants	299	209
Principal payments on capital obligation arrangements	(1,106)	(1,165)
Borrowings on revolving credit facility	—	10,000
Net cash (used in) provided by financing activities	<u>(807)</u>	<u>9,044</u>
Effect of exchange rate changes	(430)	(1,437)
NET INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	1,382	19,822
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH — Beginning of period	94,067	49,982
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH — End of period	<u>\$ 95,499</u>	<u>\$ 69,804</u>
RECONCILIATION OF CASH, CASH EQUIVALENTS, AND RESTRICTED CASH TO THE CONDENSED CONSOLIDATED BALANCE SHEETS		
Cash and cash equivalents	\$ 95,042	\$ 69,424
Restricted cash, included in other assets	407	380
Total cash, cash equivalents, and restricted cash	<u>95,499</u>	<u>\$ 69,804</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid for income taxes, net of refunds	<u>\$ 53</u>	<u>\$ 846</u>
Cash paid for interest	<u>\$ 162</u>	<u>\$ 152</u>
Stock-based compensation capitalized for software development costs	<u>\$ 52</u>	<u>\$ 50</u>
Purchases of property and equipment included in accounts payable	<u>\$ 2</u>	<u>\$ 59</u>
Property and equipment financed under capital obligation arrangements	<u>\$ 842</u>	<u>\$ 634</u>

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.**Notes to Condensed Consolidated Financial Statements
(Unaudited)****1. Organization, Description of Business, Basis of Presentation, Use of Estimates and Recently Issued Accounting Pronouncements****Organization and Description of Business**

Outbrain Inc., together with our subsidiaries (“Outbrain”, the “Company”, “we”, “our” or “us”) was incorporated in August 2006 in Delaware. The Company is headquartered in New York, New York and has wholly-owned subsidiaries in Israel, Europe, Asia, Brazil and Australia.

Outbrain is a leading recommendation platform powering the open web. Our platform provides personalized recommendations that appear as links to content, advertisements and videos on media owner’s online properties. We generate revenue from marketers through user engagements with ads that we deliver across a variety of third-party media owner’s properties. We pay traffic acquisition costs to our media owner partners on whose digital properties the recommendations are shown. Our advertiser solutions are mainly priced using a performance-based model based on the actual number of engagements generated by users. The actual number of engagements generated by users is highly dependent on our ability to generate trustworthy and interesting recommendations to individual users based on our proprietary algorithms. A small portion of our revenue is generated through advertisers participating in programmatic auctions wherein the pricing is determined by the auction results and not dependent on user engagement.

Basis of Presentation

The accompanying condensed consolidated financial statements were prepared in accordance with generally accepted accounting principles in the United States of America (“US GAAP”) for interim financial information and are unaudited. Certain information and disclosures normally included in condensed consolidated financial statements prepared in accordance with US GAAP have been condensed or omitted. Accordingly, these condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and related notes for the year ended December 31, 2020.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and related disclosures at the date of the condensed consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. We base our estimates and judgments on historical information and on various other assumptions that we believe are reasonable under the circumstances. Estimates and assumptions made in the accompanying condensed consolidated financial statements include, but are not limited to, the allowance for doubtful accounts, sales allowance, software development costs eligible for capitalization, valuation of deferred tax assets, the useful lives of property and equipment, the useful lives and fair value of intangible assets and goodwill, the fair value of stock-based awards, the recognition and measurement of income tax uncertainties and other contingencies. Actual results could differ materially from these estimates.

Certain Risks and Concentrations

Financial instruments that potentially subject us to concentrations of credit risk consist of cash and cash equivalents, restricted cash and accounts receivable. Our cash and cash equivalents and restricted cash are generally invested in high-credit quality financial instruments with both banks and financial institutions to reduce the amount of exposure to any single financial institution.

We generally do not require collateral to secure accounts receivable. No single marketer accounted for 10% or more of our total revenue for the three months ended March 31, 2021 or March 31, 2020 or 10% or more of our gross accounts receivable balance as of March 31, 2021 or December 31, 2020.

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)**1. Organization, Description of Business, Basis of Presentation, Use of Estimates and Recently Issued Accounting Pronouncements (continued)**

For the three months ended March 31, 2021, two media owners individually accounted for approximately 12% and 10% of our total traffic acquisition costs. For the three months ended March 31, 2020, two media owners each individually accounted for 13% of our total traffic acquisition costs.

Segment Information

Our chief operating decision maker is our Co-Chief Executive Officer who makes resource allocation decisions and assesses performance based on financial information presented on a consolidated basis. Accordingly, we have a single operating and reportable segment.

Recently Issued Accounting Pronouncements*Recently issued accounting pronouncements not yet adopted*

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842), which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e., lessees and lessors). The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than twelve months, regardless of their classification. Leases with a term of twelve months or less will be accounted for similar to existing guidance for operating leases today. The new standard requires lessors to account for leases using an approach that is substantially equivalent to existing guidance for sales-type leases, direct financing leases and operating leases. ASU 2016-02 supersedes the previous leases standard, Leases (Topic 840). In June 2020 the FASB issued ASU 2020-05 Revenue from Contracts with Customers (Topic 606) and Leases (Topic 842): Effective Dates for Certain Entities, the amendments in this update defer the effective date of ASU 2016-02 for private companies to fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022, early application continues to be permitted. The Company plans to adopt this standard on January 1, 2022, as required. The Company is in the process of analyzing its lease portfolio and assessing the impacts of adoption on its consolidated financial statements. The Company expects its assets and liabilities to increase in connection with the recording of right-of-use assets and lease liabilities upon adoption of this standard.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments—Credit Losses (Topic 326), which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost. ASU 2016-13 replaces the existing incurred loss impairment model with an expected loss model which requires consideration of forward-looking information to calculate credit loss estimates. These changes will result in an earlier recognition of credit losses. The Company's financial assets held at amortized cost include accounts receivable. The amendments in ASU 2020-05 deferred the effective date for Topic 326 to fiscal years beginning after December 15, 2022. The Company plans to adopt this standard on the earlier of January 1, 2023 or on losing its emerging growth company status. The Company does not expect the adoption of this standard will have a material impact on the consolidated financial statements or related disclosures.

See Note 1 to the Company's audited consolidated financial statements for the year ended December 31, 2020 for a complete disclosure of the Company's significant accounting policies.

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)**2. Revenue Recognition**

The following table presents total revenue based on where our marketers are physically located:

	Three Months Ended March 31,	
	2021	2020
	(In thousands)	
USA	\$ 78,087	\$ 65,550
Europe, the Middle East and Africa (EMEA)	126,545	90,477
Other	23,392	21,305
Total revenue	<u>\$228,024</u>	<u>\$177,332</u>

Contract Balances

There were no contract assets as of March 31, 2021 or December 31, 2020. Contract liabilities primarily relate to upfront payments and consideration received from customers. As of March 31, 2021 and December 31, 2020, the Company's contract liabilities were recorded as deferred revenue in the condensed consolidated balance sheets.

3. Fair Value Measurements

The following table sets forth the fair value of our financial assets and liabilities measured on a recurring basis by level within the fair value hierarchy:

	March 31, 2021			
	Level I	Level II	Level III	Total
	(In thousands)			
Financial Assets:				
Restricted time deposit ⁽¹⁾	\$ —	\$ 406	\$ —	\$ 406
Severance pay fund deposits ⁽¹⁾	—	5,035	—	5,035
Total financial assets	<u>\$ —</u>	<u>\$5,441</u>	<u>\$ —</u>	<u>\$5,441</u>
Financial Liabilities:				
Foreign currency forward contract ⁽²⁾	\$ —	\$ 780	\$ —	\$ 780
Total financial liabilities	<u>\$ —</u>	<u>\$ 780</u>	<u>\$ —</u>	<u>\$ 780</u>
	December 31, 2020			
	Level I	Level II	Level III	Total
	(In thousands)			
Financial Assets:				
Restricted time deposit ⁽¹⁾	\$ —	\$ 426	\$ —	\$ 426
Severance pay fund deposits ⁽¹⁾	—	5,379	—	5,379
Foreign currency forward contract ⁽³⁾	—	553	—	553
Total financial assets	<u>\$ —</u>	<u>\$6,358</u>	<u>\$ —</u>	<u>\$6,358</u>

(1) Recorded within other assets

(2) Recorded within accrued and other current liabilities

(3) Recorded within prepaid expenses and other current assets

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

3. Fair Value Measurements (continued)

During the three months ended March 31, 2021 and March 31, 2020, we recognized losses related to mark-to-market adjustments for undesignated foreign currency forward contracts of \$1.3 million and \$0.2 million, respectively, within interest income and other income (expense) in the condensed consolidated statements of operations.

4. Balance Sheet Components

Accounts Receivable, Net

Accounts receivable, net consists of the following:

	March 31, 2021	December 31, 2020
	(In thousands)	
Accounts receivable	\$154,958	\$169,623
Allowance for doubtful accounts	(4,219)	(4,174)
Accounts receivable, net	<u>\$150,739</u>	<u>\$165,449</u>

Allowance for Doubtful Accounts

The allowance for doubtful accounts consists of the following activity:

	March 31, 2021	December 31, 2020
	(In thousands)	
Allowance for doubtful accounts, beginning balance	\$4,174	\$ 3,281
Provision for doubtful accounts, net of recoveries	675	2,668
Write-offs	(630)	(1,775)
Allowance for doubtful accounts, ending balance	<u>\$4,219</u>	<u>\$ 4,174</u>

Property, Equipment and Capitalized Software, Net

Property, equipment and capitalized software, net consists of the following:

	March 31, 2021	December 31, 2020
	(In thousands)	
Computer equipment	\$ 34,280	\$ 41,735
Capitalized software development costs	46,309	43,728
Software	3,205	3,444
Leasehold improvements	1,697	2,805
Furniture and fixtures	528	908
Property, equipment and capitalized software, gross	86,019	92,620
Less: accumulated depreciation and amortization	(61,948)	(67,864)
Total property, equipment and capitalized software, net	<u>\$ 24,071</u>	<u>\$ 24,756</u>

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

4. Balance Sheet Components (continued)

Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following:

	March 31, 2021	December 31, 2020
	(In thousands)	
Accrued traffic acquisition costs	\$60,407	\$ 77,195
Accrued tax liabilities	8,101	9,622
Accrued agency commissions	9,395	8,755
Capital lease obligations, current	3,903	3,853
Other	8,259	10,322
Total accrued and other current liabilities	<u>\$90,065</u>	<u>\$109,747</u>

In addition to our accrued traffic acquisition cost, accounts payable includes \$110.4 million and \$111.7 million of traffic acquisition costs as of March 31, 2021 and December 31, 2020, respectively.

5. Goodwill and Intangible Assets

The Company's goodwill balance was \$32.9 million at March 31, 2021 and December 31, 2020 and the Company has not recorded any accumulated impairments of goodwill.

The gross carrying amount and accumulated amortization of our intangible assets are as follows:

	As of March 31, 2021			
	Amortization Period	Gross Value	Accumulated Amortization	Net Carrying Value
	(In thousands)			
Developed technology	36-48 months	\$ 8,425	\$ (8,425)	\$ —
Customer relationships	48 months	5,493	(3,174)	2,319
Publisher relationships	48 months	8,703	(4,002)	4,701
Trade names	8 years	1,724	(396)	1,328
Other	14 years	848	(132)	716
Total intangible assets, net		<u>\$25,193</u>	<u>\$(16,129)</u>	<u>\$9,064</u>
	As of December 31, 2020			
	Amortization Period	Gross Value	Accumulated Amortization	Net Carrying Value
	(In thousands)			
Developed technology	36-48 months	\$ 8,425	\$ (8,388)	\$ 37
Customer relationships	48 months	5,694	(3,166)	2,528
Publisher relationships	48 months	9,111	(3,986)	5,125
Trade names	8 years	1,805	(395)	1,410
Other	14 years	830	(118)	712
Total intangible assets, net		<u>\$25,865</u>	<u>\$(16,053)</u>	<u>\$9,812</u>

No impairment charges were recorded during the three months ended March 31, 2021 and March 31, 2020.

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

5. Goodwill and Intangible Assets (continued)

As of March 31, 2021, estimated amortization related to our identifiable acquisition-related intangible assets in future periods was as follows:

As of March 31, 2021	Amount (In thousands)
2021	\$2,637
2022	3,516
2023	1,601
2024	267
2025	267
Thereafter	776
Total	\$9,064

6. Long Term Debt

Revolving Credit Facility

The Company is party to a loan and security agreement (“Revolving Credit Facility”) with Silicon Valley Bank (“SVB”) that provides us an initial maximum borrowing capacity of up to \$35.0 million that we may use to borrow against our qualifying receivables based on a defined borrowing formula. The Revolving Credit Facility was amended in November 2018 which extended the maturity date from October 2019 to November 2, 2021. The Revolving Credit Facility was further amended in March 2020 which revised certain financial covenants.

The Revolving Credit Facility contains customary conditions to borrowings, events of default and negative covenants, including covenants that restrict the Company’s ability to dispose of assets, merge with or acquire other entities, incur indebtedness, incur encumbrances, make distributions to holders of its capital stock, make investments or engage in transactions with our affiliates. The Company is also subject to financial covenants with respect to a monthly modified liquidity ratio and Adjusted EBITDA for trailing six-month periods.

Our obligations under the Revolving Credit Facility are secured by a first priority security interest in substantially all of the assets of the Company with a negative pledge on our intellectual property. The Company was in compliance with all financial covenants under its Revolving Credit Facility as of March 31, 2021.

As of March 31, 2021 and December 31, 2020, we had no borrowings outstanding under our Revolving Credit Facility and our available borrowing capacity was \$35.0 million based on the defined borrowing formula.

7. Income Taxes

The Company’s effective tax rates for the three months ended March 31, 2021 and March 31, 2020 were 13.0% and (13.4)%, respectively. The Company’s effective tax rate differed from the United States federal statutory tax rate of 21% primarily due to the full valuation allowance recorded against the U.S. deferred tax assets for the three months ended March 31, 2021, and our deferred tax assets in the U.S. and in one of our foreign subsidiaries for the three months ended March 31, 2020, respectively.

We recognize accrued interest and penalties related to unrecognized tax benefits in our income tax provision. The balance in our unrecognized tax benefits at March 31, 2021 and December 31, 2020 was \$1.3 million and \$1.2 million, respectively. While it is often difficult to predict the outcome of any particular

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)**7. Income Taxes (continued)**

uncertain tax position, it is reasonably possible that our unrecognized tax benefits will decrease approximately \$0.4 million during the next twelve months. We expect that the amount of unrecognized tax benefits will continue to change in the future as a result of ongoing operations, the outcomes of audits, and the expiration of the statutes of limitations. These changes are not expected to have a significant impact on our results of operations or financial condition.

8. Commitments and Contingencies

From time to time, we may become subject to legal proceedings, claims and litigation arising in the ordinary course of business. In addition, we may receive letters alleging infringement of patent or other intellectual property rights. We are not currently a party to any material legal proceedings, nor are we aware of any pending or threatened litigation that, in our opinion, would have a material adverse effect on our business, operating results, cash flows or financial condition should such litigation be resolved unfavorably.

9. Stock-based Compensation

We issue equity awards under our Omnibus Securities and Incentive Plan adopted in September 2007, as amended in January 2009 (the "Plan"). The plan is administered by the Company's board of directors or designated person(s) and provides for grants of options, and restricted awards. As of March 31, 2021, approximately 1,341,091 shares were available for grant.

We recognize stock-based compensation for stock-based awards, including stock-options, restricted stock awards ("RSAs"), restricted stock units ("RSUs" and stock appreciation rights ("SARs") based on the estimated fair value of the awards. We estimated the fair value of our stock option awards on the grant date using the Black-Scholes option pricing model. The fair value of our RSUs and RSUs is the fair value of our common stock on the date of grant.

In our accompanying condensed consolidated statements of operations, we recognized stock-based compensation for our employees and non-employees as follows:

	<u>Three months ended March 31,</u>	
	<u>2021</u>	<u>2020</u>
	(in thousands)	
Research and development	\$ 247	\$178
Sales and marketing	555	475
General and administrative	<u>685</u>	<u>263</u>
Total stock-based compensation	<u>\$1,487</u>	<u>\$916</u>

During the three months ended March 31, 2021 and March 31, 2020, we have not recorded any stock-based compensation related to our stock option awards, RSAs, RSUs and SARs that vest upon the satisfaction of a performance condition because the performance condition is not probable of occurring until a qualifying liquidity event (qualified IPO or change of control) has occurred. If a qualifying liquidity event had occurred on March 31, 2021, we would have recorded \$11.4 million in additional stock-based compensation related to our stock options, RSAs, RSUs and SARs that vest upon the satisfaction of a performance condition.

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

9. Stock-based Compensation (continued)

The following table summarizes stock option, RSA and RSU activity under the Plan and related information:

	Number of Shares	Options Outstanding	RSAs and RSUs Unvested and Outstanding	
		Weighted- Average Exercise Price	Number of Shares	Weighted- Average Grant Date Fair Value
Outstanding – December 31, 2020	9,308,317	\$3.74	6,861,895	\$5.50
Options exercised	(221,134)	2.55	—	—
RSUs vested	—	—	(178,671)	5.73
Cancellations	(446,587)	2.39	(278,801)	5.58
Outstanding – March 31, 2021	<u>8,640,596</u>	\$3.84	<u>6,404,423</u>	\$5.49
Exercisable – March 31, 2021	<u>6,412,714</u>	\$3.16		

Stock Options

There were no stock options granted during the three months ended March 31, 2021. As of March 31, 2021, total unrecognized stock-based compensation related to unvested stock options was \$4.8 million, which is expected to be recognized over a weighted-average period of 3.7 years. Certain stock options vest only upon IPO or other performance conditions.

Restricted Stock Awards

As of March 31, 2021, the total unrecognized stock-based compensation related to unvested RSAs is \$0.3 million. Certain RSAs issued during 2012 and 2013 relate to common stock issued in exchange for loans in the amount of the exercise price of the awards. The awards were also subject to a performance condition that is not probable until an IPO occurs. Because the notes were considered to be in-substance nonrecourse notes receivable, the awards are treated as a stock options for accounting purposes.

Restricted Stock Units

For those RSUs subject to occurrence of a performance condition because the performance condition is not probable until an IPO or certain merger and acquisition events have occurred, we have not recorded any stock-based compensation to date. As of March 31, 2021, the unrecognized stock-based compensation related to unvested RSUs not subject to performance conditions is \$10.0 million.

Stock Appreciation Rights (SARs)

The Plan provides for the award of Stock Appreciation Rights that are granted in connection with a related option to certain employees. The fair value of each SAR award is estimated using a similar method described for stock options. The fair value of each vested SAR award is recalculated at the end of each reporting period and the liability and expense adjusted based on the new fair value. Because these SARs vest upon an IPO and the satisfaction of other performance conditions and these performance conditions are not probable to occur until an IPO has occurred, we have not recorded any stock-based compensation for the three-month periods ended March 31, 2021 and 2020 or recorded a liability related to these SAR grants as of March 31, 2021 or December 31, 2020. As of March 31, 2021 and December 31, 2020, 5,764 SAR awards were outstanding with a weighted average grant date fair value of \$2.31.

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

9. Stock-based Compensation (continued)

Stock-Based Awards Granted Outside of Equity Incentive Plans

Warrants

The Company issued equity classified warrants to purchase shares of common stock to certain third-party advisors, consultants and financial institutions with exercise prices ranging from \$0.001 to \$4.87 per share. The exercise period of the warrants is until the earlier of the closing of an IPO, the closing of a deemed liquidation event or the end of the warrant terms. As of March 31, 2021 and December 31, 2020, the Company had 1,055,852 warrants outstanding with a weighted exercise price of \$2.92.

10. Income (Loss) Per Share

We apply the two-class method to calculate basic and diluted income (loss) per share attributable to common stockholders as shares of our convertible preferred stock are participating securities due to their participation rights. The two-class method is an earnings allocation method under which earnings per share is calculated for common stock considering a participating security's rights to undistributed earnings as if all such earnings had been distributed during the period. Our participating securities are not included in the computation of loss per share attributable to common stockholders in periods of net loss because the convertible preferred stockholders have no contractual obligation to participate in losses.

	Three Months Ended March 31,	
	2021	2020
	(In thousands, except share and per share data)	
Numerator:		
Basic and diluted:		
Net income (loss)	\$ 10,746	\$ (9,570)
Less: undistributed earnings allocated to participating securities	(6,631)	—
Net income (loss) attributable to common stockholders	\$ 4,115	\$ (9,570)
Denominator:		
Basic weighted-average shares used in computing income (loss) attributable to common stockholders	29,276,271	28,288,107
Weighted average dilutive share equivalents: Stock options, Warrants, RSAs and RSUs	4,821,013	—
Diluted weighted-average shares used in computing income (loss) attributable to common stockholders	34,097,284	28,288,107
Net income (loss) per share attributable to common stockholders:		
Basic	\$ 0.14	\$ (0.34)
Diluted	\$ 0.12	\$ (0.34)

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

10. Income (Loss) Per Share (continued)

The following weighted average shares have been excluded from the calculation of diluted income (loss) per share attributable to common stockholders for each period presented because they are anti-dilutive:

	Three Months Ended March 31,	
	2021	2020
Convertible preferred stock	47,009,166	47,009,166
Options to purchase common stock	1,785,781	3,605,688
Warrants	—	577,610
Restricted stock units	58,846	460,713
Total shares excluded from diluted income (loss) per share	48,853,793	51,653,177

Unaudited Pro Forma Basic and Diluted Net Loss Per Share

Pro forma basic and diluted net loss per share attributable to common stockholders was computed to give effect to the automatic conversion of all series of convertible preferred stock using the if-converted method as though the conversion had occurred as of the beginning of the period or the original date of issuance, if later. In addition, the pro forma share amounts give effect to our stock options, RSAs, RSUs and SARs that have satisfied the service condition as of March 31, 2021 and will vest upon the satisfaction of a qualified liquidity event, which was assumed to occur as of January 1, 2020. Also, pro-forma share amounts assume that warrants are exercised upon an IPO. The unaudited pro forma basic and diluted net loss per share do not give effect to the Notes issued on July 1, 2021 or the potential exchange of those Notes for Convertible Notes (see Note 11). If we elect to exchange the Notes for Convertible Notes, diluted earnings per share in future periods could be impacted if, under the if-converted method, the effect would be more dilutive.

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

10. Income (Loss) Per Share (continued)

The following table sets forth the computation of our unaudited pro forma basic and diluted net income (loss) per share attributable to common stockholders:

	Three Months Ended March 31, 2021
	(In thousands, except share and per share data)
Numerator:	
Net income	\$ 10,746
Stock-based compensation expense, net of tax, recorded upon a qualifying event	(1,381)
Net income attributable to common stockholders used in computing pro forma net income per share, basic and diluted	<u>\$ 9,365</u>
Denominator—basic:	
Weighted-average shares used in computing income (loss), basic	29,276,271
Weighted-average pro-forma adjustment to reflect conversion of convertible preferred into common stock in accordance with the terms of the outstanding convertible preferred stock	
Weighted-average pro-forma adjustment to reflect assumed vesting of RSUs upon consummation of our expected initial public offering	
Weighted average pro-forma adjustment to reflect assumed exercise of Warrants due to acceleration of expiration of the warrants	
Weighted-average shares used in computing pro forma net income per share, basic	<u> </u>
Denominator—diluted:	
Pro forma weighted average shares, basic	
Weighted average dilutive share equivalents:	
Stock options, RSAs and RSUs	
Weighted-average shares used in computing pro forma net income (loss) per share, diluted	<u> </u>
Pro forma net income (loss) per share, basic	<u> </u>
Pro forma net income (loss) per share, diluted	<u> </u>

11. Subsequent Events

We evaluated subsequent events through May 28, 2021, the date these condensed consolidated financial statements were issued.

On April 21, 2021, we announced that we had confidentially submitted a draft registration statement on Form S-1 with the Securities and Exchange Commission (SEC) relating to the proposed initial public offering of common stock. The number of shares to be offered and the price range for the proposed offering have not yet been determined. The initial public offering is expected to take place after the SEC completes its review process, subject to market and other conditions.

On April 29, 2021, we were notified that the Antitrust Division of the U.S. Department of Justice is conducting a criminal investigation into the hiring in our industry that includes us. We are cooperating with the Antitrust Division. While there can be no assurance regarding the ultimate resolution of this matter, we do not believe that our conduct violated applicable law.

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)

11. Subsequent Events (continued)

Subsequent to May 28, 2021:

Senior Subordinated Secured Notes

On July 1, 2021, we completed the sale of \$200 million aggregate principal amount of senior subordinated secured notes due July 1, 2026 (the “Notes”), in a private placement (the “Private Placement”) to one or more institutional investors affiliated with and funds managed by, The Baupost Group, L.L.C. (the “Baupost Investors”), pursuant to a Senior Subordinated Secured Note Purchase Agreement dated July 1, 2021 (the “Note Purchase Agreement”).

We intend to exchange the Notes for Convertible Notes (described below) upon the consummation of this offering. Upon issuance of the Convertible Notes, all the Notes and the obligations thereunder shall be canceled and extinguished.

Exchange of Notes for Convertible Notes

Pursuant to the Note Purchase Agreement, we agreed that upon the consummation of our initial public offering or a similar liquidity event (an “IPO”) that results in our having a pre-money equity value of less than or equal to \$2 billion, we will, at our option, either (i) exchange all the Notes for newly-issued five-year Convertible Senior Notes (the “Convertible Notes”) having an aggregate principal amount equal to the Minimum Note Redemption Price (described below) or (ii) redeem all the Notes for cash in an amount equal to the Minimum Note Redemption Price. The Minimum Note Redemption Price will be equal to the greater of (a) \$236 million if the IPO occurs on or before August 15, 2021 (or \$240 million if the IPO occurs after August 15, 2021 but on or before December 31, 2021) and (b) an internal rate of return of 16% per annum, compounded quarterly and determined under the Note Purchase Agreement. As noted above, we intend to exchange the Notes for the Convertible Notes upon the consummation of this offering.

The Convertible Notes will have a term of five (5) years. The initial conversion rate for the Convertible Notes per \$1,000 principal amount of Convertible Notes will be a number of shares of common stock equivalent to a conversion price of 125% of the initial public offering price of our common stock. The Convertible Notes will bear a stated interest equal to the greater of (A) 2.95% per annum and (B) 2.95% per annum plus (x) the closing yield of the 5-year U.S. Treasury Rate as of the business day immediately prior to the day of issuance of the Convertible Notes *minus* (y) 0.80%, rounded up to the next highest 0.05% increment. Holders of the Convertible Notes may, at their option, convert all or any portion of their Convertible Notes into shares of our common stock at any time until the second scheduled trading day immediately preceding the maturity date, at the conversion rate then in effect. We will settle conversions of the Convertible Notes by paying or delivering, as the case may be, cash, shares of our common stock, or a combination thereof, at our election.

In connection with the Private Placement and the execution of the Note Purchase Agreement, we agreed to a form of indenture for the Convertible Notes (“Convertible Notes Indenture Form”) that will govern the Convertible Notes when issued upon the consummation of the IPO. Pursuant to the Convertible Notes Indenture Form, we agreed to issue Convertible Notes with an aggregate principal amount equal to the Minimum Note Redemption Price. If we undergo a fundamental change (as defined in the Convertible Notes Indenture Form) prior to the five-year maturity date, holders may, at their option, require us to repurchase for cash all or any portion of their Convertible Notes at a price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the repurchase date. We may not redeem the Convertible Notes prior to the third-year anniversary of their issuance. On or after such third-year anniversary, we may, at our option, redeem for cash all or any portion of the Convertible Notes, if the last reported sale price of our common stock has been at least 130% of the conversion price on each of at least 20 trading days during the 30 consecutive trading day period ending on and including the trading day preceding the date on which we provide notice of redemption, at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus any accrued

OUTBRAIN INC.

Notes to Condensed Consolidated Financial Statements
(Unaudited)**11. Subsequent Events (continued)**

and unpaid interest to, but excluding, the redemption date. In addition, calling any Convertible Note for redemption will constitute a “make-whole fundamental change” with respect to that Convertible Note, in which case the conversion rate applicable to the conversion of that Convertible Note will be increased if it is converted by holders after it is called for redemption.

The Convertible Notes will also include standard provisions regarding “fundamental changes,” “make-whole fundamental changes,” adjustments to conversion rates upon the happening of specified events, events of default and remedies, customary for public company convertible notes. The Bank of New York Mellon has agreed to act as trustee for the Convertible Notes.

SVB Subordination Agreement

The Notes issued in the Private Placement, which will be exchanged and cancelled upon the IPO, bear interest that accrues at the rate of (i) prior to July 1, 2024, 10.0% per annum and (ii) on and after July 1, 2024, 14.5% per annum, and is payable, in cash or in kind at our option, quarterly. The Notes are our senior secured obligations and will, on a date on or before 60 days following the closing of the Private Placement, be guaranteed, on a senior secured basis by certain of our wholly-owned subsidiaries and secured by a second priority lien on all of our and their tangible and intangible assets, subject to certain excluded assets, permitted liens and customary exceptions. Subject to certain exceptions, the Note Purchase Agreement limits our ability to incur debt, pay dividends or make restricted payments, sell or dispose assets, incur liens securing debt, enter into affiliate transactions, or merge or sell all or substantially all our assets. The agreement contains customary events of default including, nonpayment of principal or interest, breach of negative covenants or fundamental representations, and certain bankruptcy or insolvency events.

In connection with the Revolving Credit Facility and our entering into the Note Purchase Agreement, SVB, the Baupost Investors and the Bank of New York Mellon as collateral agent for the Notes, entered into a subordination agreement, dated as of July 1, 2021, pursuant to which (i) SVB, as senior creditor, consented to our entering into Note Purchase Agreement and related loan documents and (ii) the Baupost Investors agreed to subordinate our obligations to them under the Notes to our obligations to SVB.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of Outbrain Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Outbrain Inc. and subsidiaries (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive income (loss), convertible preferred stock and stockholders' deficit, and cash flows for each of the years in the two-year period ended December 31, 2020, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2013.

New York, New York

March 25, 2021

OUTBRAIN INC.

Consolidated Balance Sheets

(In thousands, except for number of shares and par value)

	2020	2019
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 93,641	\$ 49,593
Accounts receivable, net of allowances	165,449	141,746
Prepaid expenses and other current assets	18,326	13,306
Total current assets	277,416	204,645
Property, equipment and capitalized software, net	24,756	24,532
Intangible assets, net	9,812	13,302
Goodwill	32,881	32,881
Other assets	11,621	7,164
TOTAL ASSETS	\$ 356,486	\$ 282,524
LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
CURRENT LIABILITIES:		
Accounts payable	\$ 118,491	\$ 85,619
Accrued compensation and benefits	23,000	14,909
Accrued and other current liabilities	109,747	87,090
Deferred revenue	5,512	3,213
Total current liabilities	256,750	190,831
Other liabilities	17,105	18,911
TOTAL LIABILITIES	\$ 273,855	\$ 209,742
Commitments and Contingencies (Note 7)		
Convertible preferred stock, par value of \$0.001 per share, Series A, B, C, D, E, F, G and H—aggregate of 47,203,157 shares authorized as of December 31, 2020 and 2019; aggregate of 47,009,166 shares issued and outstanding as of December 31, 2020 and 2019, respectively; and aggregate liquidation preference of \$200.4 million as of December 31, 2020 and 2019	162,444	162,444
STOCKHOLDERS' DEFICIT:		
Common stock, par value of \$0.001 per share—110,812,435 shares authorized as of December 31, 2020 and 2019; 29,169,963 and 28,193,335 shares issued and outstanding as of December 31, 2020 and 2019	29	28
Additional paid-in capital	92,693	88,435
Accumulated other comprehensive loss	(4,290)	(5,523)
Accumulated deficit	(168,245)	(172,602)
TOTAL STOCKHOLDERS' DEFICIT	(79,813)	(89,662)
TOTAL LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT	\$ 356,486	\$ 282,524

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.
Consolidated Statements of Operations
(In thousands)

	<u>2020</u>	<u>2019</u>
Revenue	\$767,142	\$687,333
Cost of revenue:		
Traffic acquisition costs	572,802	517,000
Other cost of revenue	29,278	28,548
Total cost of revenue	<u>602,080</u>	<u>545,548</u>
Gross profit	165,062	141,785
Operating expenses:		
Research and development	28,961	26,391
Sales and marketing	77,570	78,941
General and administrative	48,354	51,038
Total operating expenses	<u>154,885</u>	<u>156,370</u>
Income (loss) from operations	10,177	(14,585)
Other income (expense), net:		
Interest expense	(832)	(601)
Interest income and other income (expense), net	<u>(1,695)</u>	<u>152</u>
Total other income (expense), net	<u>(2,527)</u>	<u>(449)</u>
Income (loss) before provision for income taxes	7,650	(15,034)
Provision for income taxes	3,293	5,480
Net income (loss)	<u>\$ 4,357</u>	<u>\$ (20,514)</u>
Net income (loss) per common share:		
Basic	\$ 0.06	\$ (0.79)
Diluted	\$ 0.05	\$ (0.79)
Pro forma net income (loss) per common share:		
Basic	\$ —	
Diluted	\$ —	

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.

Consolidated Statements of Comprehensive Income (Loss)
(In thousands)

	<u>2020</u>	<u>2019</u>
Net income (loss)	\$4,357	\$(20,514)
Other comprehensive income (loss):		
Foreign currency translation adjustments	1,233	(16)
Comprehensive income (loss)	<u>\$5,590</u>	<u>\$(20,530)</u>

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.

Consolidated Statements of Convertible Preferred Stock and Stockholders' Deficit
(In thousands, except for number of shares)

	Convertible Preferred Stock		Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive (Loss)	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount				
Balance—January 1, 2019	46,966,186	\$162,164	21,174,300	\$20	\$ 45,048	\$ (5,507)	\$(152,088)	\$(112,527)
Issuance of Series H convertible preferred stock for a business combination	35,048	228	—	—	—	—	—	—
Issuance of Series H convertible preferred stock for an asset acquisition	7,932	52	—	—	—	—	—	—
Issuance of common stock upon exercise of employee stock option	—	—	430,009	1	942	—	—	943
Issuance of common stock upon vesting of restricted stock units	—	—	463,622	1	—	—	—	1
Issuance of common stock upon acquisition	—	—	6,125,404	6	38,327	—	—	38,333
Stock-based compensation	—	—	—	—	4,118	—	—	4,118
Other comprehensive loss	—	—	—	—	—	(16)	—	(16)
Net loss	—	—	—	—	—	—	(20,514)	(20,514)
Balance—December 31, 2019	47,009,166	\$162,444	28,193,335	\$28	\$ 88,435	\$ (5,523)	\$(172,602)	\$(89,662)
Issuance of common stock upon exercise of employee stock option	—	—	472,880	0	393	—	—	393
Issuance of common stock upon vesting of restricted stock units	—	—	503,748	1	—	—	—	1
Stock-based compensation	—	—	—	—	3,865	—	—	3,865
Other comprehensive loss	—	—	—	—	—	1,233	—	1,233
Net income	—	—	—	—	—	—	4,357	4,357
Balance—December 31, 2020	<u>47,009,166</u>	<u>\$162,444</u>	<u>29,169,963</u>	<u>\$29</u>	<u>\$ 92,693</u>	<u>\$ (4,290)</u>	<u>\$(168,245)</u>	<u>\$(79,813)</u>

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.
Consolidated Statements of Cash Flows
(In thousands)

	For year-ended December 31, 2020	For year-ended December 31, 2019
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	\$ 4,357	\$(20,514)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization of property and equipment	6,638	6,248
Amortization of capitalized software development costs	7,545	6,461
Amortization of intangible assets	4,326	4,035
Amortization of deferred traffic acquisition costs	—	38
Non-cash interest	43	51
Loss on disposal of property and equipment	—	(25)
Gain on sale of asset	(1,095)	—
Stock-based compensation	3,588	3,876
Provision for doubtful accounts	2,621	3,189
Deferred income taxes	(2,256)	(141)
Other	(1,414)	(22)
Changes in operating assets and liabilities:		
Accounts receivable	(24,124)	4,797
Prepaid expenses and other current assets	(3,729)	1,038
Other assets	(1,821)	(146)
Accounts payable	31,429	(25,366)
Accrued and other current liabilities	24,109	32,291
Deferred revenue	2,159	1,045
Other	610	(115)
Net cash provided by operating activities	<u>52,986</u>	<u>16,740</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(1,511)	(2,452)
Capitalized software development costs	(8,990)	(7,935)
Proceeds from sale of assets	1,117	—
Acquisition of business	—	2,920
Other	(39)	(122)
Net cash used in investing activities	<u>(9,423)</u>	<u>(7,589)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from exercise of common stock options and warrants	545	882
Principal payments on capital lease obligations	(4,773)	(4,541)
Net cash used in financing activities	<u>(4,228)</u>	<u>(3,659)</u>
Effect of exchange rate changes	4,750	64
NET INCREASE (DECREASE) IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	44,085	5,556
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH—Beginning of period	49,982	44,426
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH—End of period	<u>\$ 94,067</u>	<u>\$ 49,982</u>
RECONCILIATION OF CASH, CASH EQUIVALENTS, AND RESTRICTED CASH TO THE CONSOLIDATED BALANCE SHEETS		
Cash and cash equivalents	\$ 93,641	\$ 49,593
Restricted cash, included in other assets	426	389
Total cash, cash equivalents, and restricted cash	<u>\$ 94,067</u>	<u>\$ 49,982</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid for income taxes, net of refunds	<u>\$ 2,639</u>	<u>\$ 5,489</u>
Cash paid for interest	<u>\$ 760</u>	<u>\$ 548</u>
Stock-based compensation capitalized for software development costs	<u>\$ 212</u>	<u>\$ 242</u>
Purchases of property and equipment included in accounts payable	<u>\$ 135</u>	<u>\$ 142</u>
Property and equipment financed under capital obligation arrangements	<u>\$ 4,834</u>	<u>\$ 6,769</u>
Series H convertible preferred stock issued for acquisition of a business	<u>\$ —</u>	<u>\$ 228</u>
Series H convertible preferred stock issued for asset acquisition	<u>\$ —</u>	<u>\$ 52</u>
Common stock issued for acquisition of a business	<u>\$ —</u>	<u>\$ 40,060</u>

See Accompanying Notes to Consolidated Financial Statements.

OUTBRAIN INC.**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies****Organization and Description of Business**

Outbrain Inc. together with our subsidiaries (“Outbrain”, the “Company”, “we”, “our” or “us”) was incorporated in August 2006 in Delaware. The Company is headquartered in New York, New York and has wholly-owned subsidiaries in Israel, Europe, Asia, Brazil and Australia.

Outbrain is a leading recommendation platform powering the open web. Our platform provides personalized recommendations that appear as links to content, advertisements and videos on media owner’s online properties. We generate revenue from marketers through user engagements with promoted recommendations that we deliver across a variety of third-party media owner’s properties. We pay traffic acquisition costs to our media owner partners on whose digital properties the recommendations are shown. Our advertiser solutions are mainly priced using a performance-based model based on the actual number of engagements generated by users. The actual number of engagements generated by users is highly dependent on our ability to generate trustworthy and interesting recommendations to individual users based on our proprietary algorithms. A small portion of our revenue is generated through advertisers participating in programmatic auctions wherein the pricing is determined by the auction results and not dependent on user engagement.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“US GAAP”). The accompanying consolidated financial statements include the accounts of Outbrain Inc. and our wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated upon consolidation. Certain reclassifications have been made to amounts reported for the prior years to achieve consistent presentation with the current year.

Use of Estimates

The preparation of the consolidated financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expense during the reporting period. We base our estimates and judgments on historical information and on various other assumptions that we believe are reasonable under the circumstances. Estimates and assumptions made in the accompanying consolidated financial statements include, but are not limited to, the allowance for doubtful accounts, sales allowance, software development costs eligible for capitalization, valuation of deferred tax assets, the useful lives of property and equipment, the useful lives and fair value of intangible assets and goodwill, the fair value of stock-based awards, the recognition and measurement of income tax uncertainties and other contingencies. Actual results may differ from those estimates and assumptions.

Cash and Cash Equivalents

We consider all highly liquid investments with maturities of three months or less when purchased to be cash equivalents. Cash and cash equivalents consist of cash on hand and highly liquid investments in money market funds.

Restricted Cash

Restricted cash represents security deposits for facility leases as well as time deposits with financial institutions. Restricted cash is included in other assets in the accompanying consolidated balance sheets.

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies (continued)****Fair Value Measurement**

We utilize valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible. Our financial instruments include restricted time deposits, severance pay fund deposits and foreign currency forward contract assets. We determine the fair value of our financial instruments based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, in which Level I provides the most reliable measure of fair value, whereas Level III, if applicable, generally would require significant management judgment:

Level I—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;

Level II—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities; and

Level III—Unobservable inputs that are significant to the measurement of the fair value of the assets or liabilities that are supported by little or no market data.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are recorded at invoiced amounts, net of allowances for doubtful accounts, if applicable, and are unsecured and do not bear interest. Accounts receivable also include earned and billable amounts not yet invoiced as of the end of the reporting period.

The allowance for doubtful accounts is based on the best estimate of the amount of probable credit losses in existing accounts receivable. We evaluate the collectability of our accounts receivable based on known collection risks and historical experience. In circumstances where we are aware of a customer's inability to meet its financial obligations to us (e.g., bankruptcy filings or substantial downgrading of credit ratings), we record a specific reserve for bad debts against amounts due to reduce the net recognized receivable to the amount we reasonably believe will be collected. For all other customers, we record reserves for bad debts based on the length of time the receivables are past due and our historical experience of collections and write-offs. If circumstances change, such as higher-than-expected defaults or an unexpected material adverse change in a major customer's ability to meet its financial obligations, our estimate of amounts collectible could be reduced by a material amount.

Certain Risks and Concentrations

Financial instruments that potentially subject us to concentrations of credit risk consist of cash and cash equivalents, restricted cash and accounts receivable. Our cash and cash equivalents and restricted cash are generally invested in high-credit quality financial instruments with both banks and financial institutions to reduce the amount of exposure to any single financial institution.

We generally do not require collateral to secure accounts receivable. No single marketer accounted for 10% or more of our total revenue for the years ended 2020 and 2019 or 10% or more of our gross accounts receivable balance as of December 31, 2020 and 2019.

For the year ended December 31, 2020, two media owners individually accounted for 12% and 11% of our total traffic acquisition costs. For the year ended December 31, 2019, two media owners individually accounted for 14% and 11% of our total traffic acquisition costs.

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies (continued)****Property, equipment and capitalized software, net**

Property and equipment, including leasehold improvements, are stated at cost, less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Depreciation on property and equipment, excluding leasehold improvements, is three years. Leasehold improvements are amortized on a straight-line basis over the shorter of the estimated useful lives of the assets or the remaining lease term. Amortization on leasehold improvements ranges from one to nine years.

We capitalize qualifying development costs associated with software that is developed or obtained for internal use, provided that management with the relevant authority authorizes and commits to the funding of the project, it is probable the project will be completed and the software will be used to perform the function intended. Capitalized costs, including costs incurred for enhancements that are expected to result in additional significant functionality are capitalized and amortized on a straight-line basis over the estimated useful life, which approximates three years. Costs related to preliminary project activities and post-implementation operation activities, including training and maintenance, are expensed as incurred.

Intangible assets, net

Intangible assets primarily consist of developed technology and customer and media owner relationships resulting from acquisitions. Intangible assets are carried at cost, less accumulated amortization, unless a determination has been made that their value has been impaired. Intangible assets are amortized on a straight-line basis over their estimated useful lives. Amortization expense in the accompanying consolidated statements of operations is included as a component of other cost of revenue for developed technology assets and sales and marketing expense for customer and media owner relationships and tradenames.

Impairment of Long-Lived Assets

Long-lived assets consist of our property, equipment, capitalized software development costs and other assets, including identifiable intangible assets with finite lives. Our long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable or that the useful life is shorter than we had originally estimated. Recoverability of these assets is first assessed by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate over their remaining lives. If the asset is considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. If the useful life is shorter than originally estimated, we amortize the remaining carrying value over the new shorter useful life.

Goodwill

Goodwill represents the excess of the purchase price of an acquired entity over the fair value of intangible assets acquired and liabilities assumed. Goodwill is not amortized but instead evaluated for impairment. We perform our annual impairment test of goodwill during the fourth quarter of each fiscal year or whenever events or circumstances change that would indicate that goodwill may not be recoverable. In conducting our impairment test, we can opt to perform a qualitative assessment to test goodwill for impairment or we can directly perform the two-step impairment test described below. Based on our qualitative assessment, if we determine that the fair value of a reporting unit is more likely than not (a likelihood of more than 50%) to be less than its carrying amount, the two-step impairment test will be performed. In the first step, we compare the fair value of our reporting unit to its carrying amount. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not considered impaired and we are not required to perform further testing. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then we must perform the

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies (continued)**

second step of the impairment test in order to determine the implied fair value of the reporting unit's goodwill. In the second step, if the carrying value of a reporting unit's goodwill exceeds its implied fair value, then we would record an impairment loss equal to the difference. Based on our qualitative assessment performed during the fourth quarter of fiscal years 2020 and 2019, we concluded that it was more-likely-than-not that the estimated fair value of Company's single reporting unit exceeded its carrying value. Accordingly, we did not recognize any goodwill impairment charges for the years ended December 31, 2020 and 2019.

Revenue Recognition

In May 2014, the FASB issued Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers (Topic 606) to supersede nearly all current revenue recognition guidance under US GAAP. The core principle of Topic 606 is to recognize revenues when goods or services are transferred to customers in an amount that reflects the consideration that is expected to be received for those goods or services. ASU 2014-09 provides a five-step model to achieve this core principle and, in doing so, it is possible that more judgment and estimates may be required within the revenue recognition process than required under previous US GAAP, including identifying performance obligations in a contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. The Company adopted the new standard effective with our December 31, 2019 annual financial statements using the modified retrospective approach. The adoption did not have a material impact on our consolidated financial statements.

We recognize revenues when we transfer control of promised services directly to our customers, in an amount that reflects the consideration to which we expect to be entitled to in exchange for those services. The Company recognizes revenue pursuant to the five-step framework contained in ASC 606: (i) identify the contract with a client; (ii) identify the performance obligations in the contract, including whether they are distinct in the context of the contract; (iii) determine the transaction price, including the constraint on variable consideration; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue as the Company satisfies the performance obligations.

We generate revenue primarily from marketers through user engagement with personalized display advertisements that we place on third-party media owners web pages and mobile applications. Our platform delivers personalized recommendations to end-users that appear as links to articles and videos on media owners' sites.

Our customers include brands, performance marketers and other advertisers, which we collectively refer to as our marketers, each of whom contract for use of our services primarily through insertion orders or through our online process, allowing marketers to establish budgets for their advertising campaigns. Advertising campaigns are billed on a monthly basis. Our payment terms generally range from 30 to 60 days.

For advertising campaigns priced on a cost-per-click basis, we bill our marketers and recognize revenue when a user clicks on an advertisement we deliver.

For campaigns priced on a cost-per-impression basis, we bill our marketers and recognize revenue based on the number of times an advertisement is displayed to a user.

Variable consideration, including allowances, discounts, refunds, credits, incentives, or other price concessions, is estimated and recorded at the time that related revenue is recognized. Advance payments from marketers for future services represent contract liabilities and are recorded as deferred revenue in our consolidated balance sheets.

The determination of whether revenue should be reported on a gross or a net basis involves significant judgement. In general, we act as a principal on behalf of our marketers and revenue is recognized gross of

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies (continued)**

any distribution costs that we remit to the media owners. In these cases, we control the advertising inventory before it is transferred to our marketers. Our control is evidenced by our ability to monetize and direct the use of the advertising inventory before it is transferred to our marketers. For those revenue arrangements where we do not control the advertising inventory before it is transferred to our marketers, we are the agent and recognize revenue on a net basis. We recognize revenue net of applicable sales taxes.

Cost of Revenue

Traffic Acquisition Costs. Traffic acquisition costs consist of amounts we owe to media owners when users engage with promoted recommendations on media owners' properties. We incur costs with media owners in the period in which the click-throughs occur or in some circumstances based on a guaranteed minimum rate of payment from us in exchange for guaranteed placement of our promoted recommendations on specified portions of the media owners online properties. These guaranteed rates are typically provided per thousand qualified page views, whereby our minimum monthly payment to the media owner may fluctuate based on how many qualified page views the media owner generates, subject to a maximum guarantee. Traffic acquisition costs also include amounts payable to programmatic supply partners.

In some instances, we may make upfront payments to media owners in connection with long-term contracts. We capitalize these advance payments under these agreements if select capitalization criteria have been met. The capitalization criteria include the existence of future economic benefits to us, the existence of legally enforceable recoverability language (e.g., early termination clauses), management's ability and intent to enforce the recoverability language and the ability to generate future earnings from the agreement in excess of amounts deferred. Capitalized amounts are amortized as traffic acquisition costs over the shorter of the period of contractual recoverability or the corresponding period of economic benefit. Amounts not yet paid are accrued systematically based on our estimate of user engagement.

Other Cost of Revenue. Cost of revenue also includes costs related to the management of our data centers, hosting fees, data connectivity costs and depreciation and amortization. Cost of revenue also includes the amortization of capitalized software that is developed or obtained for internal use associated with our revenue-generating technologies. Additionally, other cost of revenue includes amortization of intangible assets related to developed technology acquired by us and used in our revenue-generating efforts.

Research and Development

We incur research and development expenses primarily relating to the development and enhancement of our content discovery platform. These expenses consist primarily of personnel and the related overhead costs and amortization of capitalized software for non-revenue generating infrastructure. Research and development expenses are expensed as incurred, except for internal-use software development costs that qualify for capitalization.

Advertising and Promotional Costs

Advertising and promotional costs are included in sales and marketing expenses as incurred in the accompanying consolidated statements of operations. Advertising and promotional costs were \$9.3 million and \$11.0 million for the years ended December 31, 2020 and 2019, respectively.

Segment Information

Our chief operating decision maker is our Co-Chief Executive Officer who makes resource allocation decisions and assesses performance based on financial information presented on a consolidated basis. We have one business activity and there are no segment managers who are held accountable for operations, operating results beyond revenues or gross profit, or plans for levels or components below the consolidated level. Accordingly, we have a single operating and reportable segment.

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies (continued)****Stock-based Compensation**

We recognize stock-based compensation for stock-based awards, including stock options, restricted stock awards (“RSAs”), restricted stock units (“RSUs”) and stock appreciation rights (“SARs”) based on the estimated fair value of the awards. We estimate the fair value of our stock option awards on the grant date using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires the use of judgments and assumptions, including the option’s expected term and the price volatility of the underlying stock. The fair value of our RSAs and RSUs is the fair value of our common stock on the date of grant. We account for forfeitures as they occur.

Stock option awards, RSAs, RSUs and SARs generally vest subject to the satisfaction of service requirements, the satisfaction of both service requirements and achievement of certain performance conditions, or the satisfaction of service requirements and achievement of certain performance and market conditions. For stock awards that vest subject to the satisfaction of service requirements, stock-based compensation is measured based on the fair value of the award on the date of grant and is recognized as stock-based compensation on a straight-line basis over the requisite service period. For stock awards that have a performance component, stock-based compensation is measured based on the fair value on the grant date and is recognized over the requisite service period as achievement of the performance objective becomes probable.

For common stock options or warrants issued to non-employees, including consultants, we record stock-based compensation based on the fair value of the options or warrants calculated using the Black-Scholes option pricing model. We calculate the fair value of each stock-based award to non-employees on each measurement date based on the fair value of our common stock. The fair value of each stock-based award granted to non-employees is remeasured as the options or warrants vest, and the resulting change in fair value is recognized in the consolidated statements of operations during the period the related services are rendered.

Foreign Currency

We transact business in various foreign currencies. In general, the functional currency of our foreign subsidiaries is the currency of the local country. Consequently, revenues and expenses of operations outside the United States are generally translated into U.S. dollars using weighted-average exchange rates, while assets and liabilities are translated into U.S. dollars using exchange rates in effect at the balance sheet date with the resulting translation adjustments recorded as a component of accumulated other comprehensive loss within the statements of convertible preferred stock and stockholders’ deficit. Foreign currency transaction gains and losses resulting from transactions denominated in a currency other than the functional currency are recognized in the consolidated statements of operations. The net foreign exchange transaction gains (losses) included in interest income and other income (expense), net in the accompanying consolidated statements of operations were (\$3.1) million and \$0.3 million for the years ended December 31, 2020 and 2019, respectively.

Derivative Financial Instruments

We are exposed to certain risks relating to our ongoing business operations, including but not limited to, fluctuations in foreign currency exchange rates. We may enter into foreign currency forward exchange contracts to manage our foreign currency exchange risk by reducing the effects of fluctuations in foreign currency exchange rates on our net cash flows. For derivative financial instruments in which hedge accounting is not elected or applicable, we recognize gains and losses resulting from a change in fair value for these derivatives on the consolidated statement of operations in other income (expense) in the period in which the change occurs. We classify cash flows from these contracts as operating activities on the consolidated statements of cash flows.

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies (continued)**

The notional amount of our outstanding derivative instruments was \$8.8 million and \$11.5 million as of December 31, 2020 and 2019, respectively. We did not designate these foreign currency forward contracts as a hedge. The fair value of our derivatives are included in other current assets or accrued and other current liabilities in our consolidated balance sheets. We measure the fair value of our outstanding or unsettled derivatives using Level II fair value inputs, as we use a pricing model that takes into account contractual terms as well as the current foreign currency exchange rate in active markets.

Severance Pay Asset and Liability

We record a severance pay asset and liability on our consolidated balance sheets related to our employees located in Israel. Our liability for severance pay is calculated pursuant to Israeli severance pay law based on the most recent salary for the employees multiplied by the number of years of employment, as of the respective balance sheet date. Employees are entitled to one-month salary for each year of employment or a portion thereof. Our liability at each respective balance sheet date for all of our Israeli employees is fully accrued in other liabilities in the accompanying consolidated balance sheets. We fund this obligation through monthly deposits to the employee's pension and management insurance policies. The carrying value of these policies is recorded as a severance fund asset in other assets in the accompanying consolidated balance sheets.

The deposited funds may be withdrawn only upon the fulfillment of our obligation pursuant to Israeli severance pay law. The carrying value of our deposited funds is based on the cash surrender value of these policies and includes profits accumulated through the respective balance sheet date.

Income Taxes

We account for income taxes using an asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred income tax assets and liabilities are measured using the currently enacted tax rates that apply to taxable income in effect for the years in which those tax assets and liabilities are expected to be realized or settled. We regularly assess the likelihood that our deferred income tax assets will be realized. To the extent that we believe any amounts are not more likely than not to be realized, we record a valuation allowance to reduce the deferred income tax assets. Our deferred tax assets of \$2.8 million and \$1.2 million as of December 31, 2020 and 2019, respectively, are included within other assets in the consolidated balance sheet while deferred tax liabilities of \$3.4 million and \$3.9 million as of December 31, 2020 and 2019, respectively, are included within other liabilities in the consolidated balance sheet. We regularly assess the need for the valuation allowance on our deferred tax assets, and to the extent that we determine that an adjustment is needed, such adjustment will be recorded in the period that the determination is made.

We recognize the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. We recognize penalties related to income tax matters as income tax expense.

COVID-19 Impacts

In March 2020, the World Health Organization declared COVID-19 as a global pandemic. The COVID-19 pandemic has resulted in a global slowdown of economic activity causing a decrease in demand for a broad variety of goods and services, including those provided by certain advertisers using our platform. Many of our advertiser partners reduced their advertising spending, which had a negative impact on our results during the first half of 2020. As customers gradually shifted their spending towards digital advertising, our revenue trends improved meaningfully and returned to growth during the third and fourth

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****1. Organization, Description of Business and Summary of Significant Accounting Policies (continued)**

quarters of 2020. Although we have seen a recovery in the advertising market and our business in the recent months, the full impact of the COVID-19 pandemic on the global economy and the extent to which the pandemic may impact our business, financial condition, and results of operations in the future remains uncertain.

Recently Issued Accounting Pronouncements**Recently issued accounting pronouncements not yet adopted**

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842), which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e., lessees and lessors). The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less will be accounted for similar to existing guidance for operating leases today. The new standard requires lessors to account for leases using an approach that is substantially equivalent to existing guidance for sales-type leases, direct financing leases and operating leases. ASU 2016-02 supersedes the previous leases standard, Leases (Topic 840). In June 2020 the FASB issued ASU 2020-05 Revenue from Contracts with Customers (Topic 606) and Leases (Topic 842): Effective Dates for Certain Entities, the amendments in this update defer the effective date of ASU 2016-02 for private companies to fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022, early application continues to be permitted. Although adoption is not required until January 1, 2022, the Company is still evaluating the adoption date and will adopt on the earlier of January 1, 2022 or on losing Emerging Growth Company status. The Company continues to assess all impacts of adoption and expects lease liabilities and right-of-use assets to increase as a result of the adoption.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments—Credit Losses (Topic 326), which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost. ASU 2016-13 replaces the existing incurred loss impairment model with an expected loss model which requires consideration of forward-looking information to calculate credit loss estimates. These changes will result in an earlier recognition of credit losses. The amendment is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. The Company's financial assets held at amortized cost include accounts receivable. The amendments in ASU 2020-05 also defer the effective date for Topic 326 which is required to be implemented for fiscal years beginning after December 15, 2022. The Company is still evaluating the adoption date and will adopt on the earlier of January 1, 2023 or on losing Emerging Growth Company status. The Company does not expect the adoption of this standard will have a material impact on the consolidated financial statements or related disclosures.

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019

2. Fair Value Measurements

The following table sets forth the fair value of our financial assets and liabilities measured on a recurring basis by level within the fair value hierarchy:

	December 31, 2020			
	Level I	Level II	Level III	Total
	(In thousands)			
Financial Assets:				
Restricted time deposit	\$ —	\$ 426	\$ —	\$ 426
Severance pay fund deposits	—	5,379	—	5,379
Foreign currency forward contract	—	553	—	553
Total financial assets	\$ —	\$ 6,358	\$ —	\$ 6,358

	December 31, 2019			
	Level I	Level II	Level III	Total
	(In thousands)			
Financial Assets:				
Restricted time deposit	\$ —	\$ 389	\$ —	\$ 389
Severance pay fund deposits	—	4,542	—	4,542
Foreign currency forward contract	—	117	—	117
Total financial assets	\$ —	\$ 5,048	\$ —	\$ 5,048

3. Balance Sheet Components

Accounts Receivable, Net

Accounts receivable, net consists of the following:

	December 31,	
	2020	2019
	(In thousands)	
Accounts receivable	\$ 169,623	\$ 145,027
Allowance for doubtful accounts	(4,174)	(3,281)
Accounts receivable, net	\$ 165,449	\$ 141,746

Allowance for Doubtful Accounts

The allowance for doubtful accounts consists of the following activity:

	Year Ended December 31,	
	2020	2019
	(In thousands)	
Allowance for doubtful accounts, beginning balance	\$ 3,281	\$ 2,049
Provision for doubtful accounts	2,668	3,373
Recoveries	—	3
Write-offs	(1,775)	(2,144)
Allowance for doubtful accounts, ending balance	\$ 4,174	\$ 3,281

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019

3. Balance Sheet Components (continued)**Property, Equipment and Capitalized Software, Net**

Property, equipment and capitalized software, net consists of the following:

	December 31,	
	2020	2019
	(In thousands)	
Computer and equipment	\$ 41,735	\$ 37,122
Capitalized software development costs	43,728	34,525
Software	3,444	4,259
Leasehold improvements	2,805	3,122
Furniture and fixtures	908	1,028
Property, equipment and capitalized software, gross	92,620	80,056
Less: accumulated depreciation and amortization	(67,864)	(55,524)
Total property, equipment and capitalized software, net	<u>\$ 24,756</u>	<u>\$ 24,532</u>

We capitalized software development costs, including stock-based compensation, of \$9.2 million and \$8.2 million for the years ended December 31, 2020 and 2019, respectively. Accumulated amortization for our capitalized software development costs was \$29.8 million and \$22.2 million as of December 31, 2020 and 2019, respectively.

As of December 31, 2020 and 2019, total computer equipment financed and software licensed under capital leases was \$7.4 million and \$7.0 million, net of accumulated amortization of \$17.2 million and \$13.5 million. Amortization expense related to total computer equipment financed and software licensed under capital leases was \$3.7 million and \$4.5 million for the years ended December 31, 2020 and 2019.

Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following:

	December 31,	
	2020	2019
	(In thousands)	
Accrued traffic acquisition costs	\$ 77,195	\$61,003
Accrued tax liabilities	9,622	5,451
Accrued agency commissions	8,755	7,277
Capital obligations, current	3,853	3,804
Other accrued expenses	10,322	9,555
Total accrued and other current liabilities	<u>\$109,747</u>	<u>\$87,090</u>

In addition to our accrued traffic acquisition cost, accounts payable includes \$111.7 million and \$78.2 million of traffic acquisition costs as of December 31, 2020 and 2019, respectively.

4. Acquisition

On April 1, 2019, we completed the acquisition of all of the outstanding shares of Ligatus GmbH (“Ligatus”), a German-based native advertising company, pursuant to a share purchase agreement between the Company and the sellers, Gruner + Jahr GmbH.

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019

4. Acquisition (continued)

The acquisition date fair value of the consideration transferred was approximately \$40.1 million, which consisted of 6,125,404 shares of Outbrain common stock valued at \$6.54 per share.

The acquisition was accounted for as a business combination and the results of operations of the acquired entity have been included in the Company's results of operations as of the acquisition date. The purpose of the acquisition was to expand our native offering to advertisers and strengthen our relationships with our media owners. The Company expensed all transaction costs in the period in which they were incurred. The Company allocated the purchase price to identifiable assets acquired based on their estimated fair values. The fair value of the consideration transferred and the assets acquired and liabilities assumed was determined by the Company and in doing so management engaged a third-party valuation specialist to assist with the measurement of the fair value of identifiable intangible assets. The estimated fair value of the identifiable assets acquired and liabilities assumed was based on management's best estimates. The fair values of the publisher relationships were determined using the multi-period excess earnings income approach and the customer relationships were determined using the cost approach. The fair value of trade names was determined using the relief-from-royalty method. The excess of the purchase price over the aggregate fair value of the identifiable assets acquired was recorded as goodwill and is primarily attributable to expected synergies the Company expects from future growth and potential monetization opportunities. The goodwill is deductible for tax purposes.

The table below presents the fair values allocated to Ligatus' assets and liabilities as of the acquisition date.

Cash and cash equivalents	\$ 2,920
Accounts receivable	17,394
Prepaid expenses and other current assets	3,916
Publisher relationships—intangible asset	8,345
Customer relationships—intangible asset	4,115
Tradenames	1,653
Property and equipment and other assets	563
Accounts payable	(6,223)
Accrued and other liabilities	(4,052)
Deferred revenue	(189)
Deferred tax liability	(4,581)
Net assets acquired	23,861
Goodwill	16,199
Total	<u>\$40,060</u>

Identifiable intangible assets acquired are amortized on a straight-line basis over their estimated useful lives. The Company estimated the useful lives of the acquired relationships to be four (4) years, and trade names to be eight (8) years. Amortization expense in the accompanying consolidated statements of operations is included as a component of sales and marketing expense for the acquired intangible assets.

OUTBRAIN INC.

Notes to Consolidated Financial Statements
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5. Goodwill and Intangible Assets

The changes in the carrying value of goodwill are as follows:

	Year Ended December 31,	
	2020	2019
(In thousands)		
Goodwill, opening balance	\$32,881	\$16,682
Acquisition	—	16,199
Goodwill, closing balance	<u>\$32,881</u>	<u>\$32,881</u>

The Company has not recorded any accumulated impairments of goodwill.

The gross carrying amount and accumulated amortization of our intangible assets are as follows:

	December 31, 2020			
	Amortization Period	Gross Value	Accumulated Amortization	Net Carrying Value
	(In thousands)			
Developed technology	36-48 months	\$ 8,425	\$ (8,388)	\$ 37
Customer relationships	48 months	5,694	(3,166)	2,528
Publisher relationships	48 months	9,111	(3,986)	5,125
Trade names	8 years	1,805	(395)	1,410
Other	14 years	830	(118)	712
Total intangible assets, net		<u>\$25,865</u>	<u>\$(16,053)</u>	<u>\$9,812</u>

	December 31, 2019			
	Amortization Period	Gross Value	Accumulated Amortization	Net Carrying Value
	(In thousands)			
Developed technology	36-48 months	\$ 8,425	\$ (7,434)	\$ 991
Customer relationships	48 months	5,304	(1,970)	3,334
Publisher relationships	48 months	8,321	(1,560)	6,761
Trade names	8 years	1,648	(155)	1,493
Other	14 years	790	(67)	723
Total intangible assets, net		<u>\$24,488</u>	<u>\$(11,186)</u>	<u>\$13,302</u>

No impairment charges were recorded during the years ended December 31, 2020 and 2019.

As of December 31, 2020, estimated amortization related to our identifiable acquisition-related intangible assets in future periods was as follows:

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5. Goodwill and Intangible Assets (continued)

Year Ending December 31,	Amount
	(In thousands)
2021	\$3,390
2022	3,353
2023	1,687
2024	247
2025	247
Thereafter	888
Total	<u>\$9,812</u>

6. Long Term Debt**Revolving Credit Facility**

The Company is party to a loan and security agreement (“Revolving Credit Facility”) with Silicon Valley Bank (“SVB”) that provides us an initial maximum borrowing capacity of up to \$35.0 million that we may use to borrow against our qualifying receivables based on a defined borrowing formula. The Revolving Credit Facility was amended in November 2018 which extended the maturity date from October 2019 to November 2, 2021.

The Revolving Credit Facility contains customary conditions to borrowings, events of default and negative covenants, including covenants that restrict the Company’s ability to dispose of assets, merge with or acquire other entities, incur indebtedness, incur encumbrances, make distributions to holders of its capital stock, make investments or engage in transactions with our affiliates. The Company is also subject to financial covenants with respect to a monthly modified liquidity ratio and Adjusted EBITDA for trailing six-month periods.

Our obligations under the Revolving Credit Facility are secured by a first priority security interest in substantially all of the assets of the Company with a negative pledge on our intellectual property. The Company was in compliance with all of its financial covenants under its Revolving Credit Facility as of December 31, 2020.

As of December 31, 2020 and December 31, 2019, we had no borrowings outstanding under our Revolving Credit Facility and our available borrowing capacity was \$35.0 million based on the defined borrowing formula.

7. Commitments and Contingencies**Legal Proceedings**

From time to time, we may become subject to legal proceedings, claims and litigation arising in the ordinary course of business. In addition, we may receive letters alleging infringement of patent or other intellectual property rights. We are not currently a party to any material legal proceedings, nor are we aware of any pending or threatened litigation that, in our opinion, would have a material adverse effect on our business, operating results, cash flows or financial condition should such litigation be resolved unfavorably.

Lease and Other Commitments

We lease certain office and data center facilities under non-cancelable operating lease arrangements for our U.S. and international locations that expire on various dates through 2024. In addition, we have entered

OUTBRAIN INC.

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7. Commitments and Contingencies (continued)

into agreements to lease apartment facilities and motor vehicles. These arrangements require us to pay certain operating expenses, such as taxes, repairs and insurance and contain renewal and escalation clauses. We recognize rent expense under these arrangements on a straight-line basis over the term of the lease.

In addition, we leased certain equipment and computers under capital lease arrangements that expired at various dates through 2024.

As of December 31, 2020, the aggregate future non-cancelable minimum lease payments consist of the following:

Year Ending December 31:	Operating Leases	Capital Leases
(In thousands)		
2021	\$ 6,437	\$ 4,316
2022	3,807	2,645
2023	2,428	1,057
2024	1,811	129
2025	1,646	—
Thereafter	401	—
Total minimum payments required	<u>\$ 16,530</u>	<u>\$ 8,147</u>

Rent expense for all operating leases amounted to \$4.7 million and \$5.1 million for the years ended December 31, 2020 and 2019, respectively.

8. Common Stock Reserved for Issuance

We reserved shares of common stock, on an as-converted basis, for future issuance as follows:

	December 31,	
	2020	2019
Conversion of outstanding Series A convertible preferred stock	7,065,907	7,065,907
Conversion of outstanding Series B convertible preferred stock	14,565,760	14,565,760
Conversion of outstanding Series C convertible preferred stock	6,477,447	6,477,447
Conversion of outstanding Series D convertible preferred stock	5,735,026	5,735,026
Conversion of outstanding Series E convertible preferred stock	1,080,197	1,080,197
Conversion of outstanding Series F convertible preferred stock	5,318,040	5,318,040
Conversion of outstanding Series G convertible preferred stock	5,532,213	5,532,213
Conversion of outstanding Series H convertible preferred stock	1,234,576	1,234,576
Outstanding stock options	9,308,317	8,376,092
Outstanding common stock warrants	1,055,852	1,070,852
Outstanding RSAs	190,245	190,245
Outstanding RSUs	6,663,669	4,379,033
SAR awards	5,764	7,371
Shares reserved for future option grants	664,124	4,911,016
Total common stock reserved for issuance	<u>64,897,137</u>	<u>65,943,775</u>

OUTBRAIN INC.

Notes to Consolidated Financial Statements
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9. Convertible Preferred Stock

The following tables summarizes our authorized, issued and outstanding convertible preferred stock:

Convertible Preferred Stock:	December 31, 2020 and 2019				
	Shares Authorized	Shares Issued and Outstanding	Net Carrying Value	Liquidation Price Per Share	Aggregate Liquidation Preference
	(In thousands, except share data)				
Series A	7,065,907	7,065,907	\$ 5,053	\$0.72260	\$ 5,106
Series B	14,565,760	14,565,760	11,717	0.82385	12,000
Series C	6,477,447	6,477,447	12,330	1.69820	11,000
Series D	5,735,026	5,735,026	35,035	6.14070	35,217
Series E	1,080,197	1,080,197	6,054	5.55450	6,000
Series F	5,343,425	5,318,040	35,606	13.4150	71,342
Series G	5,666,172	5,532,213	48,612	8.8243	48,818
Series H	1,269,223	1,234,576	8,037	8.8243	10,894
Total convertible preferred stock	<u>47,203,157</u>	<u>47,009,166</u>	<u>\$162,444</u>		<u>\$200,377</u>

No convertible preferred stock was issued in 2020. In 2019, we issued a combined 42,980 shares of Series H convertible preferred stock in connection with a 2018 asset acquisition and a 2017 acquisition of a business.

We recorded the convertible preferred stock at fair value on the dates of issuance, net of issuance costs. We classify our convertible preferred stock outside of stockholders' deficit because, in the event of certain "liquidation events" that are not solely within our control (including merger, acquisition, or sale of all or substantially all of our assets), the shares would become redeemable at the option of the holders. We did not adjust the carrying values of the convertible preferred stock to the deemed liquidation values of such shares since a liquidation event was not probable at any of the balance sheet dates. Subsequent adjustments to increase or decrease the carrying values to the ultimate liquidation values will be made if and when it becomes probable that such a liquidation event will occur.

The holders of our convertible preferred stock have various rights, preferences, and privileges as follows:

Conversion Rights

Each share of Series A, B, C, D, E, F, G and H convertible preferred stock is convertible at the option of the holder into the number of shares of common stock determined by dividing the original issue price by the applicable conversion price. The original issue price per share and initial conversion price per share is \$0.7226 for Series A, \$0.82385 for Series B, \$1.6982 for Series C, \$6.1407 for Series D, \$5.5545 for Series E, \$6.7075 for Series F and \$8.8243 for Series G and Series H. At each reporting date, each share of Series A, B, C, D, E, F, G and H convertible preferred stock was convertible on a one-for-one basis into common stock at the respective conversion ratios. The conversion price for each share of convertible preferred stock is adjusted for certain recapitalizations, splits, combinations, common stock dividends, or similar events.

Conversion Rights In the Event of a Qualified Initial Public Offering

Each share of convertible preferred stock shall automatically be converted into shares of common stock at the then-effective conversion price upon the consummation of the Company's sale of its common stock in a bona fide, firm commitment underwriting pursuant to a registration statement under the Securities

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019**9. Convertible Preferred Stock (continued)**

Act of 1933, as amended, yielding at least \$30.0 million net to the Company (adjusted to reflect subsequent stock dividends, stock splits, or recapitalizations).

Conversion Price Adjustments

The conversion price per share of the Series A, B, C, D, F, G and H convertible preferred stock will be reduced if we issue any additional stock without consideration or for consideration per share less than the Series A, B, C, D, F, G and H convertible preferred stock conversion price in effect for that series.

Conversion Price Ratchet Adjustments in the Event of a Qualified Initial Public Offering

In the event of an initial public offering ("IPO"), if the IPO price per share is less than \$9.21105 per share (or 1.5 times the Series D original issuance price), the conversion price of the Series D convertible preferred stock will automatically adjust to be the lower of (i) the conversion price then in effect for the Series D or (ii) two-thirds (2/3) of the original conversion price of \$6.1407 per share.

If the IPO price per share is less than \$13.415 per share (or 2.0 times the Series F original issuance price), the conversion price of the Series F convertible preferred stock will automatically adjust to be the lower of the (i) the conversion price then in effect for the Series F convertible preferred stock or (ii) the Series F convertible preferred stock original issuance price of \$6.7075 multiplied by a fraction, the denominator of which is the Series F convertible preferred stock preference of \$13.415 per share and the numerator of which is the IPO price.

If the IPO price per share is less than \$8.8243 per share (or the Series G original issuance price) the conversion price of the Series G convertible preferred stock will automatically be adjusted to the IPO price concurrently with the closing of the IPO.

If the conversion ratio of the Series D, F and G convertible preferred stock is adjusted based on the ratchet provisions above, we may need to recognize a beneficial conversion charge in an amount that equals the difference between the adjusted conversion price and the price of the Series D, F and G convertible preferred stock on issuance.

Voting Rights

Each share of convertible preferred stock has a number of votes equal to the number of shares of common stock into which it is convertible. The holders of the Series A, B, C, D, F and G convertible preferred stock, voting together as a single class, have the right to elect six directors. The holders of the Series E and H convertible preferred stock and the common stock, voting together as a single class, have the right to elect the two remaining directors.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution, or winding-up of the Company, the Series A, B, C, D, E, F, G and H convertible preferred stockholders are entitled to receive their respective per share liquidation preference, adjusted for any stock splits, recapitalizations, stock dividends or the like, plus all declared but unpaid dividends. Following distribution of the liquidation preferences to the Series A, B, C, D, E, F, G and H convertible preferred stockholders, the remaining assets of the Company available for distribution to stockholders shall be distributed among the holders of the common stock and to the holders of the Series A, B, C, D and G convertible preferred stock, based on the number of shares of common stock held by each on an as-if converted basis, subject to certain limitations.

Any acquisition of the Company by means of merger or other form of corporate reorganization in which the outstanding shares of the corporation are exchanged for securities or other consideration issued,

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9. Convertible Preferred Stock (continued)

or caused to be issued, by the acquiring corporation or its subsidiary (other than a reincorporation transaction), a sale of all or substantially all of the assets of the Company, or in the event that the Company transfers or grants a perpetual exclusive license of all or substantially all of the Company's intellectual property, shall be treated as a liquidation, dissolution, or winding-up of the corporation and shall entitle the holders of convertible preferred stock and common stock to receive at the closing in cash, securities, or other property amounts as specified in above.

Dividend Rights

The Series A, B, C, D, F and G convertible preferred stockholders are entitled to receive dividends at a rate equal to their initial issuance price per share, as adjusted for any stock splits, recapitalizations, stock dividends or the like. Such dividends are noncumulative and payable out of funds legally available if declared by our board of directors. After the payment of these dividends, any additional dividends declared by our board of directors out of funds legally available shall be shared equally among all outstanding shares on an as-converted basis. No dividends have been declared to date.

Redemption Rights

Our convertible preferred stock does not contain any fixed or determinable redemption features.

10. Stock-based Compensation**Equity Incentive Plans**

In September 2007 and as amended in January 2009, we adopted the Omnibus Securities and Incentive Plan (the "Plan"). The Plan is administered by our board of directors or designated person(s). Under the Plan, the plan administrator is allowed to determine various terms and conditions of our option and restricted stock grants, including option expiration dates (generally ten years from the date of grant), vesting terms (generally over a four-year period) and payment terms.

The Plan provides for stock option grants at an exercise price as determined by the plan administrator, but in the case of incentive stock options, not less than 100% of the fair market value of the common stock subject to the option on the date of grant and 110% for owners of 10% or more of our common stock. The Plan also provides for restricted stock grants. The purchase price of restricted stock under these awards is determined by the plan administrator. We also established a Sub-Plan of the Plan in the United Kingdom under which we were permitted to make grants of options to employees subject to tax in the United Kingdom.

In our accompanying consolidated statements of operations, we recognized stock-based compensation for our employees and non-employees as follows:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
	(in thousands)	
Research and development	\$ 810	\$ 672
Sales and marketing	2,071	2,067
General and administrative	707	1,137
Total stock-based compensation	<u>\$3,588</u>	<u>\$3,876</u>

As of December 31, 2020 and 2019, we have not recorded any stock-based compensation related to our stock option awards, RSAs, RSUs and SARs that vest upon the satisfaction of a performance condition because the performance condition is not probable of occurring until a qualifying liquidity event (qualified

OUTBRAIN INC.

Notes to Consolidated Financial Statements
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10. Stock-based Compensation (continued)

IPO or change of control) has occurred. If a qualifying liquidity event had occurred on December 31, 2020, we would have recorded \$9.9 million in additional stock-based compensation related to our stock options, RSAs, RSUs and SARs that vest upon the satisfaction of a performance condition.

Determination of Fair Value

The estimated grant-date fair value of all our stock options and warrants was calculated using the Black-Scholes option pricing model, based on the following assumptions:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
Expected term (in years)	6.02	
Risk-free interest rate	0.52%	
Expected volatility	44%	N/A
Dividend rate	0%	

We determined the assumptions for the option pricing model as discussed below. Each of these inputs is subjective and generally requires significant judgment to determine. No stock options or warrants were granted in 2019.

Expected Term—The expected term represents the period that our stock-based awards are expected to be outstanding. For option grants that are considered to be “plain vanilla,” we determine the expected term using the simplified method. The simplified method deems the term to be the average of the time-to-vesting and the contractual life of the stock-based awards. For other option grants, we consider several factors in estimating the expected term including the expected lives used by a peer group of companies within our industry that we consider to be comparable to our business, the historical option exercise behavior of our employees and post-vesting employment termination behavior taking into account the contractual life of the award. The expected term for options or warrants issued to non-employees is the contractual term.

Risk-Free Interest Rate—The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the date of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the stock-based awards’ expected term.

Expected Volatility—Since we do not have a trading history of our common stock, the expected volatility was derived from the average historical stock volatilities of several unrelated public companies within our industry that we consider to be comparable to our business over a period equivalent to the expected term of the stock-based awards.

Dividend Rate—The expected dividend is zero as we have not paid and do not anticipate paying any dividends in the foreseeable future.

Fair Value of Common Stock—Because there is no public market for our common stock as we are a private company, our board of directors has determined the fair value of the common stock by considering a number of objective and subjective factors, including having valuations of our common stock performed by an unrelated valuation specialist, valuations of comparable peer companies, sales of our convertible preferred stock to unrelated third parties, operating and financial performance, the lack of liquidity of our capital stock, and general and industry-specific economic outlook. The fair value of our common stock will be determined by our board of directors until such time as our common stock is listed on an established stock exchange.

OUTBRAIN INC.

Notes to Consolidated Financial Statements
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10. Stock-based Compensation (continued)

The following table summarizes stock option, RSA and RSU activity under the Plan and related information:

	Options Outstanding					RSAs and RSUs Unvested and Outstanding	
	Shares Available for Grant	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value of Outstanding Options (In thousands)	Number of Shares	Weighted-Average Grant Date Fair Value
Outstanding—January 1, 2019	4,107,289	10,462,399	\$3.23	4.92	\$25,338	4,175,954	\$4.44
Awards authorized	—						
Options granted	—						
RSUs granted	(1,081,075)					1,081,075	\$6.53
RSUs vested	—					(463,622)	\$5.05
RSUs cancelled	224,129					(224,129)	
SARs cancelled	4,375		\$4.57				
Options exercised	—	(430,009)	\$2.27				
Options cancelled	<u>1,656,298</u>	<u>(1,656,298)</u>	<u>\$4.39</u>				
Outstanding—December 31, 2019	4,911,016	8,376,092	\$2.99	4.22	\$29,034	4,569,278	\$4.87
Awards authorized	—						
Options granted	(1,803,750)	1,803,750	\$2.71				
RSUs granted	(2,961,670)					2,961,670	\$6.44
RSUs vested	—					(503,748)	\$5.36
RSUs cancelled	165,305					(165,305)	
SARs cancelled	1,607						
Options exercised	—	(520,089)	\$1.15				
Options cancelled	<u>351,616</u>	<u>(351,616)</u>	<u>\$3.97</u>				
Outstanding December 31, 2020	<u>664,124</u>	<u>9,308,317</u>	<u>\$3.74</u>		<u>\$25,495</u>	<u>6,861,895</u>	<u>\$5.50</u>
Exercisable—December 31, 2020		<u>6,700,057</u>	\$2.99	3.10	\$23,802		

Stock Options

The weighted-average grant date fair value of options granted for the years ended December 31, 2020 and 2019 was \$2.71 and nil per share, respectively. The aggregate intrinsic value of options exercised was \$3.4 million and \$2.8 million for the years ended December 31, 2020 and 2019, respectively.

As of December 31, 2020, total unrecognized stock-based compensation related to unvested stock options was \$5.3 million. These costs are expected to be recognized over a weighted-average period of 3.81 years as of December 31, 2020. Certain stock options vest only upon IPO or other performance conditions.

Restricted Stock Awards

As of December 31, 2020, the total unrecognized stock-based compensation related to unvested RSAs is \$0.3 million.

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
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Certain RSAs issued during 2012 and 2013 relate to common stock issued in exchange for loans in the amount of the exercise price of the awards. The awards were also subject to a performance condition that is not probable until an IPO occurs. Because the notes were considered to be in-substance nonrecourse notes receivable, the awards are treated as a stock options for accounting purposes.

Restricted Stock Units

For those RSUs subject to occurrence of a performance condition, because the performance condition is not probable until an IPO or certain merger and acquisition events have occurred, we have not recorded any stock-based compensation to date. As of December 31, 2020, the unrecognized stock-based compensation related to unvested RSUs not subject to performance conditions is \$11.6 million.

Stock Appreciation Rights (SARs)

The Plan provides for the award of Stock Appreciation Rights that are granted in connection with a related option to certain employees. In 2014, we granted SAR awards to certain employees which vest subject to the occurrence of performance conditions and may be settled at the option of the employee, by exercise into shares, or cash settled for the difference between the market price on the date of exercise and the exercise price. As a result, these SARs, subject to consideration of performance conditions, will be recorded in our consolidated statements of financial position as a liability until the date of settlement.

The fair value of each SAR award is estimated using a similar method described for stock options. The fair value of each vested SAR award is recalculated at the end of each reporting period and the liability and expense adjusted based on the new fair value. Because these SARs vest upon an IPO and the satisfaction of other performance conditions and because these performance conditions are not probable to occur until an IPO has occurred, we have not recorded any stock-based compensation for the years ended December 31, 2020 and 2019 or recorded a liability related to these SAR grants as of December 31, 2020.

We granted 31,963 SAR awards with a weighted average exercise price of \$4.57 and a contractual term of 10 years. As of December 31, 2020, 5,764 SAR awards were outstanding with a weighted average grant date fair value of \$2.31, a weighted average remaining contractual term of 3.7 years and an aggregate intrinsic value of \$0. As of December 31, 2019, 7,371 SAR awards were outstanding with a weighted average grant date fair value of \$2.31, a weighted average remaining contractual term of 4.8 years and an aggregate intrinsic value of \$0.

Stock-Based Awards Granted Outside of Equity Incentive Plans*Warrants*

From 2007 to 2016, we issued warrants to purchase shares of common stock to certain third-party advisors, consultants and financial institutions with exercise prices ranging from \$0.001 to \$4.87 per share. The exercise period of the warrants is until the earlier of the closing of an IPO, the closing of a deemed liquidation event or the end of the warrant term. These warrants vest immediately.

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019**10. Stock-based Compensation (continued)**

The following table summarizes warrant activity outside of the Plan and related information:

	Warrants Outstanding			Aggregate Intrinsic Value of Outstanding Warrants
	Number of Shares	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term (Years)	
	(In thousands)			
Outstanding—January 1, 2019	1,370,852	\$3.92	4.11	\$3,035
Warrants granted	—	—		
Warrants expired	(300,000)	\$6.63		
Warrants exercised	—	—		
Outstanding—December 31, 2019	1,070,852	\$3.16	3.66	\$3,916
Warrants granted	—	—		
Warrants expired	(15,000)	\$0.33		
Warrants exercised	—	—		
Outstanding—December 31, 2020	<u>1,055,852</u>	\$2.92		
Exercisable—December 31, 2020	<u>1,055,852</u>	\$2.92	3.89	\$1,858

11. Income (Loss) Per Share

We apply the two-class method to calculate basic and diluted income (loss) per share attributable to common stockholders as shares of our convertible preferred stock are participating securities due to their participation rights. The two-class method is an earnings allocation method under which earnings per share is calculated for common stock considering a participating security's rights to undistributed earnings as if all such earnings had been distributed during the period. Our participating securities are not included in the computation of loss per share attributable to common stockholders in periods of net loss because the convertible preferred stockholders have no contractual obligation to participate in losses.

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11. Income (Loss) Per Share (continued)

	Year Ended December 31,	
	2020	2019
(In thousands, except share and per share data)		
Numerator:		
Basic and diluted:		
Net income (loss)	\$ 4,357	\$ (20,514)
Less: undistributed earnings allocated to participating securities	(2,688)	—
Net income (loss) attributable to common stockholders	<u>\$ 1,669</u>	<u>\$ (20,514)</u>
Denominator:		
Weighted-average shares used in computing income (loss) attributable to common stockholders, basic	28,587,502	25,967,720
Weighted-average shares used in computing income (loss) attributable to common stockholders, diluted	34,317,563	25,967,720
Net income (loss) per share attributable to common stockholders:		
Basic	<u>\$ 0.06</u>	<u>\$ (0.79)</u>
Diluted	<u>\$ 0.05</u>	<u>\$ (0.79)</u>

The following weighted-average shares have been excluded from the calculation of diluted income (loss) per share attributable to common stockholders for each period presented because they are anti-dilutive:

	Year Ended December 31,	
	2020	2019
Convertible preferred stock	47,009,166	47,009,166
Options to purchase common stock	3,174,828	4,372,927
Warrants	505,409	722,656
Restricted stock units	397,430	689,206
Total shares excluded from diluted income (loss) per share	<u>51,086,833</u>	<u>52,793,955</u>

Unaudited Pro Forma Basic and Diluted Net Loss Per Share

Pro forma basic and diluted net loss per share attributable to common stockholders was computed to give effect to the automatic conversion of all series of convertible preferred stock using the if-converted method as though the conversion had occurred as of the beginning of the period or the original date of issuance, if later. In addition, the pro forma share amounts give effect to our stock options, RSAs, RSUs and SARs that have satisfied the service condition as of December 31, 2020 and will vest upon the satisfaction of a qualified liquidity event, which was assumed to occur as of the beginning of the period. Also, pro-forma share amounts assume that warrants are exercised upon an IPO. The unaudited pro forma basic and diluted net loss per share do not give effect to the Notes issued on July 1, 2021 or the potential exchange of those Notes for Convertible Notes (see Note 14). If we elect to exchange the Notes for Convertible Notes, diluted earnings per share in future periods could be impacted if, under the if-converted method, the effect would be more dilutive.

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12. Income Taxes (continued)

	Year Ended December 31,	
	2020	2019
	(In thousands)	
Current provisions for income taxes:		
Federal	\$ —	\$ (43)
State	81	12
Foreign	5,468	5,652
Total current	<u>5,549</u>	<u>5,621</u>
Deferred tax benefit:		
Federal	226	170
State	46	40
Foreign	<u>(2,528)</u>	<u>(351)</u>
Total deferred tax benefit	<u>(2,256)</u>	<u>(141)</u>
Provision for income taxes	<u>\$ 3,293</u>	<u>\$5,480</u>

The reconciliation of the statutory federal income tax and our effective income tax is as follows:

	Year Ended December 31,	
	2020	2019
Tax at statutory federal rate	21.0%	21.0%
State tax—net of federal benefit	(3.9)%	1.8%
Foreign withholding taxes	25.4%	—
Foreign rate differential	(9.6)%	(0.9)%
Stock compensation and other permanent items	10.0%	(16.5)%
Tax rate change	(3.4)%	—
Uncertain tax positions	(11.2)%	(13.7)%
Change in valuation allowance	(32.0)%	(34.7)%
GILTI Inclusion—US	59.4%	—
Foreign tax credit carryforwards	(5.9)%	—
Capital loss carryforwards	(19.9)%	—
Return to provision adjustments	11.8%	8.0%
Other	<u>1.3%</u>	<u>(1.5)%</u>
Effective tax rate	<u>43.0%</u>	<u>(36.5)%</u>

Deferred taxes are the result of temporary differences between the bases of assets and liabilities for financial reporting and income tax purposes. Deferred tax assets and liabilities at December 31, 2020 and 2019 were comprised of the following:

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019

12. Income Taxes (continued)

	December 31,	
	2020	2019
	(In thousands)	
Deferred tax assets:		
Net operating loss carryforwards	\$ 31,930	\$ 39,762
Foreign tax credit carryforwards	479	—
Capital loss carryforwards	4,036	—
Stock-based compensation	861	771
Accruals, reserves, and other	6,409	4,455
Allowance for doubtful accounts	1,003	787
Gross deferred tax assets	44,718	45,775
Valuation allowance	(41,201)	(43,608)
Total deferred tax assets	3,517	2,167
Deferred tax liabilities:		
Intangible assets and capitalized software	(4,139)	(4,863)
Total deferred tax liabilities	(4,139)	(4,863)
Net deferred tax liability	<u>\$ (622)</u>	<u>\$ (2,696)</u>

Recognition of deferred tax assets is appropriate when realization of these assets is more likely than not. Based upon the weight of available evidence, which includes our historical operating performance and the recorded cumulative net losses in prior fiscal periods, we recorded a valuation allowance of \$41.2 million and \$43.6 million against the U.S. deferred tax assets as of December 31, 2020 and against the U.S. and U.K. deferred tax assets as of December 31, 2019, respectively. The net valuation allowance decreased by \$2.4 million and increased by \$5.2 million for the years ended December 31, 2020 and 2019, respectively.

As of December 31, 2020 and 2019, we had U.S. federal net operating loss carryforwards of \$105.8 million and \$129.1 million, respectively. The federal net operating loss carryforwards will expire at various amounts beginning in the year ending December 31, 2031, if not utilized. As of December 31, 2020 and 2019, we had state net operating loss carryforwards of \$126.3 million and \$128.8 million, respectively. State net operating losses will expire at various amounts beginning in the year ending December 31, 2024, if not utilized.

Utilization of the net operating losses may be subject to an annual limitation provided for in the Code under Section 382 and similar state codes. As of December 31, 2020, \$8.2 million of federal net operating losses are currently limited from use under such provisions and any annual limitation could result in the expiration of net operating loss carryforwards before utilization.

While we have recognized the U.S. federal tax impact on a portion of the undistributed earnings of our foreign subsidiaries under the Tax Cuts and Jobs Act, enacted in 2017 ("Tax Act"), our policy with respect to foreign earnings remains unchanged and we consider them to be indefinitely reinvested. Upon distribution of those earnings in the form of a dividend or otherwise, the Company could be subject to taxes, including withholding taxes payable to various foreign countries, for which a deferred tax liability is not currently recognized.

In January 2018, the FASB issued FASB Staff Question and Answer Topic 740, No. 5: Accounting for Global Intangible Low-Taxed Income ("GILTI"), which provides guidance on accounting for the GILTI provisions of the Tax Act. The GILTI provisions impose a tax on foreign income in excess of a deemed return

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019

12. Income Taxes (continued)

on tangible assets of foreign corporations. The guidance allows accounting for tax on GILTI to be treated as a deferred tax item or as a component of current period income tax expense in the year incurred, subject to an accounting policy election. The Company has elected to account for tax on GILTI as a component of current period income tax expense in the year incurred.

Unrecognized Tax Benefits

The activity related to the gross amount of unrecognized tax benefits is as follows:

	Year Ended December 31	
	2020	2019
	(In thousands)	
Beginning balance	\$ 2,087	\$ 33
Decreases based on tax positions related to prior year	(1,243)	(33)
Additions based on tax positions related to prior year	67	1,793
Additions based on tax positions related to current year	321	294
Ending balance	<u>\$ 1,232</u>	<u>\$2,087</u>

If recognized, our gross unrecognized tax benefits would not have a material impact on our effective tax rate for the year ended December 31, 2020. While it is often difficult to predict the outcome of any particular uncertain tax position, we believe it is reasonably possible that our unrecognized tax benefits will increase approximately \$0.2 million during the next twelve months. We further expect that the amount of unrecognized tax benefits will continue to change in the future as a result of ongoing operations, the outcomes of audits, and the expiration of the statute of limitations. This change is not expected to have a significant impact on our results of operations or financial condition.

We recognize accrued interest and penalties related to unrecognized tax benefits in our income tax (benefit) provision. For the years ended December 31, 2020 and 2019, we recognized \$(0.1) million and \$0.4 million accrued interest and penalties, respectively, which are reflected in the table above.

We are subject to taxation in the United States, various states, and several foreign jurisdictions. We establish reserves for open tax years for uncertain tax positions that may be subject to challenge by various taxing authorities. The consolidated tax provision and related accruals include the impact of such reasonably estimable losses and related interest and penalties as deemed appropriate. United States and foreign jurisdictions have statute of limitations generally ranging from 3 to 5 years. However, the statute of limitations does not begin for years that a net operating loss carryforward was generated until the loss is applied against taxable income. In that scenario, the taxing authority can only make adjustments in the original loss year to the extent of the net operating loss. Open audit years in the United States are 2013 through 2019 and in the U.K. are 2017 through 2019. We are currently under audit in Israel for 2018 and 2019.

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019

13. Segment Information

The following table represents total revenue based on where our marketers are physically located:

	December 31,	
	2020	2019
	(In thousands)	
USA	\$288,789	\$258,377
Europe, the Middle East and Africa (EMEA)	398,923	347,696
Other	79,430	81,260
Total revenue	<u>\$767,142</u>	<u>\$687,333</u>

Our property, equipment and capitalized software, net by geographic location are summarized as follows:

	December 31,	
	2020	2019
	(In thousands)	
USA	\$22,069	\$20,475
EMEA	2,264	2,918
Other	423	1,139
Total property, equipment and capitalized software, net	<u>\$24,756</u>	<u>\$24,532</u>

14. Subsequent Events

We evaluated subsequent events through March 25, 2021, the date these consolidated financial statements were issued.

Event (Unaudited) Subsequent to the Date of the Report of Independent Registered Public Accounting Firm
Subsequent to March 25, 2021:

On April 21, 2021, we announced that we had confidentially submitted a draft registration statement on Form S-1 with the SEC relating to the proposed initial public offering of common stock. The number of shares to be offered and the price range for the proposed offering have not yet been determined. The initial public offering is expected to take place after the SEC completes its review process, subject to market and other conditions.

On April 29, 2021, we were notified that the Antitrust Division of the U.S. Department of Justice is conducting a criminal investigation into the hiring in our industry that includes us. We are cooperating with the Antitrust Division. While there can be no assurance regarding the ultimate resolution of this matter, we do not believe that our conduct violated applicable law.

Senior Subordinated Secured Notes

On July 1, 2021, we completed the sale of \$200 million aggregate principal amount of senior subordinated secured notes due July 1, 2026 (the "Notes"), in a private placement (the "Private Placement") to one or more institutional investors affiliated with and funds managed by, The Baupost Group, L.L.C. (the "Baupost Investors"), pursuant to a Senior Subordinated Secured Note Purchase Agreement dated July 1, 2021 (the "Note Purchase Agreement").

We intend to exchange the Notes for Convertible Notes (described below) upon the consummation of this offering. Upon issuance of the Convertible Notes, all the Notes and the obligations thereunder shall be canceled and extinguished.

OUTBRAIN INC.

Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019

14. Subsequent Events (continued)

Exchange of Notes for Convertible Notes

Pursuant to the Note Purchase Agreement, we agreed that upon the consummation of our initial public offering or a similar liquidity event (an “IPO”) that results in our having a pre-money equity value of less than or equal to \$2 billion, we will, at our option, either (i) exchange all the Notes for newly-issued five-year Convertible Senior Notes (the “Convertible Notes”) having an aggregate principal amount equal to the Minimum Note Redemption Price (described below) or (ii) redeem all the Notes for cash in an amount equal to the Minimum Note Redemption Price. The Minimum Note Redemption Price will be equal to the greater of (a) \$236 million if the IPO occurs on or before August 15, 2021 (or \$240 million if the IPO occurs after August 15, 2021 but on or before December 31, 2021) and (b) an internal rate of return of 16% per annum, compounded quarterly and determined under the Note Purchase Agreement. As noted above, we intend to exchange the Notes for the Convertible Notes upon the consummation of this offering.

The Convertible Notes will have a term of five (5) years. The initial conversion rate for the Convertible Notes per \$1,000 principal amount of Convertible Notes will be a number of shares of common stock equivalent to a conversion price of 125% of the initial public offering price of our common stock. The Convertible Notes will bear a stated interest equal to the greater of (A) 2.95% per annum and (B) 2.95% per annum plus (x) the closing yield of the 5-year U.S. Treasury Rate as of the business day immediately prior to the day of issuance of the Convertible Notes *minus* (y) 0.80%, rounded up to the next highest 0.05% increment. Holders of the Convertible Notes may, at their option, convert all or any portion of their Convertible Notes into shares of our common stock at any time until the second scheduled trading day immediately preceding the maturity date, at the conversion rate then in effect. We will settle conversions of the Convertible Notes by paying or delivering, as the case may be, cash, shares of our common stock, or a combination thereof, at our election.

In connection with the Private Placement and the execution of the Note Purchase Agreement, we agreed to a form of indenture for the Convertible Notes (“Convertible Notes Indenture Form”) that will govern the Convertible Notes when issued upon the consummation of the IPO. Pursuant to the Convertible Notes Indenture Form, we agreed to issue Convertible Notes with an aggregate principal amount equal to the Minimum Note Redemption Price. If we undergo a fundamental change (as defined in the Convertible Notes Indenture Form) prior to the five-year maturity date, holders may, at their option, require us to repurchase for cash all or any portion of their Convertible Notes at a price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the repurchase date. We may not redeem the Convertible Notes prior to the third-year anniversary of their issuance. On or after such third-year anniversary, we may, at our option, redeem for cash all or any portion of the Convertible Notes, if the last reported sale price of our common stock has been at least 130% of the conversion price on each of at least 20 trading days during the 30 consecutive trading day period ending on and including the trading day preceding the date on which we provide notice of redemption, at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus any accrued and unpaid interest to, but excluding, the redemption date. In addition, calling any Convertible Note for redemption will constitute a “make-whole fundamental change” with respect to that Convertible Note, in which case the conversion rate applicable to the conversion of that Convertible Note will be increased if it is converted by holders after it is called for redemption.

The Convertible Notes will also include standard provisions regarding “fundamental changes,” “make-whole fundamental changes,” adjustments to conversion rates upon the happening of specified events, events of default and remedies, customary for public company convertible notes. The Bank of New York Mellon has agreed to act as trustee for the Convertible Notes.

SVB Subordination Agreement

The Notes issued in the Private Placement, which will be exchanged and cancelled upon the IPO, bear interest that accrues at the rate of (i) prior to July 1, 2024, 10.0% per annum and (ii) on and after July 1,

OUTBRAIN INC.

**Notes to Consolidated Financial Statements
As of and For Years Ending December 31, 2020 and 2019****14. Subsequent Events (continued)**

2024, 14.5% per annum, and is payable, in cash or in kind at our option, quarterly. The Notes are our senior secured obligations and will, on a date on or before 60 days following the closing of the Private Placement, be guaranteed, on a senior secured basis by certain of our wholly-owned subsidiaries and secured by a second priority lien on all of our and their tangible and intangible assets, subject to certain excluded assets, permitted liens and customary exceptions. Subject to certain exceptions, the Note Purchase Agreement limits our ability to incur debt, pay dividends or make restricted payments, sell or dispose assets, incur liens securing debt, enter into affiliate transactions, or merge or sell all or substantially all our assets. The agreement contains customary events of default including, nonpayment of principal or interest, breach of negative covenants or fundamental representations, and certain bankruptcy or insolvency events.

In connection with the Revolving Credit Facility and our entering into the Note Purchase Agreement, SVB, the Baupost Investors and the Bank of New York Mellon as collateral agent for the Notes, entered into a subordination agreement, dated as of July 1, 2021, pursuant to which (i) SVB, as senior creditor, consented to our entering into Note Purchase Agreement and related loan documents and (ii) the Baupost Investors agreed to subordinate our obligations to them under the Notes to our obligations to SVB.



Delivering Media Owners Best-in-Class User Engagement and Monetization ...

” Outbrain has been an **important part of our ecosystem since 2012**. Through our partnership with Outbrain, advertisers can engage with our unique and high converting audience and optimize for their ROAS (return on advertising spend) objectives on a truly global basis. Microsoft looks forward to further empowering advertisers by growing our partnership with Outbrain as **together we advance ad quality** standards and embrace cloud solutions for advanced analytics.

Kya Sainsbury-Carter, VP, Global Partner Sales at Microsoft



” In the nearly 10 years we've been partners, Outbrain has been a **trusted technology provider** that has provided not only monetization but the **versatility to grow** with our needs in the ever-changing publishing landscape.

Brad Elders, COO at New York Post



” Outbrain has been an increasingly **important partner since 2011, providing technology and products for many of our teams**, helping us improve **user engagement and retention**, as well as monetization.

David Gibbs, Director, Group Content & Advertising Products at Sky





... While Delivering Advertisers Best-in-Class User Engagement and ROAS:

” Our partnership with Outbrain has been incredibly successful. In terms of consistency, high spend, and customer volume, **Outbrain has exceeded our expectations**, delivering **some of the highest value customers** to our business.

James Nellany, Global Head Of Digital Marketing, Naked Wines



” **Outbrain has once again shown excellent results in our campaign**, based on three areas of performance. This enabled us to generate quality traffic to our website, and above all, **increase our leads** in terms of brochure downloads, dealer contact, and road tests in a very competitive market and period.

Bart De Leeuw, Marketing Manager HONDA Benelux – Cars Division



” Outbrain is our **top performing Native channel** which helps us **drive quality premium subscribers** to the Lifesum app.

Manjusha Thomas, Senior Marketing Manager, Lifesum



Shares



Common Stock

Citigroup

Jefferies

Barclays

Evercore ISI

JMP Securities

Needham & Company

LUMA Securities

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

	Amount to be Paid
Registration fee	\$ *
FINRA filing fee	*
Listing fees	*
Transfer agent's fees	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Miscellaneous	*
Total	\$ *

* To be completed by amendment.

Each of the amounts set forth above, other than the Registration fee and the FINRA filing fee, is an estimate.

Item 14. Indemnification of Directors and Officers.

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law, or the DGCL, provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent to the Registrant. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise. The Registrant's amended and restated certificate of incorporation provides for indemnification by the Registrant of members of its board of directors, members of committees of its board of directors and of other committees of the Registrant, and its executive officers, and allows the Registrant to provide indemnification for its other officers and its agents and employees, and those serving another corporation, partnership, joint venture, trust or other enterprise at the request of the Registrant, in each case to the maximum extent permitted by the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions or (iv) for any transaction from which the director derived an improper personal benefit. The Registrant's amended and restated certificate of incorporation provides for such limitation of liability.

The Registrant will enter into separate indemnification agreements with each of its directors which are in addition to the Registrant's indemnification obligations under its amended and restated certificate of incorporation. These indemnification agreements may require the Registrant, among other things, to indemnify its directors against expenses and liabilities that may arise by reason of their status as directors, subject to certain exceptions. These indemnification agreements may also require the Registrant to advance any expenses incurred by its directors as a result of any proceeding against them as to which they could be indemnified and to obtain and maintain directors' and officers' insurance.

The Registrant maintains standard policies of insurance under which coverage is provided (a) to its directors and officers against losses arising from claims made by reason of breach of duty or other wrongful act and (b) to the Registrant with respect to payments, which may be made by the Registrant to such officers and directors pursuant to the above indemnification provision or otherwise as a matter of law.

The proposed form of underwriting agreement will be filed as Exhibit 1.1 to this Registration Statement and it will provide for indemnification of directors and officers of the Registrant by the underwriters against certain liabilities.

Item 15. *Recent Sales of Unregistered Securities.*

Since January 1, 2018, the Registrant has sold the following securities without registration under the Securities Act of 1933, as amended, or the Securities Act:

1. In April 2018, we issued and sold an aggregate of 14,732 shares of Series H convertible preferred stock as consideration for the acquisition of Monetization Advanced Technologies Ltd., which we purchased in a cash and stock transaction. In April 2019 and December 2019, we released 3,400 and 4,532 shares of Series H convertible preferred stock, respectively, to Monetization Advanced Technologies Ltd. from escrow in connection with the acquisition. The deemed purchase price was \$8.82 per share of Series H convertible preferred stock.
2. In April 2019, we issued and sold an aggregate of 6,125,404 shares of common stock in connection with the acquisition of Ligatus. The deemed purchase price per share was \$6.54 per share of common stock.
3. From January 1, 2018 through June 30, 2021, we granted to our officers, employees, and consultants an aggregate of 9,357,919 options and RSUs to purchase or be settled in shares of our common stock with per share exercise prices ranging from \$0 to \$7.25 under our 2007 Plan. These grants represent 2,380,750 options to purchase common stock with exercise prices ranging from \$4.64 to \$7.25 and 6,977,169 RSUs.

Unless otherwise stated, the sales of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of securities in each of these transactions represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in such transactions.

Item 16. *Exhibits and Financial Statement Schedules.*

- (a) The Exhibit Index is hereby incorporated herein by reference.
- (b) All schedules have been omitted because they are not required, are not applicable or the information is otherwise set forth in the Consolidated Financial Statements and related notes thereto.

Item 17. *Undertakings.*

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referenced in Item 14 of this Registration Statement, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in New York, New York on this 6th day of July 2021.

OUTBRAIN INC.

By: /s/ Yaron Galai

Name: Yaron Galai

Title: *Co-Chief Executive Officer*

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons on July 6, 2021 in the capacities indicated:

Signatures	Title
<u>/s/ Yaron Galai</u> Yaron Galai	Co-Founder and Co-Chief Executive Officer and Chairman of the Board (Principal Executive Officer)
<u>/s/ David Kostman</u> David Kostman	Co-Chief Executive Officer and Director
* Ori Lahav	Co-Founder, Chief Technology Officer and General Manager, Israel
<u>/s/ Elise Garofalo</u> Elise Garofalo	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
* Jonathan (Yoni) Cheifetz	Director
* Shlomo Dovrat	Director
* Arne Wolter	Director
* Yoseph (Yossi) Sela	Director
* Dominique Vidal	Director
* Jonathan Klahr	Director
* Ziv Kop	Director

By: /s/ Yaron Galai

Yaron Galai

Attorney-in-Fact

EXHIBIT INDEX

Exhibit No.	Description
1.1*	Form of Underwriting Agreement.
3.1**	<u>Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.</u>
3.2**	<u>Bylaws of the Registrant, as currently in effect.</u>
3.3*	Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon the completion of this offering.
3.4*	Form of Amended and Restated Bylaws to be in effect upon completion of this offering.
4.1*	Specimen stock certificate
4.2**	<u>Amended and Restated Investors' Rights Agreement by and among the Registrant and the other parties thereto dated April 1, 2019.</u>
4.3**	<u>Amended and Restated Stockholders' Agreement by and among the Registrant and the other parties thereto dated December 24, 2020.</u>
4.4**	<u>Warrant to purchase shares of common stock issued to Silicon Valley Bank dated November 20, 2014.</u>
4.5**	<u>Warrant to purchase shares of common stock issued to WestRiver Mezzanine Loans, LLC dated November 20, 2014.</u>
4.6**	<u>Warrant to purchase shares of common stock issued to WestRiver Mezzanine Loans, LLC dated September 29, 2016.</u>
4.7**	<u>Warrant to purchase shares of common stock issued to American Friends of Tmura dated July 25, 2011.</u>
4.8**	<u>Warrant to purchase shares of common stock issued to Ouriel Ohyaon dated January 8, 2007.</u>
5.1*	Opinion of Mayer Brown LLP.
10.1*	Form of Indemnification Agreement between the Registrant and its directors and officers.
10.2**	<u>Amended and Restated Loan and Security Agreement dated September 15, 2014 by and between Silicon Valley Bank and the Registrant.</u>
10.3†**	<u>2007 Omnibus Securities and Incentive Plan, as amended and restated, foreign addenda, and forms of award agreements</u>
10.4†*	2021 Long-Term Incentive Plan, and forms of award agreements
10.5**	<u>Sixth Amendment to Amended and Restated Loan and Security Agreement dated March 27, 2020 by and between Silicon Valley Bank and the Registrant.</u>
10.6**	<u>Fifth Amendment to Amended and Restated Loan and Security Agreement dated November 2, 2018 by and between Silicon Valley Bank and the Registrant.</u>
10.7**	<u>Fourth Amendment to Amended and Restated Loan and Security Agreement dated October 6, 2016 by and between Silicon Valley Bank and the Registrant.</u>
10.8**	<u>Third Amendment to Amended and Restated Loan and Security Agreement dated August 25, 2016 by and between Silicon Valley Bank and the Registrant.</u>
10.9**	<u>Second Amendment to Amended and Restated Loan and Security Agreement dated January 27, 2016 by and between Silicon Valley Bank and the Registrant.</u>
10.10**	<u>First Amendment to Amended and Restated Loan and Security Agreement dated November 20, 2014 by and between Silicon Valley Bank and the Registrant.</u>
10.11†*	Amended and Restated Employment Agreement, dated _____, by and between Elise Garofalo and the Registrant.
10.12†*	Employment Agreement, dated _____, by and between Yaron Galai and the Registrant.
10.13†*	Employment Agreement, dated _____, by and between David Kostman and the Registrant.
10.14†*	Form of 2021 Employee Stock Purchase Plan

Exhibit No.	Description
10.15**	English Translation of Unprotected Lease Agreement dated January 17, 2017 by and between Cash and Carry Food Services Ltd. and Outbrain Israel Ltd.
10.16**	Seventh Amendment to Amended and Restated Loan and Security Agreement dated June 21, 2021 by and between Silicon Valley Bank and the Registrant.
10.17	Senior Subordinated Secured Note Purchase Agreement dated July 1, 2021 by and between the Registrant, Baupost Private Investments A-2, L.L.C., Baupost Private Investments B-2, L.L.C., Baupost Investments C-2, L.L.C., Baupost Private Investments P-2, L.L.C., Baupost Private Investments Y-2, L.L.C., Baupost Private Investments BVI-2, L.L.C., Baupost Private Investments BVII-2, L.L.C., Baupost Private Investments BVIII-2, L.L.C., Baupost Private Investments BVIV-2, L.L.C. and The Bank of New York Mellon.
21.1**	List of subsidiaries of the Registrant.
23.1	Consent of KPMG LLP, independent registered public accountants.
23.2*	Consent of Mayer Brown LLP (included in Exhibit 5.1).
24.1**	Power of attorney (included in signature page to Registration Statement).

† Compensatory plan or agreement.

* To be filed by amendment.

** Previously filed.

Certain identified information has been excluded from this exhibit because it is not material.

THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO TIME, THE “SVB SUBORDINATION AGREEMENT”) DATED AS OF JULY 1, 2021 BETWEEN SILICON VALLEY BANK AND THE BANK OF NEW YORK MELLON, TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE OBLIGORS DESCRIBED THEREIN PURSUANT TO THAT CERTAIN AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 15, 2014 AMONG OUTBRAIN INC. AND SILICON VALLEY BANK, AS SUCH LOAN AND SECURITY AGREEMENT HAS BEEN AND HEREAFTER MAY BE AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS UNDER THAT AGREEMENT AS CONTEMPLATED HEREUNDER AND BY THE SVB SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SVB SUBORDINATION AGREEMENT AND THIS AGREEMENT.

SENIOR SUBORDINATED SECURED NOTE PURCHASE AGREEMENT

dated as of July 1, 2021

among

**OUTBRAIN INC.,
as Issuer**

**CERTAIN SUBSIDIARIES OF ISSUER
as Guarantors,**

VARIOUS INVESTORS FROM TIME TO TIME PARTY HERETO,

AND

**THE BANK OF NEW YORK MELLON,
as Collateral Agent**

**\$200,000,000 ORIGINAL PRINCIPAL AMOUNT SENIOR SUBORDINATED SECURED NOTES DUE
JULY 1, 2026**

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***All appendices, schedules and exhibits (except for Exhibits A and I) have been intentionally omitted pursuant to Items 601(a)(5) and 601(b)(2) of Regulation S-K.**

SENIOR SUBORDINATED SECURED NOTE PURCHASE AGREEMENT

This SENIOR SUBORDINATED SECURED NOTE PURCHASE AGREEMENT, dated as of July 1, 2021, is entered into by and among OUTBRAIN INC., a Delaware corporation (“Company”, or “Issuer”), certain Subsidiaries of Company from time to time, as Guarantors, the Investors from time to time party hereto and The Bank of New York Mellon, as collateral agent for the Investors (in such capacity, together with its successors and assigns, “Collateral Agent”).

WITNESSETH:

WHEREAS, unless defined in these recitals, capitalized terms used in these recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Issuer desires to issue and sell to the Investors, and the Investors have agreed to purchase, pursuant to this Agreement, on the Closing Date, Issuer’s initial senior subordinated secured notes due July 1, 2026 in the aggregate original stated principal amount of \$200,000,000 (the “Notes”) in the form attached hereto as Exhibit A, the proceeds of which will be used as described in Section 2.2;

WHEREAS, Issuer has agreed to secure all of its Obligations on a post-closing basis by granting to Collateral Agent, for the benefit of Secured Parties, a second priority Lien, subject to Permitted Liens, on all of its material assets; and

WHEREAS, Issuer has agreed to cause Guarantors on a post-closing basis to guarantee the obligations of Issuer hereunder and to secure their respective Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a second priority Lien, subject to Permitted Liens, on all of their respective material assets.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Company or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims) or other regulatory body or any mediator or arbitrator, whether pending or, to the knowledge of Company or any of its Subsidiaries, threatened against or affecting Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries.

“Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling (including any member of the senior management group of such Person), controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise; provided that exclusively for purposes of Section 6.9, beneficial ownership of 10% or more of the securities having ordinary voting power for the election of directors of such Person, shall be deemed to be “control”. Notwithstanding anything herein to the contrary, in no event shall, Collateral Agent or any Investor or any of their Affiliates or Related Funds be considered an “Affiliate” of any Note Party.

“Aggregate Amounts Due” has the meaning specified in Section 2.10.

“Aggregate Payments” has the meaning specified in Section 7.2.

“Agreement” means this Senior Subordinated Secured Note Purchase Agreement and any appendices, exhibits and schedules attached hereto as it may be amended, supplemented or otherwise modified from time to time.

“Anti-Terrorism Laws” means any Requirement of Law relating to terrorism or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (b) the Currency and Foreign Transactions Reporting Act (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), (c) the USA Patriot Act, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), (e) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (f) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), or (g) any similar laws enacted in the United States or any other jurisdictions in which the Issuer or any of its Subsidiaries operates, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

“Antitrust Law” means any Law that is designed or intended to prohibit, restrict or regulate actions or transactions having the purpose or effect of monopolization, restraint of trade, harm to competition or effectuating foreign investment.

“Application Event” means the occurrence of an Event of Default and the election by the Required Investors during the continuance of such Event of Default to require that payments and proceeds of Collateral be applied pursuant to Section 2.9(d).

“Asset Sale” means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license or other disposition to (other than to a Note Party), or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Note Party’s businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the sale or issuance (other than to a Note Party) of any Capital Stock of any Note Party or any Subsidiary thereof. For purposes of clarification, “Asset Sale” shall include (a) the sale, exclusive licensure or other disposition for value of any contracts, intellectual property rights or accounts (other than to a Note Party) whether or not in connection with the settlement of any litigation and (b) any disposition of property through a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law but shall exclude (c) the sale or issuance of any Capital Stock of Company or direct or indirect parent of Company.

“Assignment Agreement” means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by the Required Investors.

“Authorized Officer” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, co-chief executive officer, president, co-founder, chief technology officer, general manager, or one of its vice presidents (or the equivalent thereof), or such Person’s chief financial officer or treasurer.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“Baupost Investor” means the Initial Investors and their Affiliates and Related Funds, and including any investment fund sponsored and managed by Baupost Capital, L.L.C. or a special purpose vehicle controlled by such investment fund.

“Beneficiary” means Collateral Agent and each Investor.

“Blocked Person” means any Person:

- (a) that is publicly identified (i) on the most current list of “Specially Designated Nationals and Blocked Persons” published by OFAC or resides, is organized or chartered, or located in a country or territory subject to comprehensive OFAC sanctions or an embargo program or (ii) as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other Anti-Terrorism Law;
- (b) that is owned 50% or more or controlled by, or that is acting for or on behalf of, any Person described in clause (a) above; or
- (c) with which any Investor is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law.

“Board Observer” has the meaning specified in Section 5.12.

“Board of Directors” means, (a) with respect to any corporation or exempted company, the board of directors of the corporation or exempted company or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors of the general partner of the partnership, (c) with respect to a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

“BOD Meeting” has the meaning specified in Section 5.12.

“Business Day” means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state or jurisdiction are authorized or required by law or other governmental action to close.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (a) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (b) as lessee which is a transaction of a type commonly known as a “synthetic lease” (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for federal income Tax purposes); provided that notwithstanding the foregoing, in no event will any lease that would have been categorized as an operating lease as determined in accordance with GAAP as in effect prior to December 31, 2018 be considered a “Capital Lease”.

“Capital Stock” means any and all shares, equity 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), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing; provided that, any instrument evidencing Indebtedness convertible into or exchangeable for any of the foregoing shall not be deemed “Capital Stock” unless and until any such instruments are so converted or exchanged.

“Cash” means money, currency or a credit balance in any demand or Deposit Account.

“Cash Equivalents” means, as at any date of determination, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A 2 from S&P or at least P 2 from Moody’s; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A 2 from S&P or at least P 2 from Moody’s; (d) certificates of deposit or bankers’ acceptances maturing within one year after such date and issued or accepted by any Investor or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody’s.

“Cash Pay Election” has the meaning specified in Section 2.4(c).

“Closing” has the meaning specified in Section 2.1(a)(ii).

“Closing Certificate” means a Closing Certificate substantially in the form of Exhibit E.

“Closing Date” means July 1, 2021.

“Collateral” means, collectively, all of the real, personal and mixed property (including Capital Stock) and all interests therein and proceeds thereof now owned or hereafter acquired by any Note Party upon which a Lien is granted or purported to be granted by such Note Party to the Collateral Agent, for the benefit of Secured Parties, pursuant to the Collateral Documents as security for the Obligations; provided that the Collateral shall not include any Excluded Assets.

“Collateral Access Agreement” means a collateral access agreement in form consistent with any collateral access agreement in effect pursuant to the terms of any Permitted Senior Indebtedness.

“Collateral Agent” has the meaning specified in the preamble hereto, and shall include any additional Collateral Agent appointed under Section 9.1.

“Collateral Agent Fee Letter” means that certain fee letter dated as of the date hereof by and between Company and Collateral Agent, pursuant to which Company has agreed to pay certain fees to Collateral Agent from time to time.

“Collateral Documents” means the Pledge and Security Agreement, any Mortgages, any Control Agreement, any Collateral Access Agreement, any Foreign Collateral Document and all other instruments, documents and agreements delivered by any Note Party pursuant to this Agreement or any of the other Note Documents in order to grant to Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Note Party constituting Collateral as security for the Obligations, in each case, as such Collateral Documents may be amended or otherwise modified from time to time.

“Collateral Provision Date” means the date on which the deliveries set forth in Section 5.13(b) required to be made within 60 days of the Closing Date shall have been made and the representations and warranties required to be made pursuant to Section 5.13(b) shall have been made, in each case, in accordance with the terms of Section 5.13(b).

“Collateral Provision Date Condition” means the condition that the Collateral Provision Date shall have occurred.

“Commitment” means the commitment of an Investor to purchase the Notes and “Commitments” means such commitments of all Investors in the aggregate. The amount of each Investor’s Commitment is set forth on Appendix A, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments as of the Closing Date is \$200,000,000.

“Common Stock” means common stock of Company, par value \$0.001 per share or, with respect to any Qualified IPO or Non-Qualified IPO, where equity interests other than Common Stock are being registered or listed, the class of Capital Stock offered in such Qualified IPO or Non-Qualified IPO.

“Company” has the meaning specified in the preamble hereto.

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

“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 EBITDA” means, for any period, an amount determined for any Person and its Subsidiaries on a consolidated basis equal to the sum, without duplication, of the amounts for such period of (a) Consolidated Net Income, plus (b) Consolidated Interest Expense, plus (c) to the extent deducted in the calculation of Consolidated Net Income, depreciation expense and amortization expense, plus (d) to the extent deducted in the calculation of Consolidated Net Income, federal, state and local income taxes, whether paid, payable or accrued, plus (e) all non-cash expenses reflected in Consolidated Net Income, plus (f) non-cash stock compensation expense, plus (g) any non-recurring non-capitalized fees, costs and expenses in connection with financings, acquisitions, investments, dispositions, initial public offerings or the establishment of joint ventures, strategic alliances, new product offerings or lines of business, licenses (including for Intellectual Property), litigation or settlement of disputes or similar arrangements during such period (including financing and refinancing fees and any premium or penalty paid in connection with redeeming or retiring Indebtedness prior to its stated maturity pursuant to the agreements or instruments governing such Indebtedness), in each case whether or not consummated, plus (h) cash restructuring expenses, charges, accruals or reserves (and adjustments to any reserves) and business optimization expenses, cash charges, expenses, costs or reserves as a result of actions taken in connection with upgrading and improving the financial accounting systems and functions and implementation of improved information systems and training for related personnel and other nonrecurring restructuring, integration, reconfiguration, start-up and other similar costs operating improvements, production and sourcing initiative, cost savings initiative, new initiatives, new product roll outs, and entry into new markets, including costs related to the expansion, closure, temporary shutdown and/or consolidation of facilities, contract termination costs, retention, recruiting, relocation and reallocation costs (including of employees, equipment and other assets and resources), severance and signing bonuses and expenses, consulting fees and any one-time expense relating to enhanced accounting function, or costs associated with becoming a public company or any other costs incurred in connection with any of the foregoing, plus (i) the amount of net “run-rate” cost savings, operating expense reductions, other operating improvements and acquisition synergies (calculated on a Pro Forma Basis as though such items had been realized on the first day of such period) as a result of actions taken or to be taken in connection with any acquisition, investment, expansion, disposition or restructuring, operating improvements, production and sourcing initiative, cost savings initiative, new initiatives, new product roll outs and entry into new markets (including those of the type referred to in clause (h) above but excluding any revenue synergies associated with the foregoing) by the Issuer or any of its Subsidiaries, net of the amount of actual benefits realized during such period that are otherwise included in the calculation of Consolidated EBITDA from such actions and only to the extent that the same have been realized or are reasonably expected to be realized within twenty-four (24) months of the related acquisition, investment, expansion, disposition, restructuring, operating improvements, production and sourcing initiative, cost-savings initiative, new initiative, new product roll out or entry into new markets; provided the aggregate amount added back pursuant to this clause (i), when combined with the aggregate amount added back pursuant to clause (j) below, shall not exceed 7% of Consolidated EBITDA for such period (calculated prior to giving effect to such add-backs and all other permitted add-backs and adjustments) plus (j) any non-recurring expenses, charges or losses; provided the aggregate amount added back pursuant to this clause (j), when combined with the aggregate amount added back pursuant to clause (i) above, shall not exceed 7% of Consolidated EBITDA for such period (calculated prior to giving effect to such add-backs and all other permitted add-backs and adjustments) plus (k) any extraordinary or unusual expenses, charges or losses plus (l) to the extent covered by insurance and actually reimbursed, or, so long as the Issuer has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount (1) is not denied in writing by the applicable insurer and (2) in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 day period), expenses, charges or losses with respect to liability or casualty events or business interruption, plus (m) Transaction Costs, plus (n) losses from discontinued operations minus (o) gains from discontinued operations minus (p) any non-recurring gains provided the aggregate amount included pursuant to this clause (p) shall not exceed 7% of Consolidated EBITDA for such period (calculated after giving effect to such add-backs and all other permitted add-backs and adjustments) minus (q) extraordinary or unusual gains.

“Consolidated Interest Expense” means, for any period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Indebtedness of such Person in respect of which Consolidated Interest Expense is being determined and its Subsidiaries on a consolidated basis, including, without limitation or duplication, all commissions, discounts, amortization of debt discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

“Consolidated Net Income” means, for any period, the net income (or loss) of any Person and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, provided that there shall be excluded from such net income (or loss) (i) the income of any Subsidiary of the Person in respect of which Consolidated Net Income is being determined to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, except to the extent of any receipt by such Person of any dividends or other distributions from such Subsidiary, (ii) any gains or losses attributable to Asset Sales to the sale or issuance (other than to a Note Party) of any Capital Stock of any direct or indirect Subsidiary of the Person in respect of which Consolidated Net Income is being determined, (iii) returned surplus assets of any Pension Plan, (iv) the cumulative effect of any change in accounting principles or any change in the application thereof, (v) unrealized net losses and gains in the fair market value of any arrangements under hedging agreements, (vi) any income or loss attributable to the early extinguishment or conversion of Indebtedness, arrangements under hedging agreements or other derivative instruments (including deferred financing expenses written off and premiums paid), and (vii) the income (or loss) of any Person (other than the Person or subsidiary thereof in respect of which Consolidated Net Income is being determined) in which any other Person (other than the Person or subsidiary thereof in respect of which Consolidated Net Income is being determined) has a joint interest, except to the extent of any receipt by such Person of any dividends or other distributions from such Person.

“Consolidated Senior Secured Debt” means, as at any date of determination for any Person, the aggregate principal amount (or stated balance sheet amount, if larger) of all Indebtedness described in clauses (a), (b), (c), (g) (solely to the extent of amounts that are drawn and unreimbursed) and (solely in respect of the foregoing Indebtedness) (f) of the definition thereof of such Person and its Subsidiaries determined on a consolidated basis in accordance with GAAP, that is, in each case, secured by a first lien security interest on the Collateral; provided, that, for the avoidance of doubt, the term “Consolidated Senior Secured Debt” shall not include the Notes or any senior secured indebtedness the Liens with respect to which rank pari passu with, or any indebtedness the Liens with respect to which rank junior to, the Liens securing the Notes.

“Consolidated Total Debt” means, as at any date of determination for any Person, the aggregate principal amount (or stated balance sheet amount, if larger) of all Indebtedness described in clauses (a), (b), (c), (g) (solely to the extent of amounts that are drawn and unreimbursed) and (solely in respect of the foregoing Indebtedness) (f) of the definition thereof of such Person and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

“Contractual Obligation” means, as applied to any Person, any provision of any Capital Stock issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control Account” means a Deposit Account or Securities Account subject to a Control Agreement in favor of Collateral Agent.

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to the Required Investors and Collateral Agent, executed and delivered by a Note Party, Collateral Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account), which provides for “springing” cash dominion by Collateral Agent with respect to the applicable account, or as applicable, any similar document, agreement or notice as may be customary in any relevant jurisdiction.

“Counterpart Agreement” means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Note Party pursuant to Section 5.10.

“Debtor Relief Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Default Rate” has the meaning specified in Section 2.5(a).

“Deferred Payment Obligations” means purchase price adjustments, earn-outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with any Permitted Acquisition (and, in the case of deferred compensation representing, or in substance representing, consideration or a portion of the purchase price in connection with such Permitted Acquisitions) or Permitted Investment.

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Designated Non-Cash Consideration” shall mean the fair market value of non-cash consideration received by Issuer or one of its Subsidiaries in connection with an Asset Sale or Disposition that is so designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer of the Issuer, setting forth such valuation and the basis therefor, less the amount of cash or cash equivalents received in connection with a subsequent disposition of such Designated Non-Cash Consideration.

“Designated Payment Account” means an account at a bank designated by each Investor from time to time as the account into which the Note Parties shall make all payments to such Investor under this Agreement and the other Note Documents.

“Dispose” or “Disposed of” shall mean to convey, sell, lease, assign, transfer or otherwise dispose of any property, business or asset. The term “Disposition” shall have a correlative meaning to the foregoing.

“Disputes” has the meaning specified in Section 4.21(b).

“Disqualified Capital Stock” means any Capital Stock that, 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, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Capital Stock that would constitute Disqualified Capital Stock, in each case of clauses (a) through (d), prior to the date that is 91 days after the Maturity Date; provided that, if such Capital Stock is issued to any plan for the benefit of any employee, director, manager or consultant of Company or its Subsidiaries or by any such plan to such employee, director, manager or consultant, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of the termination, death or disability of such employee, director, manager or consultant.

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

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States, any state thereof or the District of Columbia.

“Electronic Means” shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Collateral Agent, or another method or system specified by the Collateral Agent as available for use in connection with its services hereunder.

“Eligible Assignee” means (a) any Investor, any Affiliate of any Investor and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) of Regulation D under the Securities Act) and which other entity extends credit or buys loans as one of its or its Affiliates’ businesses, or other Person (other than a natural Person) which shall be subject, to the extent no Event of Default pursuant to Section 8.1(a), Section 8.1(f) or Section 8.1(g) has occurred and is continuing, to the consent of Company (not to be unreasonably withheld or delayed; such consent of Company being deemed to be given if Company has not responded within ten (10) Business Days of its receipt of the request for such consent); provided, neither (i) Issuer nor any Subsidiary of Issuer nor (ii) any Affiliate of Issuer shall, in any event, be an Eligible Assignee.

“EMU Legislation” means the legislative measures of the European council for the introduction of, changeover to or operation of a single or unified European currency.

“Environmental Claim” means any complaint, summons, citation, investigation, notice, directive, notice of violation, order, claim, demand, action, litigation, judicial or administrative proceeding or judgment involving (a) any actual or alleged violation of any Environmental Law; (b) injury to the environment, natural resource, any Person (including wrongful death) or property (real or personal) in connection with Hazardous Materials or actual or alleged violations of Environmental Laws; or (c) actual or alleged Releases or threatened Releases of Hazardous Materials in actual or alleged violation of Environmental Laws (i) on, at or migrating from any assets, properties or businesses currently or formerly owned or operated by any Note Party or any of its Subsidiaries or any predecessor in interest, (ii) from adjoining properties or businesses, or (iii) onto any facilities which received Hazardous Materials generated by any Note Party or any of its Subsidiaries or any predecessor in interest.

“Environmental Laws” means any and all applicable foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations or binding determinations of any Governmental Authorizations relating to (a) the manufacture, generation, use, storage, transportation, treatment, disposal or Release of Hazardous Materials; (b) occupational safety and health and industrial hygiene; (c) the protection of the environment or natural resources, including endangered or threatened species; or (d) protection of human health with respect to exposure to Hazardous Materials.

“Environmental Liabilities and Costs” means all liabilities, monetary obligations, losses (including monies paid in settlement), damages, punitive damages, natural resources damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred in connection with any Remedial Action, any Environmental Claim, or any other claim or demand by any Governmental Authority or any Person that relates to any actual or alleged violation of Environmental Laws, actual or alleged exposure or threatened exposure to Hazardous Materials, or any actual or alleged Release or threatened Release of Hazardous Materials.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

“ERISA” means the United States Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any Person that at any relevant time is or was considered a single employer with any Note Party under Section 414 of the Internal Revenue Code.

“ERISA Event” means: (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 or 430 of the Internal Revenue Code with respect to any Pension Plan or the failure to make by its due date a required installment under Section 412 or 430 of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by any Note Party or any ERISA Affiliate from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability on Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the withdrawal of any ERISA Affiliate in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the occurrence of any non-exempt prohibited transaction under Section 4975 of the Internal Revenue Code or Section 406 of ERISA; or (i) the imposition of a Lien pursuant to the Internal Revenue Code or ERISA on any Note Party or its Subsidiaries with respect to any Pension Plan or Multiemployer Plan.

“Euro” and “€” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Event of Default” means each of the conditions or events set forth in Section 8.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Excluded Accounts” means, to the extent the amounts deposited therein do not secure any Permitted Senior Indebtedness, (a) any Deposit Account of a Note Party that is used by such Note Party solely as a payroll account for the employees of such Note Party or for purposes of workers’ compensation, (b) zero balance accounts, (c) any Deposit Account the balance of which consists primarily of (i) withheld income Taxes and federal, state, local or foreign employment Taxes in such amounts as are required in the reasonable judgment of a Note Party to be paid to the Internal Revenue Service or any other U.S., federal, state or local or foreign government agencies with respect to employees of such Note Party or (ii) any fiduciary or trust account, (d) Offshore Accounts, (e) accounts with average daily end of day balances of less than \$5,000,000 in the aggregate or (f) any other such accounts as may be agreed to by the Required Investors in writing (at the sole discretion of the Required Investors).

“Excluded Assets” means, to the extent not securing any Permitted Senior Indebtedness, (a) any governmental licenses or state or local franchises, charters and authorizations, to the extent a security interest in any such license, franchise, charter or authorization is prohibited or restricted by applicable law, rule or regulation, (b) assets to the extent the pledge thereof or grant of security interests therein (x) is prohibited or restricted by applicable law, rule or regulation, (y) would cause the destruction, invalidation or abandonment of such asset under applicable law, rule or regulation, or (z) requires any consent, approval, license or other authorization of any third party or Governmental Authority (excluding any prohibition or restriction that is ineffective under the UCC), (c) assets where the cost of obtaining a security interest therein is excessive in relation to the practical benefit to the Investors afforded thereby as reasonably determined between Company and the Required Investors, (d) any lease, license, contract, property right or agreement, or any property subject to a purchase money security interest, Capital Lease obligation or similar arrangement, in each case to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or create a right of termination in favor of any other party thereto (other than Company or any of its Subsidiaries) or otherwise require consent thereunder (other than from Company or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC, notwithstanding such prohibition, (e) any Excluded Account, (f) any applications for trademarks or service marks filed in the United States Patent and Trademark Office or any successor thereto (the “PTO”) on the basis of the applicant’s intent-to-use such trademark or service mark, prior to the filing of an amendment with the PTO under 15 U.S.C. §1051(c) that brings the application into conformity with 15 U.S.C. §1051(a) or the filing of a verified statement of use with the PTO under 15 U.S.C. §1051(d) that has been examined and accepted by the PTO, (g) motor vehicles, airplanes and other assets subject to certificates of title, to the extent a Lien therein cannot be perfected by the filing of a UCC financing statement, (h) any leasehold interest in real property, and any fee owned real property other than any Material Real Property or which would require flood insurance, (i) any property or assets for which the creation or perfection of pledges of, or security interests in, would result in material adverse tax consequences to the Issuer or any of its Subsidiaries, as reasonably determined by the Issuer in consultation with the Required Investors, (j) letter of credit rights, except to the extent constituting supporting obligations for the Collateral (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement), (k), (A) margin stock, (B) Capital Stock of any Excluded Subsidiary and (C) assets and Capital Stock in any entities which do not constitute Subsidiaries, but only to the extent that (x) the organizational documents or other agreements with equity holders (other than the Issuer and its Subsidiaries) of such entities do not permit or restrict the pledge of such Capital Stock, or (y) the pledge of such Capital Stock (including any exercise of remedies) would result in a change of control or repurchase obligation to any of the Note Parties or such entity, in each case, after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law, (l) commercial tort claims as to which the applicable Note Party has determined that it reasonably expects to recover less than \$5,000,000 and (m) except to the extent able to be perfected by action in the jurisdiction of organization of a Note Party, any assets located outside the United States or the United Kingdom or, in the case of a Note Party organized under any jurisdiction other than the United States, the United Kingdom or any state or territory located therein, action in any jurisdiction other than such Note Party’s jurisdiction of organization.

“Excluded Subsidiary” means (a) any Immaterial Subsidiary, (b) any Subsidiary that is prohibited by applicable Law or contract (with respect to any such contractual restriction, only to the extent existing on the Closing Date or the date on which the applicable Person becomes a direct or indirect Subsidiary of Company (and not created in contemplation of such acquisition)) from guaranteeing the Obligations or which would require governmental (including regulatory) consent, approval, license or authorization to provide the Guaranty (unless such consent, approval, license or authorization has been received), (c) any bankruptcy remote special purpose receivables entity or captive insurance company designated by the Company and permitted hereunder, (d) in the case of any obligation under any hedging arrangement that constitutes a “swap” within the meaning of section 1(a)(947) of the Commodity Exchange Act, any Subsidiary of Company that is not an “Eligible Contract Participant” as defined under the Commodity Exchange Act, (e) any Subsidiary that is a not-for-profit entity so long as such Subsidiary continues to be a not-for-profit entity, (f) any Securitization Subsidiary and (g) any other Subsidiary in circumstances where Company and the Required Investors reasonably agree that the cost or burden of providing a Guaranty outweighs the benefit afforded thereby.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a recipient or required to be withheld or deducted from a payment to a recipient: (i) Taxes imposed on or measured by the recipient’s net income (however denominated), franchise Taxes imposed on the recipient and branch profits Taxes imposed on the recipient, in each case, (A) by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Investor, in which its applicable investing office is located or (B) that are Other Connection Taxes, (ii) in the case of an Investor, United States federal withholding Taxes imposed on amounts payable to or for the account of such Investor pursuant to a law in effect on the date on which such Investor becomes a party hereto or such Investor changes its investing office, except that this clause (ii) shall not apply to the extent that, pursuant to Section 2.12 amounts with respect to such Taxes were payable either to such Investor’s assignor immediately before such Investor became a party hereto or to such Investor immediately before it changed its investing office, (iii) Taxes attributable to such recipient’s failure to comply with Section 2.12(d) and (iv) any withholding Taxes imposed under FATCA.

“Fair Share” has the meaning specified in Section 7.2.

“Fair Share Contribution Amount” has the meaning specified in Section 7.2.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue 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, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“FCPA” has the meaning specified in Section 4.26.

“Financial Officer Certification” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Company that such financial statements fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of Company and its Subsidiaries ending on December 31 of each calendar year.

“Fixed Amounts” has the meaning specified in Section 1.5.

“Flood Hazard Property” means any Material Real Property whereupon the improvements are located in an area designated by the Federal Emergency Management Agency as a special flood hazard area.

“Flow of Funds Agreement” means that certain Flow of Funds Agreement, dated as of the Closing Date, duly executed by Issuer and the Investors, in form and substance reasonably satisfactory to the Investors, in connection with the disbursement of proceeds of the sale by Issuer of the Notes in accordance with Section 2.2.

“Foreign Collateral Document” means a document or agreement governed by the law of a foreign jurisdiction providing for a Lien on all or a portion of the Collateral or the perfection thereof including those documents delivered in respect of a Foreign Subsidiary pursuant to Section 5.13(b)(ii).

“Foreign Official” means any officer or employee of a non-U.S. government or any department, agency, or instrumentality thereof, or of a public international organization, or any Person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Fully-Diluted Capitalization” means the aggregate number of issued and outstanding shares of Company’s Common Stock, assuming full conversion or exercise of all outstanding options, warrants, and convertible securities, but excluding shares authorized as of the date hereof in any option or equity incentive pool but remaining unissued, calculated as of the date that is one (1) Business Day prior to the date of the closing of the Qualified IPO or Non-Qualified IPO, and three (3) Business Days prior to the closing of the Sale of Company, as applicable, giving pro forma effect to any subdivision of the Common Stock, by split-up, reverse split-up or otherwise, or combination of the Common Stock.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, regulatory body, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

“Governmental Authorization” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Grantor” has the meaning specified in the Pledge and Security Agreement.

“Guaranteed Obligations” has the meaning specified in Section 7.1.

“Guarantor” means each Subsidiary of Company which executes and delivers a Counterpart Agreement, in each case, unless and until such time as the respective Guarantor is released from all of its obligations under the Guaranty in accordance with the terms hereof. Notwithstanding anything herein or in any other Note Document, no Excluded Subsidiary shall constitute a Guarantor.

“Guaranty” means the guaranty of each Guarantor set forth in Article VII.

“Hazardous Materials” means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) asbestos and asbestos-containing materials; and (e) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Investor which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“Historical Financial Statements” means as of the Closing Date, (a) the audited financial statements of Company and its Subsidiaries for the Fiscal Year ended December 31, 2020, consisting of balance sheets and the related consolidated statements of operations, comprehensive loss, convertible preferred stock and stockholders’ deficit, and cash flows for such Fiscal Year, and (b) for the Fiscal Quarter ended March 31, 2021, internally prepared, unaudited financial statements of Company and its Subsidiaries consisting of a balance sheet and the related consolidated statements of income, stockholders’ equity and cash flows, in the case of clause (b), certified by the chief financial officer of Company as fairly presenting, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

“Immaterial Subsidiary” means any Subsidiary of Company that is not a Material Subsidiary.

“Implied Conversion Price” means the amount equal to the quotient of (a) \$2,000,000,000 *divided* by (b) the Fully-Diluted Capitalization.

“Incurrence-Based Amounts” has the meaning specified in Section 1.5.

“Indebtedness” means, as applied to any Person, without duplication: (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (c) all obligations of such Person evidenced by notes, bonds or similar instruments or upon which interest payments are customarily paid and all obligations in respect of notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services, including any earn-outs or other deferred payment obligations in connection with an acquisition but solely to the extent such earn-out or other obligation constitutes a liability on a balance sheet in accordance with GAAP; (e) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person; (f) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person; provided, however, that the amount of such Indebtedness will be the lesser of (x) the fair market value of such asset at such date of determination and (y) the unpaid amount of such Indebtedness of such other Persons; (g) the face amount of any letter of credit or letter of guaranty issued, bankers’ acceptances facilities, surety bonds and similar credit transactions issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (h) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the Indebtedness of another; (i) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the Indebtedness of the obligor thereof will be paid or discharged or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (j) any liability of such Person for Indebtedness of another through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (i) or (ii) of this clause (j), the primary purpose or intent thereof is as described in clause (i) above; (k) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes (the amount of any such obligations to be equal at any time to the net payments under such agreement or arrangement giving rise to such obligation that would be payable by such Person at the termination of such agreement or arrangement) and (l) Disqualified Capital Stock. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly non-recourse to such Person.

“Indemnified Liabilities” means, collectively, any and all liabilities (including Environmental Liabilities and Costs), obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), documented out-of-pocket costs (including the reasonable costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Release of Hazardous Materials), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of one primary counsel (and, if necessary, of any regulatory or subject matter expert counsel and of a single local counsel in each relevant material jurisdiction) for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Note Documents or the transactions contemplated hereby or thereby (including the Investors’ agreement to make purchases or the use or intended use of the proceeds thereof, or any enforcement of any of the Note Documents (including any sale of, collection from, or other realization upon, any of the Collateral or the enforcement of the Guaranty)) or (b) any Environmental Claim relating to or arising from any past or present activity, operation, land ownership, or practice of Company or any of its Subsidiaries. Indemnified Liabilities shall not include Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Issuer under any Note Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” has the meaning specified in Section 10.3.

“Indemnitee Agent Party” has the meaning specified in Section 9.6.

“Initial Investors” means each Investor party to this Agreement on the Closing Date.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

“Intercompany Note” means that certain Global Intercompany Note, dated as of the Closing Date, made by Company and its Subsidiaries in favor of Company and its Subsidiaries from time to time party thereto and Collateral Agent in form and substance reasonably satisfactory to the Required Investors.

“Interest Payment Date” means (i) the last Business Day of each Fiscal Quarter, commencing on the first such date to occur after the Closing Date and (ii) the final maturity date of the Notes (whether by scheduled maturity, acceleration or otherwise).

“Internal Reorganization Transaction” means a bona fide internal reorganization transaction pursuant to which (i) Issuer either merges into a Successor Issuer or becomes a wholly-owned subsidiary of a Successor Issuer and (ii) all of the Capital Stock of such Successor Issuer is owned, directly or indirectly, by Persons who were holders of the Capital Stock of Issuer immediately prior to the consummation of such transaction.

“Interest Rate Agreement” means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with Company’s and its Subsidiaries’ operations, (b) approved by the Required Investors, and (c) not for speculative purposes. The amount of the obligation of any Person under any Interest Rate Agreement shall be the amount determined in respect thereof as of the end of the then most recently ended Fiscal Quarter of such Person, based on the assumption that such Interest Rate Agreement had terminated at the end of such Fiscal Quarter, and in making such determination, if any agreement relating to such Interest Rate Agreement provides for the netting of amounts payable by and to such Person thereunder or if any such agreement provides for the simultaneous payment of amounts by and to such Person, then in each such case, the amount of such obligation shall be the net amount so determined.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

“Internal Revenue Service” means the United States Internal Revenue Service.

“Investment” means (a) any direct or indirect purchase or other acquisition by Company or any of its Subsidiaries of, or of a beneficial interest in, any of the securities or Capital Stock or all or substantially all of the assets of any other Person (or of any division or business line of such other Person); (b) any direct or indirect loan, advance or capital contributions by Company or any of its Subsidiaries to any other Person; and (c) any direct or indirect guarantee of any obligations of any other Person. For purposes of covenant compliance, the amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto minus the lesser of such cost and the sum of any dividend, distribution, interest payment, return of capital, repayment or other amount or value received, in each case, in cash or Cash Equivalents in respect of such Investment, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

“Investor” means each investor listed on the signature pages hereto as an Investor, and any other Person that becomes a party hereto pursuant to an Assignment Agreement other than any Person that ceases to be a party hereto pursuant to any Assignment Agreement.

“IPO Conversion Price” means cash consideration, in Dollars, in an amount equal to the product of (a) the IPO Price *multiplied* by (b) the quotient of (i) the Minimum Note Redemption Price *divided by* (ii) the Implied Conversion Price.

“IPO Price” means the public offering price per share of the Common Stock.

“Issuer” has the meaning specified in the preamble hereto.

“Issuance Request” means an irrevocable written notice substantially in the form of Exhibit B.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

“Law” means any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, code, ruling, or order of, including the administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, or any agreement with, any Governmental Authority.

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means any lien, mortgage, pledge, assignment, hypothec, deed of trust, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

“Limited Condition Transaction” shall mean (i) any Permitted Acquisition or other Investment, including by means of a merger, amalgamation or consolidation, by the Issuer or one or more of its Subsidiaries, the consummation of which is not conditioned upon the availability of, or on obtaining, third party financing and (ii) any repayment or redemption of Indebtedness of the Issuer or any of its Subsidiaries, the consummation of which is not conditioned upon the availability of, or on obtaining, third party financing.

“Lock-Up Agreement” means a Lock-Up Agreement substantially in the form of Exhibit J.

“Make-Whole Premium” has the meaning specified in Section 2.9(g).

“Margin Stock” has the meaning specified in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Material Adverse Effect” means a material adverse effect on or a material adverse change in (a) the business operations, properties, assets or financial condition of Company and its Subsidiaries taken as a whole; (b) the ability of the Note Parties, taken as a whole, to fully and timely perform their payment obligations under any Note Document to which they are a party; (c) the legality, validity, binding effect, or enforceability against the Note Parties, of the Note Documents to which they are parties; (d) following the time of granting of a security interest with respect thereto, the Collateral or the validity, perfection or priority of Collateral Agent’s Liens on the Collateral (subject to Permitted Liens) or (e) the material rights, remedies and benefits (taken as a whole) available to, or conferred upon, the Investors under any Note Document.

“Material Debt” has the meaning specified in Section 8.1(b).

“Material Subsidiary” means a Subsidiary in respect of which (i) total revenues of such Subsidiary and its Subsidiaries (on a consolidated basis) during the most recent four Fiscal Quarters then ended constitute more than 5.0% of the consolidated total revenues of Company and its Subsidiaries for such period, taken as a whole, or (ii) total assets of such Subsidiary and its Subsidiaries (on a consolidated basis) as of the last day of the most recently ended Fiscal Quarter constitute more than 5.0% of the consolidated assets of Company and its Subsidiaries as of such date, taken as a whole; provided that if, at any time and from time to time after the Collateral Provision Date, Subsidiaries that are not Material Subsidiaries have, during the most recent Fiscal Quarter then ended or as of the last day of the most recently ended Fiscal Quarter, as applicable, in the aggregate, (a) total revenues for such period greater than 10.0% of the total revenues of Company and its Subsidiaries or (b) total assets as of the last day of such period greater than 10.0% of the consolidated assets of Company and its Subsidiaries as of such date, then Company shall, within forty-five (45) days (but within sixty (60) days with respect to a Foreign Subsidiary) after the date on which financial statements for such period are delivered pursuant to Section 5.1(a) of this Agreement, (i) designate in writing to the Investors one or more of such Subsidiaries as “Material Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 5.10 with respect to any such Subsidiaries.

“Material Real Property” means any fee-owned real property and owned by any Note Party with a fair market value as reasonably determined by Company equal to or greater than \$5,000,000.

“Maturity Date” means the earlier of (a) July 1, 2026 and (b) the date that the Notes shall become due and payable in full hereunder, whether by acceleration or otherwise.

“Minimum Note Redemption Price” means the greater of (a) (i) with respect to a Qualified IPO, Non-Qualified IPO, Sale of Company or acceleration of the Obligations occurring on or before August 15, 2021, \$236,000,000, (ii) with respect to a Qualified IPO or Non-Qualified IPO or Sale of Company occurring later than August 15, 2021 but on or before December 31, 2021, \$240,000,000 and (iii) with respect to a Qualified IPO, Non-Qualified IPO, Sale of Company or acceleration of the Obligations occurring later than December 31, 2021, \$246,000,000 and (b) the Required IRR.

“Moody’s” means Moody’s Investor Services, Inc.

“Mortgage” means a mortgage, deed of trust or deed to secure debt, in form and substance reasonably satisfactory to the Required Investors, made by a Note Party in favor of Collateral Agent for the benefit of the Secured Parties, securing the Obligations and delivered to Collateral Agent.

“Mortgage Deliverables” means each of the following with respect to any Material Real Property:

(i) fully executed and notarized Mortgage(s), in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering such Material Real Property;

(ii) a customary opinion of counsel in each jurisdiction in which such Material Real Property is located with respect to the enforceability of the form of Mortgage(s) to be recorded in such jurisdiction and such other customary matters as the Required Investors may reasonably request, in each case in form and substance reasonably satisfactory to the Required Investors;

(iii) (A) ALTA mortgagee title insurance policy or unconditional commitment therefor issued by one or more title companies reasonably satisfactory to the Required Investors with respect to each such Material Real Property (each, a “Title Policy”), in amounts not less than the fair market value of each such Material Real Property, as reasonably determined by Company, together with a title report issued by a title company with respect thereto, dated not more than thirty days prior to the Closing Date and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to the Required Investors and (B) evidence satisfactory to the Required Investors that such Note Party has paid to the title company or to the appropriate Governmental Authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp Taxes (including mortgage recording and intangible Taxes) payable in connection with recording the Mortgage(s) for each such Material Real Property in the appropriate real estate records;

(iv) evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, in form and substance reasonably satisfactory to the Required Investors; and

(v) ALTA survey of all such Material Real Property by a surveyor or engineer licensed to perform surveys in the jurisdiction where such Material Real Property is located, certified to Collateral Agent and dated as of a date sufficient for the title company to remove the standard survey exception in the Title Policy for such Material Real Property.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which a Note Party or any ERISA Affiliate contributes, is obligated to contribute, or has any Liability.

“Narrative Report” means, with respect to the financial statements for which such narrative report is required, (a) a narrative report describing the operations of Company and its Subsidiaries in the form prepared for presentation to senior management of Company and (b) a financial report package including management’s discussion and analysis of the financial condition and results of operations, in each case, for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate with comparison to and variances from the immediately preceding period and budget.

“Net Leverage Ratio” means, on any date of determination, the ratio of (a) Consolidated Total Debt as of such day (less Qualified Cash as of such day) to (b) Consolidated EBITDA for the period of four consecutive Fiscal Quarters of Company most recently ended on or prior to such date of determination for which financial statements have been furnished pursuant to Section 5.01(a) or (b).

“Net Senior Secured Leverage Ratio” means, on any date of determination, the ratio of (a) Consolidated Senior Secured Debt as of such day (less Qualified Cash as of such day) to (b) Consolidated EBITDA for the period of four consecutive Fiscal Quarters of Company most recently ended on or prior to such date of determination for which financial statements have been furnished pursuant to Section 5.01(a) or (b).

“Non-Qualified IPO” means any initial public offering or listing of Common Stock of Issuer (including a merger or other business combination of Issuer with a registered special purpose acquisition company (or any Subsidiary thereof)) that does not constitute a Qualified IPO.

“Non-Qualified IPO Notice” has the meaning specified in Section 2.8(a)(ii).

“Non-Qualified Sale of Company” means a Sale of Company that does not constitute a Qualified Sale of Company.

“Non-Qualified Sale of Company Notice” has the meaning specified in Section 2.8(b)(ii).

“Non-US Investor” has the meaning specified in Section 2.12(d)(i).

“Notes” has the meaning set forth in the recitals to this Agreement.

“Note Document” means any of this Agreement, the Notes, if any, the Collateral Documents, the Flow of Funds Agreement, the Collateral Agent Fee Letter, any Guaranty, the Intercompany Note, any Subordination Agreement and all other documents, instruments or agreements executed and delivered by a Note Party for the benefit of Collateral Agent or any Investor in connection herewith, except that, for the avoidance doubt, the term “Note Document” does not include the PubCo Notes or the PubCo Notes Indenture.

“Note Exposure” means, with respect to any Investor, as of any date of determination, the outstanding principal amount of the Notes of such Investor; provided, at any time prior to the purchase of the Notes on the Closing Date, the Note Exposure of any Investor shall be equal to such Investor’s Commitment.

“Note Party” means Company or any Guarantor.

“Obligations” means all indebtedness, advances, debts or obligations of every nature of each Note Party and its Subsidiaries from time to time owed to Collateral Agent (including former Collateral Agents), the Investors, or any of them, under any Note Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Note Party, would have accrued on any Obligation, whether or not a claim is allowed against such Note Party for such interest in the related bankruptcy proceeding), the Make-Whole Premium, fees, expenses, indemnification or otherwise and whether primary, secondary, direct, indirect, contingent, fixed or otherwise (including obligations of performance). For the avoidance doubt, the term “Obligations” does not include indebtedness, advances, debts or obligations under the PubCo Notes or the PubCo Notes Indenture.

“OFAC” has the meaning specified in the definition of “Anti-Terrorism Laws”.

“OFAC Sanctions Programs” means (a) the Requirements of Law and Executive Orders administered by OFAC, including but not limited to, Executive Order No. 13224, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

“Offshore Accounts” means accounts maintained by Company’s Subsidiaries outside the United States and the United Kingdom, provided that the maximum balance maintained in such accounts does not exceed the aggregate amount of \$25,000,000 at any time.

“Organizational Documents” means (a) with respect to any corporation or exempted company, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, as applicable, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization or certificate of formation, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Note Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

“Other Connection Taxes” means, with respect to Collateral Agent or any Investor, Taxes imposed as a result of a present or former connection between Collateral Agent or such Investor and the jurisdiction imposing such Tax (other than connections arising from Collateral Agent or such Investor 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 Note Document, or sold or assigned an interest in any Note or Note Document).

“Other Taxes” has the meaning specified in Section 2.12(b).

“Participant Register” has the meaning specified in Section 10.6(h)(ii).

“Participating Member State” means any member state of the European Union that adopts or has adopted (and has not ceased to adopt) the Euro as its lawful currency in accordance with legislation of the European Union relating to the Economic and Monetary Union.

“PATRIOT Act” has the meaning specified in Section 4.26.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Penalty Interest” has the meaning specified in Section 2.5(b).

“Pension Plan” means any employee pension benefit plan as defined in Section 3(2) of ERISA, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA, and in respect of which a Note Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Perfection Certificate” means a certificate in form reasonably satisfactory to the Required Investors that provides information with respect to the assets of each Note Party.

“Permitted Acquisition” means any acquisition by Company or any other Note Party, whether by purchase, merger or otherwise, of all or substantially all of the assets of, at least 50% of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

(a) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(b) the Person or Persons (or assets, business line, unit or division) being acquired shall be in the same or a related line of business as Company or any of its Subsidiaries, or is ancillary or complementary thereto; and

(c) with respect to Permitted Acquisitions the consideration for which is comprised, in whole or in part, of Cash, the assets, business line, unit or division being acquired or the Person whose Capital Stock is being acquired did not have pro forma Consolidated EBITDA that is less than negative \$20,000,000 during the 12-month consecutive period most recently concluded prior to the date such acquisition is consummated; provided that this clause (c) may be waived by the Required Investors.

“Permitted Convertible Indebtedness Call Transaction” shall mean any purchase by the Issuer of a call or capped call option (or substantively equivalent derivative transaction) on the Issuer’s Common Stock in connection with the issuance of any convertible Indebtedness otherwise permitted hereunder, or any refinancing, refunding, extension or renewal thereof as permitted hereunder, and any sale by the Issuer of a call option or warrant (or substantively equivalent derivative transaction) on the Issuer’s Common Stock; provided that the purchase price for the Permitted Convertible Indebtedness Call Transaction does not exceed the net proceeds from the issuance of such convertible notes issued in connection with the Permitted Convertible Indebtedness Call Transaction or any such refinancing, refunding, extension or renewal thereof as permitted hereunder.

“Permitted Indebtedness” means:

(a) Indebtedness of Issuer and its Subsidiaries existing as of the Closing Date set out more specifically on Schedule 6.1;

(b) the Obligations;

(c) Permitted Intercompany Investments;

(d) Deferred Payment Obligations;

(e) Indebtedness in an aggregate amount not to exceed at any time, together with any amounts incurred pursuant to clause (v) of this definition as a refinancing (or refinancings of such refinancings) of Indebtedness described in this clause (e), the greater of (x) \$15,000,000 and (y) 15% of TTM EBITDA with respect to (i) Capital Leases and (ii) purchase money Indebtedness (including any Indebtedness assumed in connection with a Permitted Acquisition); provided that any such Indebtedness shall be secured only by the asset subject to such Capital Lease or by the asset acquired in connection with the incurrence of such Indebtedness and the proceeds thereof;

(f) guarantees by Company or any Subsidiary in respect of Indebtedness otherwise permitted hereunder; provided that such guaranty constitutes a Permitted Intercompany Investment;

(g) unsecured Indebtedness of Issuer that is subordinated to the Obligations pursuant to a subordination, intercreditor, or other similar agreement in form and substance reasonably satisfactory to the Required Investors entered into between Collateral Agent and the other creditor or agent or trustee therefor;

(h) Permitted Senior Indebtedness in an aggregate amount not to exceed the greater of (x) \$150,000,000, together with any amounts incurred pursuant to clause (v) of this definition as a refinancing (or refinancings of such refinancings) of Indebtedness described in this clause (h), plus obligations incurred in the ordinary course in respect of cash management services and other bank products or services, or under any hedging arrangements entered into for non-speculative purposes, in either case owing to any lender of Permitted Senior Indebtedness or any Affiliate thereof, plus interest, fees, expenses, costs and indemnification obligations in respect of such Permitted Senior Indebtedness and (y) an aggregate amount of senior secured Indebtedness in the nature of Consolidated Senior Secured Debt, which amount when taken together with amounts outstanding under clause (x) hereof and, on a Pro Forma Basis, would not cause the pro forma Net Senior Secured Leverage Ratio to exceed 2.00 to 1.00.

(i) Indebtedness and obligations owing under Interest Rate Agreements;

(j) Indebtedness of a Person acquired in a Permitted Acquisition; provided that (i) Indebtedness was in existence prior to the date of such Permitted Acquisition, (ii) such Indebtedness was not incurred in connection with, or in contemplation of, such Permitted Acquisition and (iii) no Note Party or Subsidiary of a Note Party (other than the target of such Permitted Acquisition or the Subsidiary formed to acquire the Capital Stock or assets of such Person) is liable therefor;

(k) Indebtedness consisting of the financing of insurance premiums arising in the ordinary course of business;

(l) deferred compensation due to employees;

(m) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(n) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(o) Indebtedness and obligations owing to carriers, warehousemen, suppliers, or other similar persons incurred in the ordinary course of business and securing obligations which are not yet delinquent;

(p) Indebtedness in respect of performance bonds, performance letters of credit, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business and consistent with past practice;

(q) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services, in each case arising in the ordinary course of business;

(r) Indebtedness issued by the Issuer or any Subsidiary to any current or former director, officer, employee, member of management, manager or consultant of the Issuer or any Subsidiary (or their respective immediate family members) to finance the purchase or redemption of Capital Stock of the Issuer permitted hereunder;

(s) unsecured Indebtedness of Issuer and/or any Subsidiary or Indebtedness of Issuer and/or any Subsidiary secured on a junior priority basis to the Liens on the Collateral and subordinated to the Obligations pursuant to a subordination, intercreditor, or other similar agreement in form and substance reasonably satisfactory to the Required Investors, in an aggregate principal outstanding amount (such outstanding amount measured solely when incurred, created or assumed) pursuant to this clause (s) that, together with any amounts incurred pursuant to clause (v) of this definition as a refinancing (or refinancings of such refinancings) of Indebtedness described in this clause (s), does not exceed the greater of (x) \$20,000,000 and (y) 20% of TTM EBITDA for the most recently ended Test Period;

(t) Permitted Receivables Financings;

(u) unsecured Indebtedness so long as after giving effect thereto (A) the Net Leverage Ratio, calculated on a Pro Forma Basis, would not exceed 3.50 to 1.00, (B) no Event of Default has occurred and is continuing and (C) such Indebtedness does not mature prior to the Maturity Date; and

(v) any refinancings, refundings, renewals, replacements or extensions of Indebtedness described in any clause above, which refinancings, refundings, renewals, replacements or extensions are made in compliance with such respective applicable clause and which do not shorten the maturity thereof or increase the principal amount thereof (other than to finance any unpaid accrued interest and premium (including tender premiums) and fees thereon and any discounts, costs, fees, commissions and expenses in respect thereof or in connection with such refinancing, refunding, renewal, replacement or extension).

“Permitted Intercompany Investments” means Investments by (including equity Investments held by): (i) a Note Party to or in another Note Party; (ii) a Subsidiary that is not a Note Party to or in another Subsidiary that is not a Note Party; (iii) a Subsidiary that is not a Note Party to or in a Note Party, so long as, in the case of a loan or an advance, such loan or advance is evidenced by the Intercompany Note; (iv) a Note Party to or in one or more direct or indirect Subsidiaries that are not Note Parties in an aggregate amount not to exceed \$20,000,000 in the aggregate in any Fiscal Quarter.

“Permitted Investments” means:

(a) Investments in Cash and Cash Equivalents;

(b) Permitted Intercompany Investments;

(c) Permitted Acquisitions;

(d) existing Investments of Company or Subsidiary as of the Closing Date or Investments made pursuant to binding commitments in effect on the Closing Date, in each case, described on Schedule 6.6 and any modification, replacement, renewal or extension of the foregoing; provided that, the amount of the original Investment is not increased except pursuant to a contractual requirement to increase the amount of such Investment as in effect on the Closing Date, which requirement exists on the Closing Date and is described on Schedule 6.6;

(e) Investments consisting of (i) endorsements of negotiable instruments for collection or deposit in the ordinary course of business, (ii) extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss, and (iii) prepayments and deposits to suppliers in the ordinary course of business;

(f) Investments consisting of any bid, performance or similar project related bonds, parent company performance guarantees, bank performance guaranties or surety bonds or performance letters of credit, in each case provided in the ordinary course of business and consistent with past practice or industry practice;

(g) (i) guarantees permitted by Section 6.1 and (ii) guarantees by Company or any Subsidiary of operating leases or of other obligations that do not constitute Indebtedness entered into in the ordinary course of business;

(h) (x) Investments received or acquired in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business

(i) any Investment (x) acquired by Issuer or a Subsidiary (a) in exchange for any other Investment or accounts receivable held by the Issuer or such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the Issuer of such other Investment or accounts receivable, or (b) as a result of a foreclosure or other remedial action by the Issuer or any of its Subsidiaries with respect to any Investment or other transfer of title with respect to any Investment in default and (y) received in compromise or resolution of (a) obligations of trade creditors or customers that were incurred in the ordinary course of business of Issuer or any Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer, or (b) litigation, arbitration or other disputes;

(j) Investments received as non-cash consideration in a disposition permitted by Section 6.7 or 6.8;

(k) Investments of any Person (or any Subsidiary of such Person) in existence at the time such Person (or any Subsidiary of such Person) becomes a Subsidiary of Company; provided that, such Investments were not made in connection with or anticipation of such Person becoming a Subsidiary;

(l) Investments consisting of Permitted Liens;

(m) equity Investments owned as of the Closing Date in any Subsidiary;

(n) loans and advances to officers, directors, employees, managers, consultants and independent contractors for business-related travel and entertainment expenses, moving and relocation expenses and other similar expenses, in each case in the ordinary course of business and consistent with past practice;

(o) additional Investments by Issuer or any of Subsidiaries in an aggregate amount, taken together with all other Investments made pursuant to this clause (o) that are at the time outstanding, not to exceed the greater of (x) \$20,000,000 and (y) 20% of TTM EBITDA; provided, however, that if any Investment pursuant to this clause (o) is made in any Person that is not a Subsidiary at the date of the making of such Investment and such Person becomes a Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (b) above and shall cease to have been made pursuant to this clause (o);

(p) Investments the payment for which consists of Capital Stock of Issuer;

(q) Investments consisting of the leasing, licensing, sublicensing or contribution of intellectual property on a non-exclusive basis pursuant to joint marketing arrangements with other Persons;

(r) Investments consisting of purchases or acquisitions of inventory, supplies, materials and equipment or purchases, acquisitions, licenses, sublicenses, leases or subleases of intellectual property, other assets or other rights, in each case in the ordinary course of business;

(s) Redemptions or repurchases of the Notes;

- (t) guarantees of Indebtedness permitted to be incurred under Section 6.1 and Obligations relating to such Indebtedness, and guarantees in the ordinary course of business;
- (u) advances, loans or extensions of trade credit in the ordinary course of business by Issuer or any of its Subsidiaries to customers on ordinary terms;
- (v) loans and advances to one or more directors, officers or other employees or consultants of Issuer, or any Subsidiary of the Issuer in connection with such director's, officer's, employee's or consultant's acquisition of Capital Stock of the Issuer, so long as no cash is actually advanced by the Issuer or any Subsidiary to any such director, officer, employee or consultant;
- (w) guarantees of operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Issuer or any Subsidiary in the ordinary course of business;
- (x) Investments consisting of the redemption, purchase, repurchase or retirement of any Capital Stock permitted hereunder;
- (y) Investments consisting of guarantees in the ordinary course of business to support the obligations of any Subsidiary under its worker's compensation and general insurance agreements and consistent with past practice or industry practice;
- (z) Investments held to meet obligations of Issuer and its Subsidiaries to pay benefits under non-qualified retirement and deferred compensation plans maintained for the benefit of employees in the ordinary course of its business and consistent with past practice;
- (aa) Investments in Joint Ventures of the Issuer or any of its Subsidiaries in an aggregate amount, taken together with all other Investments made pursuant to this clause (aa) that are at the time outstanding, not to exceed the greater of (i) \$20,000,000 and (ii) 20% of TTM EBITDA; provided, however, that if any Investment pursuant to this clause (aa) is made in any Joint Venture that is not a Subsidiary at the date of the making of such Investment and such joint venture becomes a Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (b) above and shall cease to have been made pursuant to this clause (aa);
- (bb) intercompany current liabilities owed to Joint Ventures incurred in the ordinary course of business in connection with the cash management operations of the Issuer and its Subsidiaries;
- (cc) Investments in connection with any Permitted Receivables Financing;
- (dd) Investments in connection with Permitted Convertible Indebtedness Call Transactions;
- (ee) Investments in the nature of cash management obligations, netting services, cash pooling arrangements, ACH arrangements, daylight overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business or consistent with past practice or industry practice; and
- (ff) other Investments so long as (x) after giving effect thereto on a Pro Forma Basis, the Net Leverage Ratio does not exceed 3.00 to 1.00 and (y) no Event of Default has occurred and is continuing at the time of the Investment.

“Permitted Liens” means:

(a) Liens securing Permitted Senior Indebtedness; provided that, on and after the Collateral Provision Date and for so long as the Obligations are required to be secured pursuant to the terms of this Agreement, any such Liens shall be (i) on Collateral (or assets that (x) become Collateral within 60 days of the granting of such Lien or (y) are offered as additional Collateral to the Investors hereunder and on which the Required Investors decline to take such a Lien) and (ii) subject to the terms and conditions of a Subordination Agreement; provided further that, notwithstanding anything to the contrary herein, any such Liens on specific assets shall continue to be permitted under this clause (a) despite the release in accordance with the terms hereof of any Lien by the Required Investors or any representative thereof;

(b) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Note Document;

(c) Liens for Taxes not yet due and payable or if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) statutory Liens of landlords, banks (and rights of set off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401 (a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business for amounts not yet overdue for a period of more than thirty (30) days or which are being contested in good faith by appropriate proceedings and adequate reserves therefor are maintained in accordance with GAAP;

(e) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(f) deposits in the ordinary course of business of any Note Party to secure liabilities to insurance carriers, lessors, utilities and other service providers;

(g) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries;

(h) any interest or title of a lessor or sublessor under any lease, license or sublease (that is otherwise permitted hereunder without reference to this clause (h)) entered into by any Note Party or any Subsidiary thereof and in the ordinary course of its business and covering only the assets so leased, licensed or subleased;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) Liens described in Schedule 6.2 and any renewals or extensions thereof; provided that, (i) the property covered thereby is not changed other than improvements upon such property, (ii) the obligor with respect thereto is not changed and (iii) any renewal or extension of the obligations secured thereby is permitted by Section 6.1;

- (l) Liens securing Capital Leases and purchase money Indebtedness permitted pursuant to clause (e) of the definition of Permitted Indebtedness; provided, any such Lien shall encumber only the asset subject to such Capital Lease or the asset acquired with the proceeds of such Indebtedness;
- (m) any attachment or judgment Liens not constituting an Event of Default under Section 8.1(h);
- (n) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by Company or any of its Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to overdrafts, cash management and operating account arrangements, including those involving pooled accounts and netting arrangements;
- (o) Liens in favor of Issuer or any of its Subsidiaries other than Liens on the assets of a Note Party;
- (p) (i) deposits made or other security provided in the ordinary course of business to secure liability to insurance carriers or under self-insurance arrangements in respect of such obligations and (ii) liens on the unearned portion of insurance premiums securing the financing of the premiums with respect thereto to the extent the financing is permitted under the definition of Permitted Indebtedness;
- (q) non-exclusive grants of intellectual property, software and other technology licenses that do not materially detract from or interfere with the Issuer's use of such assets and in the ordinary course of business;
- (r) liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;
- (s) Liens incurred to secure cash management services arising in connection with ordinary banking arrangements;
- (t) other Liens securing obligations the principal amount of which does not exceed the greater of (i) \$15,000,000 and (ii) 15% of TTM EBITDA, at any one time outstanding;
- (u) Liens (i) on Capital Stock or assets of a Joint Venture to secure Indebtedness of such joint venture permitted to be incurred pursuant to Section 6.1, (ii) consisting of customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to non-wholly-owned Subsidiaries or (iii) consisting of any encumbrance or restriction (including put and call arrangements) in favor of a Joint Venture party with respect to Capital Stock of, or assets owned by, any Joint Venture or similar arrangement pursuant to any joint venture or similar agreement;
- (v) Liens on equipment of Issuer or any Subsidiary of the Issuer granted in the ordinary course of business to the Issuer's or such Subsidiary's client at which such equipment is located;
- (w) Liens created for the benefit of (or to secure) all of the Notes or the Guarantees;

(x) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; and (iii) in favor of banking or other financial institutions or entities, or electronic payment service providers, 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 or finance industry;

(y) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other Persons not given in connection with the issuance of Indebtedness; (ii) relating to pooled deposit or sweep accounts of the Issuer or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Issuer and its Subsidiaries; or (iii) relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Subsidiaries in the ordinary course of business;

(z) any encumbrance or restriction (including put and call arrangements) with respect to capital stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(aa) Liens in favor of a trustee or agent in an indenture or similar document relating to any Indebtedness to the extent such Liens secure only customary compensation and reimbursement obligations of such trustee or agent;

(bb) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(cc) [Reserved];

(dd) receipt of progress payments and advances from customers in the ordinary course of business to the extent same creates a Lien on the related inventory and proceeds thereof

(ee) Liens arising by virtue of the rendition, entry or issuance against the Issuer or any of its Subsidiaries, or any property of the Issuer or any of its Subsidiaries, of any judgment, writ, order or decree to the extent the rendition, entry, issuance or continued existence of such judgment, writ, order or decree (or any event or circumstance relating thereto) has not resulted in the occurrence of an Event of Default hereunder;

(ff) Liens on cash and Cash Equivalents consisting of proceeds of Indebtedness permitted under Section 6.1 issued by the Issuer or a Subsidiary under any indenture or similar debt instrument, pursuant to customary escrow arrangements that require the release of such cash and Cash Equivalents within 120 days after the date that such escrow is established and funded, provided that such Liens extend solely to the account in which such cash and Cash Equivalents are deposited and are solely in favor of the holders of such Indebtedness (or any agent or trustee for such Person or Persons);

(gg) Liens in connection with any Permitted Receivables Financing; and

(hh) Liens on cash and Cash Equivalents that are earmarked to be used to satisfy, defease or discharge Indebtedness; provided that (w) such cash and Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be satisfied, defeased or discharged, (x) such Liens extend solely to the account in which such cash and Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be satisfied, defeased or discharged and (y) the satisfaction, defeasance or discharge of such Indebtedness is permitted hereunder.

“Permitted Receivables Financing” means one or more non-recourse (except for Standard Securitization Undertakings) receivables purchase facilities made available to the Issuer or any Subsidiary to which the Issuer or any Subsidiary sells or otherwise disposes of Securitization Assets to either (a) a Person that is not a Company or a Subsidiary or (b) a Securitization Subsidiary that in turn sells Securitization Assets to a person that is not the Issuer or a Subsidiary in each case in exchange for cash proceeds which are distributed to a Note Party.

“Permitted Senior Indebtedness” means the SVB Financing Agreement (including letters of credit issued thereunder) or any other Indebtedness, in each case, incurred pursuant to clause (h) of the definition of Permitted Indebtedness so long as (A) such Indebtedness is not (x) on or after the Collateral Provision Date, secured by assets that are not Collateral hereunder (without giving effect to any declining by the Required Investors for such assets to become Collateral hereunder) or (y) guaranteed by any Person that is not a Note Party (without giving effect to any declining by Required Investors for such Person to become a Note Party hereunder), and (B) such Indebtedness is subject to the terms and conditions of a Subordination Agreement.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, estate, trusts, banks, trust companies, land trusts, business trusts, company, firm or other enterprise, association, entity or organizations, whether or not legal entities, and Governmental Authorities.

“PIK Interest” has the meaning specified in Section 2.4(c).

“Plan Asset Regulation” means 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA.

“Plan Assets” means “plan assets” as defined in the Plan Asset Regulation.

“Pledge and Security Agreement” means a Pledge and Security Agreement executed by Grantors in favor of Collateral Agent for the benefit of the Secured Parties in form and substance reasonably acceptable to the Required Investors and the Collateral Agent as it may be amended, supplemented or otherwise modified from time to time.

“Preferred Stock” means the preferred Capital Stock of Company.

“Pro Forma Basis” shall mean, as to any person, for any events as described below that occur subsequent to the commencement of a period for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred on the first day of the most recent period of four consecutive Fiscal Quarters ended on or before the occurrence of such event in each case to the extent practicable in the reasonable judgment of the Issuer: (i) any asset sale and any asset acquisition, Investment (or series of related Investments), and (ii) any incurrence, repayment, repurchase or redemption of Indebtedness (or any issuance, repurchase or redemption of Disqualified Capital Stock or preferred stock), other than fluctuations in revolving borrowings in the ordinary course of business.

Pro forma calculations made pursuant to the definition of this term “Pro Forma Basis” shall be determined in good faith by a financial officer of the Issuer.

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date on which the relevant calculation is being made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness if such hedging obligation has a remaining term in excess of 12 months). Interest on a Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capital Lease in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period, except to the extent the outstandings thereunder are reasonably expected to increase as a result of any transactions described in clause (i) of the first paragraph of this definition of “Pro Forma Basis” which occurred during the respective period or thereafter and on or prior to the date of determination. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may reasonably designate.

“Pro Rata Share” means with respect to all payments, computations and other matters relating to the Notes of any Investor, the percentage obtained by dividing the Note Exposure of that Investor by the aggregate Note Exposure of all Investors.

“PTO” has the meaning specified in the definition of “Excluded Assets”.

“PubCo Notes” means those notes issued pursuant to, and governed exclusively by, the PubCo Notes Indenture.

“PubCo Notes Indenture” means an Indenture substantially in the form of Exhibit I.

“Purchase Price” has the meaning specified in Section 2.1(a)(i).

“Qualified Capital Stock” means Capital Stock other than Disqualified Capital Stock.

“Qualified Cash” means, as of any date of determination, the amount of unrestricted Cash and Cash Equivalents of the Note Parties.

“Qualified IPO” means the issuance of Common Stock or equity interests of any direct or indirect parent of Company or any Subsidiary of Company (“Group Shares”), pursuant to a bona fide firmly-committed underwritten initial public offering, underwritten by one or more investment banks, pursuant to an effective registration statement under the Securities Act of 1933, as amended, or a direct listing pursuant to a Form 10 registration statement (or any successor form thereto) (including a merger or other business combination of Issuer with a registered special purpose acquisition company (or any Subsidiary thereof)) (an “IPO”) in which Company has an equity market capitalization of greater than \$2,000,000,000, as calculated by reference to the IPO Price.

“Qualified IPO Notice” has the meaning specified in Section 2.8(a)(i).

“Qualified Sale of Company” means a Sale of Company in respect of which the aggregate consideration paid to the holders of the equity interests of Company or of any direct or indirect parent of Company exceeds \$2,000,000,000.

“Qualified Sale of Company Notice” has the meaning specified in Section 2.8(b)(i).

“Register” has the meaning specified in Section 2.3(b).

“Related Fund” means, with respect to any Investor that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Investor or by an Affiliate of such investment advisor.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Remedial Action” means all actions taken to (a) correct or address any actual or threatened non-compliance with Environmental Law, (b) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (c) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (d) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (e) perform any other actions authorized or required by Environmental Law or Governmental Authority.

“Required Investors” means Investors holding at least 50.1% in aggregate principal amount of the outstanding Notes.

“Required IRR” means the amount actually received in cash in respect of the Notes, as of any date of determination, which would provide the Investors with an internal rate of return on the Notes of not less than 16.0% per annum compounded quarterly; provided, that for purposes of the calculation of Required IRR, (v) payments of non-default rate cash interest shall be taken into account, and interest paid at the Default Rate shall be disregarded, (w) Penalty Interest paid pursuant to Section 2.5(b) shall be disregarded, (x) payments pursuant to Section 10.2 or 10.3 shall be disregarded, (y) interest payments paid in cash shall be deemed paid on the date actually paid in cash (i.e. on the applicable Interest Payment Date if paid on such date) and (z) all payments (other than cash interest payments) shall be deemed paid on such date of determination.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, or requirements of any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Restricted Junior Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Company now or hereafter outstanding; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Company or any of its Subsidiaries that is not a Note Party now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Company or any of its Subsidiaries that is not a Note Party now or hereafter outstanding, and (d) any voluntary redemption, purchase, retirement or defeasance (including in substance or legal defeasance) prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any subordinated Indebtedness, other than with the proceeds of any subordinated Indebtedness or Permitted Senior Indebtedness, in each case, permitted hereunder.

“Sale of Company” means any of the following events or series of related events:

- (a) the sale, lease, transfer or other disposition of 50% or more of Company’s and its Subsidiaries’ properties or assets (as determined on a consolidated basis) to any Person or group other than among Issuer and its Subsidiaries in one transaction or a series of related transactions;
- (b) the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a Person or group of affiliated Persons (other than an underwriter of Company’s securities) of Company’s securities if, after such closing, such Person or group of affiliated Persons would hold 50% or more of the outstanding voting stock (determined on an as converted and exercised basis) of Company (or the surviving or acquiring entity);
- (c) the obtaining by any Person or group of affiliated Persons of the power (whether or not exercised) to elect a majority of the members of the Board of Directors (or similar governing body) of Company;
- (d) the grant to a single entity (or group of affiliated entities) of an exclusive, irrevocable license to all or substantially all of Company’s intellectual property that is used to generate all or substantially all of Company’s revenues;
- (e) the adoption by the holders of Capital Stock of Issuer of a plan, the consummation of which would result in the liquidation, dissolution or winding up of Issuer; provided, however, that a transaction shall not constitute a Sale of Company if its sole purpose is to change the state of Company’s incorporation or to create a holding company that will be owned in the same proportions by the Persons who held Company’s securities immediately prior to such transaction; or
- (f) any merger or consolidation in which Issuer is the Surviving Person as a result of which the holders of capital stock of Issuer immediately prior to such transaction own less than 50% of the aggregate voting power or economic interest represented by the capital stock of Company or the Surviving Person.

Notwithstanding the foregoing, an Internal Reorganization Transaction shall not be deemed a Sale of Company.

“Sale of Company Conversion Price” means cash consideration, in Dollars, in an amount equal to the product of (a) the Sale of Company Price *multiplied* by (b) the quotient of (i) the Minimum Note Redemption Price *divided by* (ii) the Implied Conversion Price.

“Sale of Company Price” means (i) if the consideration is paid in cash, the price per share of Capital Stock received in connection with such transaction that constitutes a Sale of Company, and (ii) if the consideration is paid other than in cash, the value of the consideration received per share of Capital Stock in connection with such transaction that constitutes a Sale of Company, in the case of this clause (ii), as determined by the Board of Directors in good faith and in a commercially reasonable manner, based on the value of such consideration as of the date of the Sale of Company, it being understood that if the definitive agreement relating to such transaction provides for formulas or methodologies for the valuation of such consideration, the Board of Directors shall rely on such formulas or methodologies when making its determination. For purposes of calculating the Sale of Company Price, no value shall be ascribed to any deferred payments, contingent payments, escrows, holdbacks or earn-outs that may be due and payable in connection with a Sale of Company.

“Sanctions Programs” means: OFAC Sanctions Programs, and any sanctions enforced by the United Nations Security Council, the European Union, Her Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority.

“S&P” means Standard & Poor’s Financial Services, LLC, or any successor to the ratings agency business thereof.

“SEC” means the United States Securities and Exchange Commission or any successor thereto.

“Secured Parties” has the meaning assigned to that term in the Pledge and Security Agreement.

“Securities Account” means a securities account (as defined in the UCC).

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Securitization Asset” means any accounts receivable, real estate asset, mortgage receivables or related assets relating to a Permitted Receivables Financing.

“Securitization Repurchase Obligation” means any obligation of a seller of Securitization Assets in a Permitted Receivables Financing to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“Securitization Subsidiary” means any Subsidiary in each case formed for the purpose of and that solely engages in one or more Permitted Receivables Financings and other activities reasonably related thereto.

“Significant Subsidiary” means any Subsidiary of the Company that satisfies the criteria for a “significant subsidiary” set forth in Rule 1-02 of Regulation S-X under the Exchange Act, as such regulation is in effect on the Closing Date.

“Similar Business” means any business engaged or proposed to be engaged in by Company or any of its Subsidiaries on the Closing Date and any business or other activities that are similar, ancillary or an extension, development or expansion of, the businesses in which Issuer and its Subsidiaries are engaged on the Closing Date.

“Solvent” means, with respect to Company and its Subsidiaries on a consolidated basis, that as of the date of determination, both (a)(i) the sum of Company’s and its Subsidiaries’ debt (including contingent liabilities), taken as a whole, does not exceed the present fair saleable value of Company’s and its Subsidiaries’ present assets, taken as a whole; (ii) the capital of Company and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of Company and its Subsidiaries, taken as a whole, as contemplated on the Closing Date or with respect to any transaction contemplated or undertaken after the Closing Date; and (iii) Company and its Subsidiaries, taken as a whole, have not incurred and do not intend to incur, or believe that they will incur, debts beyond their ability to pay such debts as they become due (whether at maturity or otherwise); and (b) Company and its Subsidiaries, taken as a whole, are “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Specified Event of Default” has the meaning specified in Section 2.5(b).

“Standard Securitization Undertakings” means representations, warranties, performance guarantees, servicing obligations, covenants and indemnities entered into by the Issuer or any Subsidiary of the Issuer which the Issuer has determined in good faith to be customary or typical in a securitization financing, including those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

“Subordination Agreement” means an Intercreditor Agreement or Subordination Agreement with respect to any Permitted Senior Indebtedness that is on the terms contemplated by Exhibit K or otherwise reasonably acceptable to the Required Investors, and including, for the avoidance of doubt, the SVB Subordination Agreement.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless otherwise specified or unless the context otherwise requires, “Subsidiary” shall mean a Subsidiary of the Issuer.

“Successor Issuer” means a Person who is a successor of Issuer or a Person who issues Capital Stock in any Internal Reorganization Transaction in which the common stock is converted into or exchanged for, in whole or in part, Capital Stock of such Person.

“Surviving Person” means the surviving Person in a merger, consolidation, sale or similar transaction involving Issuer.

“SVB Financing Agreement” means that certain Amended and Restated Loan and Security Agreement dated as of September 15, 2014, among Company and Silicon Valley Bank (as amended by (i) that certain First Amendment to Amended and Restated Loan and Security Agreement dated as of November 20, 2014, (ii) that certain Second Amendment to Amended and Restated Loan and Security Agreement dated as of January 27, 2016, (iii) that certain Third Amendment to Amended and Restated Loan and Security Agreement dated as of August 25, 2016, (iv) that certain Fourth Amendment to Amended and Restated Loan and Security Agreement dated as of October 6, 2016, (v) that certain Fifth Amendment to Amended and Restated Loan and Security Agreement dated as of November 2, 2018 (vi) that certain Sixth Amendment to Amended and Restated Loan and Security Agreement dated as of March 27, 2020 and that certain Seventh Amendment to Amended and Restated Loan and Security Agreement dated as of June 21, 2021 and as further refinanced, replaced, amended, restated, amended and restated, supplemented or otherwise modified).

“SVB Subordination Agreement” means that certain Subordination Agreement (as amended, restated, supplemented or modified from time to time) dated as of the date hereof between Silicon Valley Bank and Collateral Agent and reasonably acceptable to the Required Investors.

“Tax” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed by any Governmental Authority and all interest, penalties, additions to tax or other liabilities with respect thereto.

“Test Period” shall mean, on any date of determination, the period of four consecutive Fiscal Quarters of the Issuer then most recently ended (taken as one accounting period) for which financial statements have been (or were required to be) furnished pursuant to Section 5.01(a) or (b) under this Agreement.

“Tax Distribution” shall mean, for any taxable period for which the Issuer is a member of a consolidated, combined, unitary or similar tax group for U.S. federal and/or applicable state or local tax purposes of which a parent entity is the common parent, payments by the Issuer or any of its Subsidiaries to discharge the consolidated, combined, unitary or similar Tax liabilities of such parent company and its Subsidiaries when and as due, to the extent such liabilities are attributable to the income of the Issuer and/or any Subsidiary.

“Transaction Costs” means the reasonable and documented fees, costs and expenses payable by Company or any of its Subsidiaries to the Investors on or before the Closing Date in connection with the transactions contemplated by the Note Documents, in an amount not to exceed \$350,000.

“Treasury Rate” has the meaning specified in Section 2.9(i).

“TTM EBITDA” means on any date Consolidated EBITDA for the period of four consecutive Fiscal Quarters most recently ended on or prior to such date, calculated on a Pro Forma Basis.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

“UETA” means the Uniform Electronic Transactions Act.

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

Section 1.2 Accounting and Other Terms.

(a) Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Investors pursuant to Section 5.1(a) and Section 5.1(b) shall be prepared in accordance with GAAP as in effect at the time of such preparation. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Company and its 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. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts referred to herein shall be made, without giving effect to any change to GAAP occurring after the Closing Date as a result of the adoption of Financial Accounting Standards Board Accounting Standards Codification 842 (or any other Accounting Standards Codification having a similar result or effect and related interpretations), or any other proposals issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a Capital Lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on the Closing Date; it being further agreed that all liabilities under or in respect of any lease (whether now outstanding or at any time hereafter entered into or incurred) that, under GAAP as in effect on the Closing Date, would be accrued as an operating lease expense and would not constitute a Capital Lease shall continue to be treated as operating lease expense in accordance with GAAP as in effect on the Closing Date and shall not constitute a Capital Lease.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the UCC as in effect from time to time in the State of New York and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the UCC as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Required Investors may otherwise reasonably determine.

(c) For purposes of determining compliance with any incurrence or expenditure tests set forth in this Agreement, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars (\$)) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other recognized and publicly available service for displaying exchange rates as may be reasonably selected by the Required Investors or, in the event no such service is available, on such other basis as is reasonably satisfactory to the Required Investors) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other recognized and publicly available service for displaying exchange rates as may be reasonably selected by the Required Investors or, in the event no such service is available, on such other basis as is reasonably satisfactory to the Required Investors) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time).

Section 1.3 Interpretation, Etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Article, Section, Appendix, Schedule or Exhibit shall be to an Article, a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible. Any reference herein or in any other Note Document to the satisfaction, repayment, or payment in full of the Obligations or Guaranteed Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Notes, together with the payment of any premium applicable to the repayment of the Notes, including (if and to the extent applicable) Make-Whole Premium, (ii) all costs, expenses, or indemnities payable pursuant to Section 10.2 or Section 10.3 of this Agreement that have accrued and are unpaid regardless of whether demand has been made therefor and (iii) all fees, charges (including loan fees, service fees, professional fees, and expense reimbursement) and other Obligations that have accrued hereunder or under any other Note Document and are unpaid and (b) the receipt by the Required Investors of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to the Investors at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys’ fees and legal expenses), such cash collateral to be in such amount as the Required Investors reasonably determines is appropriate to secure such contingent Obligations. Notwithstanding anything in this Agreement to the contrary, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (B) all requests, rules, guidelines or directives concerning capital adequacy 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 shall, in each case, be deemed to be enacted, adopted, issued, phased in or effective after the date of this Agreement regardless of the date enacted, adopted, issued, phased in or effective. Unless the context requires otherwise (a) any definition of or reference to any Note Document, agreement, instrument or other document herein 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 in any Note Document) and (b) any reference to any law or regulation shall (i) include all statutory and regulatory provisions consolidating, amending, replacing or interpreting or supplementing such law or regulation, and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.3 shall apply, *mutatis mutandis*, to all Note Documents.

Section 1.4 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York, New York on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” each means “to but excluding” and the word “through” means “to and including”; provided, however, that with respect to a computation of fees or interest payable to any Investor, such period shall in any event consist of at least one full day.

Section 1.5 Certain Calculations. For purposes of determining the permissibility of any action, change, transaction or event that requires a calculation of any financial ratio or test, such financial ratio or test shall be calculated at the time such action is taken (subject to Section 1.6), such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be. Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (any such amounts, the “Fixed Amounts”) substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (any such amounts, the “Incurrence-Based Amounts”), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts. For purposes of determining compliance at any time with Article VI, in the event that any Indebtedness, Lien, Restricted Junior Payment or Investment, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Article VI, the Issuer, in its sole discretion, may, from time to time, classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any category. It is understood and agreed that any Indebtedness, Lien, Restricted Junior Payment or Investment need not be permitted solely by reference to one category of permitted Indebtedness, Lien, Restricted Junior Payment or Investment under the applicable section of Article VI, but may instead be permitted in part under any combination thereof.

Section 1.6 Limited Condition Transactions . In connection with any action being taken solely in connection with a Limited Condition Transaction (including any contemplated incurrence or assumption of Indebtedness in connection therewith), for purposes of:

- (a) determining compliance with any provision of the Note Documents (other than Section 6.10 hereof) that requires the calculation of the Net Leverage Ratio or the Net Senior Secured Leverage Ratio;
- (b) determining the accuracy of representations and warranties and/or whether a Default or Event of Default shall have occurred and be continuing (or any subset of Defaults or Events of Default); or
- (c) testing availability under baskets set forth in the Note Documents (including baskets measured as a percentage of Consolidated EBITDA);

in each case, at the option of the Issuer (the Issuer's election, in writing to the Collateral Agent, to exercise such option in connection with any Limited Condition Transaction, an "LCA Election"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements with respect to such Limited Condition Transaction are entered into (the "LCA Test Date"), and if, on a Pro Forma Basis after giving pro forma effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness or Liens and the use of proceeds thereof) as if they had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date, the Issuer could have taken such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with.

For the avoidance of doubt, if the Issuer has made an LCA Election and any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in Consolidated EBITDA of the Issuer or any Subsidiary or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations.

If the Issuer has made an LCA Election for any Limited Condition Transaction, then, in connection with any subsequent calculation of the ratios or baskets on or following the relevant LCA Test Date and prior to the earliest of (i) the date on which such Limited Condition Transaction is consummated, (ii) 120 days following the LCA Test Date or (iii) the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness or Liens and the use of proceeds thereof) have been consummated; provided that if such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any action taken where compliance of such ratios or baskets was determined or tested assuming such Limited Condition Transaction and other transaction in connection therewith have been consummated will not be deemed to have been exceeded as a result of failure to consummate such Limited Condition Transaction and other transactions in connection therewith.

ARTICLE II

NOTES

Section 2.1 Notes.

(a) Notes Issuance.

(i) Purchase and Sale of the Notes. Subject to the terms and conditions hereof, each Investor severally and not jointly agrees to purchase, and Issuer agrees to issue, sell and deliver, on the Closing Date, Notes in an amount equal to such Investor's Commitment (the "Purchase Price"). Any Note issued under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed or reissued. Each Investor's Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the purchase of Notes in an amount equal to such Investor's Commitment on such date. The Notes issued pursuant hereto shall evidence the principal amounts of all Notes sold hereunder and the date and principal amount of each purchase and sale of Notes to the Investors by Issuer, as well as each payment or prepayment made on account of the principal thereof, and in each case the resulting aggregate unpaid principal balance thereof (including capitalized interest), shall be recorded by each Investor in accordance with Section 2.3(b).

(ii) The Closing. The purchase and sale of the Notes will occur at a closing (the "Closing") to be held at the offices of Ropes & Gray LLP, Prudential Tower, 800 Boylston Street, Boston, Massachusetts 02199, or at such other location as may be agreed upon by the parties hereto, subject to the terms and conditions hereof.

(iii) Payment of Purchase Price. Upon satisfaction or waiver of the conditions precedent specified herein, at the Closing, each Investor shall pay or cause to be paid the Purchase Price to Issuer by wire transfer in immediately available funds, in accordance with the wire instructions for Issuer set forth on Schedule 2.1 or as otherwise directed by Issuer, and against such payment, Issuer will deliver the Notes issued in the names of the Investors.

(b) Issuer shall deliver to each Investor a fully executed Issuance Request no later than 5:00 p.m. one Business Day prior to the Closing Date (or such shorter period permitted by the Required Investors), with respect to the Notes.

Any Investor (A) may act without liability upon the basis of written or facsimile notice believed by such Investor in good faith to be from Issuer (or from any Authorized Officer thereof designated in writing purportedly from Issuer to such Investor), (B) shall be entitled to rely conclusively on any Authorized Officer's authority to request the purchase of Notes on behalf of Issuer until the Investors receive written notice to the contrary, and (C) shall have no duty to verify the authenticity of the signature appearing on any written Issuance Request.

Section 2.2 Use of Proceeds. The proceeds of the sale by Issuer of the Notes shall be applied by Company for working capital, capital expenditures and general corporate purposes of Company and its Subsidiaries; provided, that no more than \$100,000,000 of such proceeds may be used by Company for secondary share repurchases. No portion of the proceeds of the sale by Issuer of the Notes shall be used in any manner that causes or might cause such sale and purchase of the Notes or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

(a) Investors' Evidence of Debt. Each Investor shall maintain on its internal records in accordance with its usual practice an account or accounts evidencing the Obligations of Issuer to such Investor, including the amounts of the Notes purchased by it and each repayment in respect thereof. Any such recordation shall be conclusive and binding on Issuer, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not in any manner affect Issuer's Obligations in respect of any Notes; and provided further, in the event of any inconsistency between the Register and any Investor's records, the recordations in the Register shall govern in the absence of manifest error.

(b) Register. Company shall maintain a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of Investors and principal amounts of the Notes (and stated interest therein) purchased by each Investor pursuant to the terms hereof from time to time (the "Register"). The Register shall be available for inspection by Issuer, Collateral Agent and any Investor at any reasonable time and from time to time upon reasonable prior written notice. Company shall record in the Register the Notes, and each repayment in respect of the principal amount of the Notes, each assignment and assumption, and any such recordation shall be conclusive and binding on Issuer and each Investor, absent manifest error; provided that failure to make any such recordation, or any error in such recordation, shall not affect Issuer's Obligations in respect of any Note. Company shall promptly correct any error in the Register upon notice from any Investor. The parties intend that any interest in or with respect to the Notes under this Agreement be treated as being issued and maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Internal Revenue Code and any regulations thereunder (and any successor provisions), including without limitation under United States Treasury Regulations Section 5f.103-1(c) of Proposed Regulations Section 1.163-5 (and any successor provisions), and the provisions of this Agreement shall be construed in a manner that gives effect to such intent.

(c) Exchange. Notes may be exchanged at the option of any Investor holding such Note for Notes of a like aggregate principal amount, but in different denominations. Whenever any Notes are so surrendered for exchange, Issuer, at its expense, will execute and deliver the Notes that the Investor making the exchange is entitled to receive.

(d) Replacement Notes. If any mutilated Note is surrendered to Issuer, or if any Note is lost or stolen and Issuer receives evidence to its satisfaction of the ownership and the destruction, loss or theft of such Note, Issuer shall issue a replacement Note. If required by Issuer, an unsecured indemnity must be supplied by the applicable Investor that is sufficient in the judgment of Issuer to protect Issuer from any loss that it may suffer if a Note is replaced.

(e) Restrictive Securities Legend. Upon original issuance thereof, and until such time as the same is no longer required under the applicable requirements of the Securities Act, the Notes (and all Notes issued in exchange therefor or substitution thereof) shall bear the following legend:

"THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER MAY NOT OFFER, SELL, TRANSFER, ASSIGN, PLEDGE, HYPOTHECATE, OR OTHERWISE DISPOSE OF OR ENCUMBER THIS NOTE EXCEPT (I) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR PROSPECTUS UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAW, RESPECTIVELY, OR WITH AN EXEMPTION FROM SUCH REGISTRATION OR PROSPECTUS REQUIREMENT AND (II) IN COMPLIANCE WITH SECTION 2.3 OF THAT CERTAIN SENIOR SUBORDINATED SECURED NOTE PURCHASE AGREEMENT DATED JULY 1, 2021, AMONG ISSUER, COLLATERAL AGENT, THE INVESTORS AND THE OTHER NOTE PARTIES PARTY THERETO (EACH AS DEFINED THEREIN)."

(f) Other Legends. Each Note shall bear a legend in substantially the following form:

“THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN (X) THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO TIME, THE “SVB SUBORDINATION AGREEMENT”) DATED AS OF JULY 1, 2021 BETWEEN SILICON VALLEY BANK AND THE BANK OF NEW YORK MELLON, TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE OBLIGORS DESCRIBED THEREIN PURSUANT TO THAT CERTAIN AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 15, 2014 AMONG OUTBRAIN INC. AND SILICON VALLEY BANK, AS SUCH LOAN AND SECURITY AGREEMENT HAS BEEN AND HEREAFTER MAY BE AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS UNDER THAT AGREEMENT AS CONTEMPLATED BY THE SENIOR SUBORDINATED SECURED NOTE PURCHASE AGREEMENT (THE “NOTE PURCHASE AGREEMENT”), DATED AS OF JULY 1, 2021 BETWEEN OUTBRAIN INC., THE BANK OF NEW YORK MELLON, AND THE INVESTORS FROM TIME TO TIME PARTY THERETO AND (Y) ANY ADDITIONAL SUBORDINATION AGREEMENT (AS DEFINED IN THE NOTE PURCHASE AGREEMENT) ENTERED INTO FROM TIME TO TIME; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SVB SUBORDINATION AGREEMENT AND THE NOTE PURCHASE AGREEMENT.”

Section 2.4 Interest.

(a) Except as otherwise set forth herein, interest shall be payable on the principal amount of the Notes, from the Closing Date to, but excluding, repayment thereof at a rate of (i) prior to July 1, 2024, 10.0% per annum and (ii) on and after July 1, 2024, 14.5% per annum.

(b) Interest payable hereunder shall be computed on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest in respect of any Note, the date of the issuance of such Note shall be included, and the date of payment of such Note shall be excluded.

(c) Accrued interest in respect of the Notes shall be payable in arrears (i) on each Interest Payment Date and (ii) on the Maturity Date. On each Interest Payment Date accrued interest shall be paid, at the election of Company, (i) entirely in cash or (ii) by capitalizing on the applicable Interest Payment Date any accrued interest (all such accrued interest capitalized from time to time is referred to herein as “PIK Interest”) and by adding such PIK Interest to the outstanding principal amount of the Notes. For each Interest Payment Date, Company shall be deemed to have elected to pay accrued interest entirely as PIK Interest, unless at least two (2) Business Days prior to the applicable Interest Payment Date, Company has provided written notice to the Investors of its election to pay the entirety of the accrued interest in cash (a “Cash Pay Election”). Following the provision of a Cash Pay Election with respect to any Interest Payment Date, accrued interest shall be paid on such Interest Payment Date entirely in cash. On the Maturity Date, all accrued interest shall be paid in cash. PIK Interest which is added to the outstanding principal amount of the Notes shall bear interest in accordance with this Section 2.4 and shall otherwise be treated as principal of such Notes for purposes of this Agreement, including being payable in cash in full on the Maturity Date and with respect to the accrual of interest on the PIK Interest amounts.

Section 2.5 Default Interest; Penalty Interest.

(a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default for which Penalty Interest is paid in accordance with clause (b) below), Issuer shall pay interest on the principal amounts of the Notes and, to the extent permitted by applicable law, any fees or other amounts owed hereunder (including any Make-Whole Premium, if applicable), shall thereafter bear interest (including post petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand, at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the Notes (the “Default Rate”). All interest payable at the Default Rate shall be payable in kind on each Interest Payment Date. Payment or acceptance of interest at the Default Rate provided for in this Section 2.5 is not a permitted alternative to timely payment and shall not constitute a waiver of any Default or Event of Default or otherwise prejudice or limit any rights or remedies of any Investor.

(b) Upon the occurrence and during the continuance of an Event of Default (a “Specified Event of Default”) pursuant to Section 8.1(c), arising from the failure to comply with Section 5.13, the Issuer shall pay (x) beginning on the date that is the 60th day following the Closing Date for each day up to the 30th day thereafter for so long as the Collateral Provision Date Condition was not satisfied, interest at a rate per annum equal to 4.0% of the principal amount of the Notes as long as such Specified Event of Default is continuing, and (y) beginning on the date that is the 91st day following the Closing Date for each day thereafter for so long as the Collateral Provision Date Condition was not satisfied, interest at a rate per annum equal to 6.0% of the principal amount of the Notes as long as such Specified Event of Default is continuing. For the avoidance of doubt, the interest that accrues pursuant to this Section 2.5(b) (“Penalty Interest”) will be in addition to the Interest that accrues on a Note pursuant to Section 2.4. Penalty Interest that has accrued shall be payable in cash at the end of each calendar month in which the Specified Event of Default has occurred or is continuing, as applicable.

Section 2.6 Collateral Agent Fees. Company shall pay to Collateral Agent such fees as shall have been separately agreed upon in the Collateral Agent Fee Letter in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between Company and Collateral Agent).

Section 2.7 Repayment of Notes.

(a) The Notes, together with all other amounts owed hereunder with respect thereto, shall be paid in full on the Maturity Date.

(b) No prepayments of the Notes shall be permitted without the prior written consent of the Investor whose Notes are being prepaid.

Section 2.8 Redemption or Exchange of Notes Upon IPO or Sale of Company.

(a) IPO

(i) Qualified IPO. At least five (5) Business Days, but not more than sixty (60) days, prior to the proposed consummation of a Qualified IPO, Issuer shall provide the Investors with written notice in the form of Exhibit H-1 (a “Qualified IPO Notice”) setting forth the proposed terms and proposed closing date of such Qualified IPO. Issuer may send an updated Qualified IPO Notice to the Investors from time to time containing updated terms and closing date. Upon the consummation of such Qualified IPO, Company shall at its election (i) redeem the Notes by paying the IPO Conversion Price in cash to the Investors or (ii) exchange the Notes of each Investor for PubCo Notes having an aggregate principal amount equal the IPO Conversion Price in accordance with such Investor’s Pro Rata Share.

(ii) Non-Qualified IPO. At least five (5) Business Days, but not more than sixty (60) days, prior to the proposed consummation of a Non-Qualified IPO, Issuer shall provide the Investors with written notice in the form of Exhibit H-2 (a “Non-Qualified IPO Notice”) setting forth the proposed terms and proposed closing date of such Non-Qualified IPO. In the event the terms of the Non-Qualified IPO are changed in any material respect, including for the avoidance of doubt, any economic changes, Issuer shall send an updated Non-Qualified IPO Notice to the Investors containing the updated terms and closing date. Upon the consummation of such Non-Qualified IPO, Company shall, at its election (i) redeem the Notes by paying in cash the Minimum Note Redemption Price to the Investors or (ii) exchange the Notes of each Investor for PubCo Notes having an aggregate principal amount equal the Minimum Note Redemption Price in accordance with such Investor’s Pro Rata Share.

(iii) Lock-Up. Each Investor that receives PubCo Notes pursuant to clauses (i) and (ii) above, will not, without the prior written consent of the managing underwriter of a Qualified IPO, until the date specified by Company and the managing underwriter (such date not to exceed 180 days from the date of the final prospectus relating to the registration by Company of the listed Group Shares under the Securities Act on a registration statement on Form S-1), (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly any PubCo Note without the consent of Company, or (b) enter into any swap, derivatives or other agreement or any hedging transaction that transfers, in whole or in part, any of the economic consequences of ownership of such PubCo Notes held at the time of issuance of such PubCo Notes. Each Investor further agrees to execute Lock-Up Agreements. If Company or any underwriter selected in connection with an initial public offering does not require a Person holding more than one percent (1%) of the outstanding Common Stock of Company (on an as-converted to Common Stock basis) to be subject to a lock-up period, or terminates or waives a lock-up period with respect to a Person holding any shares of Common Stock or any other security of the Company that is or may become convertible, exercisable, redeemable or otherwise exchangeable for shares of Common Stock, then such action shall also apply to the Investors. The foregoing provisions of this Section 2.8(a)(iii) shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement or securities acquired in or following the Qualified IPO or Non-Qualified IPO, as applicable, and shall be applicable to the Investors only if all officers, directors and holders of more than one percent (1%) of the Common Stock (after giving effect to conversion into Common Stock of all outstanding shares of Company’s Preferred Stock) enter into a similar agreement. The underwriters in connection with such registration are intended third party beneficiaries of this Section 2.8(a)(iii) and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto.

(b) Sale of Company.

(i) Qualified Sale of Company. As promptly as practicable and in any event no later than the earlier of (x) two (2) Business Days following the execution of a definitive agreement relating to a transaction that constitutes a Qualified Sale of Company and (y) ten (10) Business Days prior to the anticipated closing date of such transaction, Issuer shall provide the Investors with written notice in the form of Exhibit H-3 (a “Qualified Sale of Company Notice”) setting forth the proposed terms and conditions and proposed closing date of, and shall include all definitive documentation relating to, the Qualified Sale of Company, which terms and conditions may be modified in Issuer’s sole discretion provided that Issuer delivers to the Investors an updated Qualified Sale of Company Notice, including all updated terms and conditions and definitive documentation not later than five (5) Business Days before the closing of the Qualified Sale of Company. Upon the consummation of such Qualified Sale of Company, Company shall redeem the Notes by paying the Sale of Company Conversion Price to the Investors.

(ii) Non-Qualified Sale of Company. As promptly as practicable and in any event no later than the earlier of (x) two (2) Business Days following the execution of a definitive agreement relating to a transaction that constitutes a Non-Qualified Sale of Company and (y) ten (10) Business Days prior to the anticipated closing date of such transaction, Issuer shall provide the Investors with written notice in the form of Exhibit H-4 (a “Non-Qualified Sale of Company Notice”) setting forth the proposed terms and conditions and proposed closing date of, and shall include all definitive documentation relating to, the Non-Qualified Sale of Company, which terms and conditions may be modified in Issuer’s sole discretion provided that Issuer delivers to the Investors an updated Non-Qualified Sale of Company Notice, including all updated terms and conditions and definitive documentation not later than five (5) Business Days before the closing of the Non-Qualified Sale of Company. Upon the consummation of such Non-Qualified Sale of Company, Company shall redeem the Notes by paying in cash the Minimum Note Redemption Price to the Investors.

(c) Authorized Shares. Effective upon Issuer’s initial listing, Issuer shall use its reasonable best efforts to (a) obtain any approvals of the NASDAQ Stock Market necessary for the issuance of the Common Stock, including to cause the Common Stock to be approved for listing on the NASDAQ Stock Market, subject to official notice of issuance, and (b) maintain the listing of all of the Common Stock upon each national securities exchange and automated quotation system, if any upon which shares of common stock are then listed (subject to official notice of issuance) and shall maintain, so long as any other shares of common stock shall be so listed, such listing of the Common Stock. Company shall pay all fees and expenses in connection with satisfying the obligations under this Section 2.8(c).

(d) Antitrust Approvals. If any notifications, filings or approvals are required to be obtained under any Antitrust Laws that are applicable to the issuance of the PubCo Notes pursuant to and in accordance with this Section 2.8, then each of Issuer and the Investors shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under any applicable Laws to make such notifications or filings and to obtain such approvals as promptly as reasonably practicable. In such event, each of Issuer and the Investors shall cooperate with the other party’s legal advisors in the preparation and filing of any documentation, notifications, filings, registrations, submissions and other materials required or necessary under any applicable Antitrust Law and providing, within a reasonable time, all documents and information necessary to prepare and make any such filing. Issuer and the Investors shall timely provide all information, documents and statements required by the applicable Governmental Authorities for the analysis of any such filing. All filings made pursuant to any applicable Antitrust Laws shall be made in substantial compliance with the requirements of such Antitrust Laws and any other applicable Laws. Each of Issuer and the Investors shall use its reasonable best efforts to cause any required filings under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, and any other applicable Antitrust Laws to be considered for grant of “early termination” or the equivalent thereof. Issuer and the Investors shall cooperate with each other in connection with the foregoing and in connection with resolving any investigation or other inquiry of any Governmental Authority under any applicable Antitrust Law.

Section 2.9 General Provisions Regarding Payments.

(a) All payments by Issuer of principal, interest, fees, Minimum Note Redemption Price, IPO Conversion Price or Sale of Company Conversion Price and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to the applicable Investor, not later than 11:00 a.m. to such Investor's Designated Payment Account on the date due or specified, without presentation or surrender of any Note or the making of any notation thereon, except upon the written request of Issuer made concurrently with or reasonably promptly after payment or prepayment in full of any Note, each Investor shall surrender such Note for cancellation, reasonably promptly after such request, to Issuer; funds received by an Investor after that time on such due date shall be deemed to have been paid by Issuer on the next Business Day.

(b) All payments (other than exchanges of the Notes for PubCo Notes pursuant to Section 2.8(a)) in respect of the principal amount of any Note shall be accompanied by payment of accrued interest on the principal amount being repaid, any Make-Whole Premium payable in accordance with this Agreement (if applicable), and all other amounts payable with respect to the principal amount being repaid or prepaid.

(c) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(d) At any time an Application Event has occurred and is continuing, or the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by Collateral Agent or any Investor hereunder or under any Collateral Document in respect of any of the Obligations, including, but not limited to all proceeds received by Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows:

first, ratably to pay the Obligations in respect of any fees (other than any Make-Whole Premium), expense reimbursements, indemnities and other amounts then due and payable to Collateral Agent until paid in full;

second, ratably to pay the Obligations in respect of any fees (other than Make-Whole Premium) and indemnities then due and payable to the Investors until paid in full;

third, ratably to pay accrued interest in respect of the Notes until paid in full;

fourth, ratably to pay principal of the Notes until paid in full;

fifth, ratably to pay the Obligations in respect of any Make-Whole Premium to the Investors relating to such principal until paid in full;

and

sixth, to the ratable payment of all other Obligations then due and payable until paid in full.

(e) For purposes of Section 2.9(d) (other than clause sixth, of Section 2.9(d)), “paid in full” means payment in cash of all amounts owing under the Note Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(f) In the event of a direct conflict between the priority provisions of Section 2.9(d) and other provisions contained in any other Note Document (other than any applicable Subordination Agreement), it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 2.9(d) shall control and govern.

(g) Make-Whole Premium. If Issuer prepays prior to the Maturity Date, for any reason (including, but not limited to, after acceleration of the Obligations including in connection with the commencement of any Insolvency Proceeding or other proceeding pursuant to any Debtor Relief Laws), all or any part of the principal balance of any Note (for the avoidance of doubt, other than exchanges for PubCo Notes or redemptions through the payment of Minimum Note Redemption Price, IPO Conversion Price or Sale of Company Conversion Price, in each case, pursuant to Section 2.8), Issuer shall pay to the Investors entitled to a portion of such payment, an amount (the “Make-Whole Premium”) equal to the greater of (x) the present values of each remaining scheduled payment of interest (assuming such interest payments are paid in cash) that would be due on such Note from the date of prepayment until the Maturity Date (exclusive of interest accrued to the date of prepayment), discounted to the date of prepayment on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points and (y) the Minimum Note Redemption Price. The term “Treasury Rate” shall mean a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) equal to the rate determined by the Required Investors on the date three (3) Business Days prior to the date of payment, to be the yield expressed as a rate listed in The Wall Street Journal for United States Department of the Treasury securities having a term of not greater than 12 months. Nothing contained in this Section 2.9(g) shall be construed to permit any prepayment of the Notes.

(h) Without limiting the generality of the foregoing, it is understood and agreed that if the Obligations are accelerated for any reason, including because of default, the commencement of any Insolvency Proceeding or other proceeding pursuant to any Debtor Relief Laws, sale, disposition or encumbrance (including that by operation of law or otherwise), the Make-Whole Premium, if any, determined as of the date of acceleration will also be due and payable as though said Indebtedness was voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Investor’s lost profits as a result thereof. Any Make-Whole Premium payable in accordance with the immediately preceding sentence shall be presumed to be the liquidated damages sustained by each Investor as the result of the early termination and Issuer agrees that it is reasonable under the circumstances currently existing. The Make-Whole Premium, if any, shall also be payable (i) in the event the Obligations (and/or this Agreement or the Notes evidencing the Obligations, if any) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means and/or (ii) upon the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations (and/or this Agreement or the Notes evidencing the Obligations, if any) in any Insolvency Proceeding or other proceeding pursuant to any Debtor Relief Laws, foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means or the making of a distribution of any kind in any Insolvency Proceeding to the Investors, in full or partial satisfaction of the Obligations. ISSUER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING YIELD MAINTENANCE PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION OF THE OBLIGATIONS PURSUANT TO ANY INSOLVENCY PROCEEDING OR OTHER PROCEEDING PURSUANT TO ANY DEBTOR RELIEF LAWS OR PURSUANT TO A PLAN OF REORGANIZATION. Issuer expressly agrees that: (A) the Make-Whole Premium is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel; (B) the Make-Whole 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 Investors and Issuer giving specific consideration in this transaction for such agreement to pay the Make-Whole Premium; and (D) Issuer shall be estopped hereafter from claiming differently than as agreed to in this paragraph. Issuer expressly acknowledges that its agreement to pay the Make-Whole Premium to Investors as herein described is a material inducement to Investors to purchase the Notes.

Section 2.10 Ratable Sharing. Investors hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment, through the exercise of any right of set off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Note Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Investors hereunder or under the other Note Documents (collectively, the "Aggregate Amounts Due" to such Investors) which is greater than the proportion received by any other Investor in respect of the Aggregate Amounts Due to such other Investor holding Notes, then the Investor receiving such proportionately greater payment shall (a) notify each other Investor of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Investors so that all such recoveries of Aggregate Amounts Due shall be shared by all Investors holding Notes in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Investor is thereafter recovered from such Investor upon the bankruptcy or reorganization of Issuer or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Investor ratably to the extent of such recovery, but without interest. Issuer expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set off or counterclaim with respect to any and all monies owing by Issuer to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Section 2.11 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.12 (which shall be controlling with respect to the matters covered thereby), in the event that any Investor shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration, implementation or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by such Investor with any guideline, rule, request or directive issued or made after the date hereof by any central bank or Governmental Authority or quasi-Governmental Authority (whether or not having the force of law): (i) subjects such Investor (or its applicable investing office) to any Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) 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; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Investor; or (iii) imposes any other condition, cost or expense (other than a Tax) on or affecting such Investor (or its applicable investing office), this Agreement or Notes purchased by such Investor or any participation therein or its obligations hereunder or the London interbank market; and the result of any of the foregoing shall be to increase the cost to such Investor of agreeing to purchase, purchasing, holding, continuing or maintaining any Note hereunder or of maintaining its obligation to purchase any such Note, or to increase the cost to such Investor of participating in, or to reduce any amount received or receivable by such Investor (or its applicable investing office) hereunder (whether of principal, interest or any other amount); then, in any such case, Issuer shall promptly pay to such Investor, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Investor in its sole discretion shall determine) as will compensate such Investor for any such additional cost or reduction in amounts received or receivable hereunder. Such Investor shall deliver to Issuer a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Investor under this Section 2.11(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Investor shall have determined that the adoption, effectiveness, phase in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Investor (or its applicable investing office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Investor or any corporation controlling such Investor as a consequence of, or with reference to, such Investor's Notes or other obligations hereunder with respect to the Notes to a level below that which such Investor or such controlling corporation could have achieved but for such adoption, effectiveness, phase in, applicability, change or compliance (taking into consideration the policies of such Investor or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Issuer from such Investor of the statement referred to in the next sentence, Issuer shall pay to such Investor such additional amount or amounts as will compensate such Investor or such controlling corporation for such reduction. Such Investor shall deliver to Issuer a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Investor under this Section 2.11(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

Section 2.12 Taxes; Withholding, etc.

(a) Withholding of Taxes. Any and all payments by or on account of any obligation of any Note Party hereunder and under the other Note Documents shall (except to the extent required by applicable law (including, for this purpose, FATCA) as determined in the good faith discretion of an applicable withholding agent) be paid free and clear of, and without any deduction or withholding on account of, any Tax. If any Note Party or any other Person is required by applicable law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Note Party to any Investor under any of the Note Documents: (1) such Person shall pay or cause to be paid any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Note Party) for their own account or (if that liability is imposed on such Investor) on behalf of and in the name of such Investor; (2) if such Tax is an Indemnified Tax, the sum payable by such Note Party shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, such Investor, receives on the due date an amount equal to the sum it would have received had no such deduction, withholding or payment been required or made; and (3) as soon as practicable after any payment of Taxes by a Person to a Governmental Authority pursuant to this Section, such Person shall deliver to each Investor the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(b) Other Taxes. The Note Parties shall timely pay to the relevant Governmental Authorities in accordance with applicable law any present or future stamp, court or documentary, intangible, recording, filing or similar Taxes or any other excise or property Taxes that arise from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Note Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (“Other Taxes”). As soon as practicable after paying any such Other Taxes to a Governmental Authority, each Note Party shall deliver to the Investors the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence reasonably satisfactory to the Investors that such Other Taxes have been paid to the relevant Governmental Authority.

(c) Tax Indemnification. The Note Parties hereby jointly and severally indemnify and agree to hold Collateral Agent and each Investor harmless from and against all Indemnified Taxes (including, without limitation, Indemnified Taxes imposed on any amounts payable under this Section 2.12) and any reasonable expenses arising therefrom or with respect thereto payable or paid by such Person, whether or not such Indemnified Taxes were correctly or legally asserted by the relevant Governmental Authority. Issuer shall indemnify Collateral Agent or each Investor, as the case may be, within ten days from the date on which Collateral Agent or any Investor makes demand therefor. A certificate as to the amount of such payment or liability delivered to Issuer by an Investor, or by Collateral Agent on its own behalf, shall be conclusive absent manifest error.

(d) Evidence of Exemption From U.S. Withholding Tax.

(i) Each Investor that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income Tax purposes (a “Non-US Investor”) shall, to the extent it is legally entitled to do so, deliver to Issuer and Collateral Agent, on or prior to the Closing Date (in the case of each Investor listed on the signature pages hereof on the Closing Date) or on or prior to the date such Person becomes an Investor hereunder, and at such other times as may be necessary in the determination of Issuer, (i) two copies of Internal Revenue Service Form W-8IMY (with appropriate attachments), W-8BEN, W-8BEN-E or W-8ECI (or any successor forms), as applicable, duly executed by such Investor to establish that such Investor is not subject to deduction or withholding of United States federal income Tax with respect to any payments to such Investor of principal, interest, fees or other amounts payable under any of the Note Documents, and (ii) if such Investor is claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, a certificate to the effect that such Investor is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of Issuer within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” related to Issuer as described in Section 881(c)(3)(C) of the Internal Revenue Code, duly executed by such Investor. Each Investor required to deliver any forms or certificates with respect to United States federal income Tax withholding matters pursuant to this Section 2.12(d) hereby agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any material respect, such Investor shall update such form or certification, or notify Collateral Agent and Issuer of its inability to deliver any such forms or certificates.

(ii) If a payment made to an Investor under any Note Document would be subject to United States federal withholding Tax imposed by FATCA if such Investor were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Investor shall deliver to Issuer and Collateral Agent at the time or times prescribed by law and at such time or times reasonably requested by Issuer or Collateral Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Issuer or Collateral Agent as may be necessary for Issuer to comply with its obligations under FATCA and to determine that such Investor has complied with such Investor's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.12(d)(ii), FATCA shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Investor that is a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income Tax purposes shall deliver to Issuer or Collateral Agent upon such Person's written request, on or prior to the Closing Date (in the case of each such Investor listed on the signature pages hereof on the Closing Date) or on or prior to the date such Person becomes an Investor hereunder, and at such other times as may be necessary in the determination of Issuer or Collateral Agent (each, in its reasonable exercise of its discretion), two copies of Internal Revenue Service Form W-9 duly executed by such Investor certifying that such Investor is exempt from United States federal backup withholding Taxes with respect to any payments to such Investor of principal, interest, fees or other amounts payable under any of the Note Documents.

(iv) Any Investor shall, to the extent it is legally entitled to do so, deliver to Issuer, on or prior to the date on which such Investor becomes an Investor under this Agreement (and from time to time thereafter upon the reasonable request of Company), executed copies (in such number as shall be requested by the recipient) of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in any applicable withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Issuer to determine the withholding or deduction required to be made. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation shall not be required if in the Investor's reasonable judgment such completion, execution or submission would subject such Investor to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Investor.

(e) Treatment of Certain Refunds. If any party 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 pursuant to this Section 2.12 (including by the payment of additional amounts pursuant to this Section 2.12), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.12 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) Survival. Each party's obligations under this Section shall survive the replacement of, an Investor, and the repayment, satisfaction or discharge of all obligations under any Note Document.

Section 2.13 Obligation to Mitigate. If any Investor requests compensation under Section 2.10, Section 2.11 or Section 2.12, or requires Issuer to pay any Indemnified Taxes or additional amounts to any Investor or any Governmental Authority for the account of any Investor pursuant to Section 2.12, then such Investor (at the request of Issuer) will, to the extent not inconsistent with the internal policies of such Investor and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its purchases of Notes through another office of such Investor, or (b) take such other measures as such Investor may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Investor pursuant to Section 2.10, Section 2.11 or Section 2.12 would be materially reduced and if, as determined by such Investor in its sole discretion, the purchasing, holding or maintaining of such Notes through such other office or in accordance with such other measures, as the case may be, would not otherwise be disadvantageous to such Investor; provided, Issuer agrees to pay all reasonable costs and expenses incurred by such Investor in connection with utilizing such other office as described above or taking such other measures as such Investor may deem reasonable as described above. A certificate as to the amount of any such expenses payable by Issuer pursuant to this Section 2.13 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Investor to Issuer shall be conclusive absent manifest error.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1 Closing Date. The obligation of each Initial Investor to purchase Notes on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Notes. Each Investor shall have received originally executed Note(s) delivered by Issuer for each Initial Investor.

(b) Note Documents. Collateral Agent and each Investor shall have received sufficient copies of each Note Document (other than the Collateral Documents or any Guaranty) originally executed (or, in the discretion of the Required Investors, executed electronically) and delivered by each applicable Note Party for each Investor.

(c) Organizational Documents; Incumbency. Each Investor shall have received a certificate for each Note Party, by such Note Party's secretary or assistant secretary, each dated the Closing Date, attaching (i) copies of each Organizational Document of such Note Party and, to the extent applicable, certified as of a recent date by the appropriate governmental official; (ii) signature and incumbency certificates of the officers of such Person executing the Note Documents (other than the Collateral Documents or any Guaranty) to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of such Note Party approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents (other than the Collateral Documents or any Guaranty) to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (iv) a good standing certificate from the applicable Governmental Authority of such Note Party's jurisdiction of incorporation, organization or formation, each dated a recent date prior to the Closing Date.

(d) Organizational and Capital Structure. The organizational structure and capital structure of Company and its Subsidiaries shall be as set forth on Schedule 4.2.

(e) Governmental Authorizations and Consents. Each Note Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Note Documents that are to be delivered on the Closing Date and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Required Investors. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Note Documents that are to be delivered on the Closing Date or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(f) Financial Statements. Investors shall have received from Company the Historical Financial Statements.

(g) Opinions of Counsel to Note Parties. Investors and their respective counsel shall have received originally executed copies of the favorable written opinion of Mayer Brown LLP, counsel for Note Parties, and as to such other matters as the Investors may reasonably request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to the Investors (and each Note Party hereby instructs such counsel to deliver such opinions to the Investors).

(h) Fees and Expenses. Company shall have paid to the Investors and Collateral Agent the fees and expenses then due and payable on the Closing Date pursuant to Section 10.2 (which amounts may be offset against the proceeds of the Notes) and the Collateral Agent Fee Letter.

(i) Solvency Certificate. On the Closing Date, the Investors shall have received a Solvency Certificate of the chief financial officer or treasurer of Company substantially in the form of Exhibit G, dated as of the Closing Date, certifying that, after giving effect to the consummation of the transactions contemplated herein including the purchase of the Notes on the Closing Date and the application of proceeds therefrom, Company and its Subsidiaries, on a consolidated basis, are and will be Solvent.

(j) Closing Certificate. Company shall have delivered to the Investors an originally executed Closing Certificate, together with all attachments thereto.

(k) No Litigation. Other than as disclosed in Company's Form S-1 as of the date herein, there shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments pending or, to Company's knowledge, threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable judgment of the Required Investors, singly or in the aggregate, materially impairs any of the other transactions contemplated by the Note Documents, or that could have a Material Adverse Effect.

(l) No Material Adverse Effect. Since December 31, 2020, no event, circumstance or change shall have occurred that has caused or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect.

(m) Bank Regulations. Collateral Agent and each Investor shall have received a duly executed Internal Revenue Service Form W-9 (or other applicable Tax forms) and all documentation and other information reasonably requested at least three (3) Business Days prior to the Closing Date that is required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Patriot Act, and all such documentation and other information shall be in form and substance reasonably satisfactory to Collateral Agent and the Investors, as applicable.

(n) Issuance Request. The Investors shall have received a fully executed and delivered Issuance Request in respect of the Notes.

(o) Representations and Warranties. The representations and warranties contained herein and in each other Note Document (other than the Collateral Documents or any Guaranty), delivered to Collateral Agent or any Investor pursuant hereto or thereto on or prior to the date hereof shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the date hereof to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(p) No Default or Event of Default. No event shall have occurred and be continuing or would result from the consummation of the transactions contemplated herein that would constitute an Event of Default or a Default.

Each Investor, by delivering its signature page to this Agreement and purchasing the Notes on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Note Document and each other document required to be approved by Collateral Agent, Required Investors or Investors, as applicable, on the Closing Date.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce Collateral Agent and Investors to enter into this Agreement and to purchase the Notes to be made thereby, each Note Party represents and warrants to Collateral Agent and Investor on the Closing Date that the following statements are true and correct:

Section 4.1 Organization; Requisite Power and Authority; Qualification. Each of Company, Guarantor and Significant Subsidiaries (a) is duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of its incorporation or organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Note Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of Issuer, to make the issuances of Notes hereunder, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

Section 4.2 Capital Stock and Ownership. The Capital Stock of each of Company and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Company or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Company or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Company or any of its Subsidiaries of any additional membership interests or other Capital Stock of Company or any of its Subsidiaries or other securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Company or any of its Subsidiaries.

Section 4.3 Due Authorization. The execution, delivery and performance of the Note Documents have been duly authorized by all necessary action on the part of each Note Party that is a party thereto.

Section 4.4 No Conflict. The execution, delivery and performance by Note Parties of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not (a) violate any provision of any of the Organizational Documents of Company or any of its Subsidiaries; (b) violate in any material respect any provision of any law or any governmental rule or regulation applicable to Company or any of its Subsidiaries or any order, judgment or decree of any court or other agency of government binding on Company or any of 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 Contractual Obligation of Company or any of its Subsidiaries, except as would not reasonably be expected to have a Material Adverse Effect; (d) result in or require the creation or imposition of any Lien upon any of the material properties or assets of Company or any of its Subsidiaries (other than to the extent constituting Permitted Liens, any Liens created under any of the Note Documents in favor of Collateral Agent, on behalf of Secured Parties); (e) except as would not reasonably be expected to have a Material Adverse Effect, result in any default, non-compliance, suspension revocation, impairment, forfeiture or non-renewal of any permit, license, authorization or approval applicable to its material operations or any of its material properties; (f) require any approval of stockholders, shareholders, members or partners of Company or any of its Subsidiaries; or (g) require any approval or consent of any Person under any Contractual Obligation of Company or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Investors or as would not reasonably be expected to have a Material Adverse Effect.

Section 4.5 Governmental Consents. The execution, delivery and performance by Note Parties of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date (or thereafter as permitted under this Agreement) or except as would not reasonably be expected to have a Material Adverse Effect.

Section 4.6 Binding Obligation. Each Note Document has been duly executed and delivered by each Note Party that is a party thereto and is the legally valid and binding obligation of such Note Party, enforceable against such Note Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

Section 4.7 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, neither Company nor any of its Subsidiaries has any contingent liability or liability for Taxes, long term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, or condition (financial or otherwise) of Company and any of its Subsidiaries taken as a whole.

Section 4.8 No Material Adverse Effect. Since March 31, 2021, no event, circumstance or change has occurred that has caused or may reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect.

Section 4.9 Adverse Proceedings, etc. There are no Adverse Proceedings, individually or in the aggregate, that (a) have a material adverse effect on the validity or enforceability of any Note Document or otherwise restrain or prohibit the consummation of the transactions contemplated hereby or thereby or (b) would materially impair Collateral Agent's security interest on behalf of the Secured Parties in the Collateral or would reasonably be expected to have a Material Adverse Effect.

Section 4.10 Payment of Taxes. All material U.S. federal income and all state and other material Tax returns and reports of Company and its Subsidiaries required to be filed by any of them have been timely filed, and all material Taxes due and payable and all assessments, fees and other governmental charges levied or imposed upon Company and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been timely paid, except (a) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 4.11 Properties, Title. Each of Company and its Subsidiaries has (a) good, sufficient, marketable and legal title to (in the case of fee interests in real property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and valid title to (in the case of all other personal property), all of their respective tangible properties and assets, reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.7, in each case except as would not reasonably be expected to have a Material Adverse Effect,. All such tangible properties and assets are in working order and condition, ordinary wear and tear excepted, and except as permitted by this Agreement, all such tangible properties and assets are free and clear of Liens in each case except as would not reasonably be expected to have a Material Adverse Effect,.

Section 4.12 Environmental Matters. Except as (with respect to sub-sections (a)-(f) below) any such failure could not reasonably be expected to result in a Material Adverse Effect:

(a) No Environmental Claim has been asserted against any Note Party or, to the knowledge of any Note Party, any predecessor in interest nor has any Note Party received written notice of any threatened or pending Environmental Claim against any Note Party or any predecessor in interest.

(b) No Note Party or, to the knowledge of the Note Parties, no third party has caused or permitted a Release of Hazardous Materials at any of the properties currently or formerly owned or operated by any Note Party or any predecessor in interest, in any case in a manner or to a degree that imposes any reporting, investigation, remediation, corrective action or other response obligation on any Note Party under any Environmental Law or that could reasonably be expected to result in liability for any Note Party under Environmental Law.

(c) The operation of the business of, and each of the properties owned or operated by, each Note Party, as currently conducted, are in compliance with all applicable Environmental Laws.

(d) Each Note Party holds and is in compliance with all Governmental Authorizations required under any applicable Environmental Laws in connection with the operations carried on by it as currently conducted, and no action is pending or, to the knowledge of the Note Parties, threatened the effect of which would be to adversely revoke, terminate, or modify any such Governmental Authorization.

(e) To the knowledge of the Note Parties, no event or condition has occurred or is occurring that could reasonably be expected to form the basis of an Environmental Claim against any Note Party.

(f) The Note Parties have made available to the Investors true and complete copies of all material environmental reports, audits and investigations in the possession, custody or reasonable control of the Note Parties, related to material Environmental Liabilities and Costs arising from the real property or the operations of the Note Parties.

Section 4.13 No Defaults. Neither Company nor any Significant Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

Section 4.14 Investment Company Act. Neither Company nor any of its Subsidiaries is, and after giving effect to the offering and sale of the Notes and the application of the proceeds thereof, will be an “investment company” as defined under the Investment Company Act of 1940. Neither Company nor any of its Subsidiaries is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

Section 4.15 Margin Stock. Neither Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the sale by Issuer of the Notes hereunder will be used by any Note Party to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 4.16 Employee Benefit Plans. No ERISA Event has occurred or is reasonably expected to occur that could reasonably be expected to result in a Material Adverse Effect.

Section 4.17 Certain Fees. No broker’s or finder’s fee or commission will be payable with respect hereto or any of the transactions contemplated hereby.

Section 4.18 Solvency. As of the Closing Date, Company, together with its Subsidiaries on a consolidated basis, after giving effect to the incurrence of Obligations and the sale by Issuer of the Notes hereunder, is Solvent.

Section 4.19 ERISA. The underlying assets of Company and its Subsidiaries do not constitute Plan Assets and, to the knowledge of Company and its Subsidiaries the execution, delivery and performance of this Agreement and the other Note Documents do not and will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code.

Section 4.20 Compliance with Statutes, etc. Each of Company and its Subsidiaries is in compliance with (i) its organizational documents and (ii) all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including Environmental Laws), except such non-compliance that could not reasonably be expected to result in a Material Adverse Effect.

Section 4.21 Intellectual Property.

(a) Each of Company and its Subsidiaries owns, or holds licenses in, all trademarks, trade secrets, trade names, copyrights and patents that are necessary to the conduct of its business as currently conducted.

(b) There is no opposition, interference, reexamination, derivation or other post-grant proceeding, injunction, claim, suit, action, subpoena, hearing, inquiry, investigation (by the International Trade Commission or otherwise), complaint, arbitration, mediation, demand, decree or other dispute, disagreement, proceeding or claim before a Governmental Authority (collectively, "Disputes") that is pending or currently threatened in writing, that challenges the legality, scope, validity, enforceability, ownership or inventorship of the material intellectual property of Company or its Subsidiaries (other than routine office actions or other determinations in the ordinary course of prosecution before the PTO or the United States Copyright Office or any foreign counterpart thereof).

(c) To the knowledge of Company and its Subsidiaries, the operation of the business of Company and its Subsidiaries as currently conducted does not infringe upon or otherwise violate any intellectual property rights of any other Person in any material respect.

Section 4.22 Insurance. Each of Company and its Subsidiaries keeps its property adequately insured and maintains insurance to such extent and against such risks as is customary with companies in the same or similar businesses or as otherwise required by applicable Requirements of Law. Schedule 4.22 sets forth a list of all insurance maintained by each Note Party on the Closing Date.

Section 4.23 Permits, Etc. Each Note Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, which, if not obtained, could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect, except, to the extent any such condition, event or claim could not be reasonably be expected to have a Material Adverse Effect.

Section 4.24 Bank Accounts and Securities Accounts. Schedule 4.24 sets forth a complete and accurate list as of the Closing Date of all Deposit Accounts and all Securities Accounts maintained by each Note Party, together with a description thereof (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof), other than Excluded Accounts.

Section 4.25 Security Interests. The Collateral Documents will, when executed and delivered, create in favor of Collateral Agent, for the benefit of Secured Parties, a legal, valid and enforceable security interest in the Collateral secured thereby, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. Upon the filing of the UCC-1 financing statements required thereby, the possession by the "First Lien Representative" (or similar term, as defined in the applicable Subordination Agreement) of any certificated Capital Stock or instrument owned by such Note Party in accordance with the applicable Subordination Agreement, the recording of the intellectual property security agreements referred to in each Pledge and Security Agreement in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, such security interests in and Liens on the Collateral granted thereby shall be perfected, first priority security interests (subject to Permitted Liens).

Section 4.26 PATRIOT ACT and FCPA. To the extent applicable, each Note Party is in compliance in all respects with (a) the Sanctions Programs, and (b) applicable Anti-Terrorism Laws. Neither the Note Parties nor any of their officers, directors, employees or agents acting on the Note Parties' behalf shall use the proceeds of the sale by Issuer of the Notes (i) to make any payments, directly or knowingly indirectly (including through any third party intermediary), to any Foreign Official in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), (ii) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions Programs, (iii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions Programs, or (iv) in any other manner that will result in a violation of Sanctions Programs by any person party hereto. None of the Note Parties, nor any Subsidiary of any Note Parties, nor to the knowledge of any Note Party any of their respective agents acting or benefiting in any capacity in connection with the Notes or other transactions hereunder, is a Blocked Person. None of the Note Parties (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person in violation of any OFAC Sanctions Program, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any OFAC Sanctions Programs in violation of such OFAC Sanctions Programs.

Section 4.27 Disclosure. No representation or warranty of any Note Party contained in any Note Document or in any other documents, certificates or statements made or furnished to Investors by or on behalf of Company or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains, when furnished, any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Investors that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results.

Section 4.28 Use of Proceeds. The proceeds of the sale by Issuer of the Notes shall be applied by Company in accordance with Section 2.2. No portion of the proceeds of the sale by Issuer of the Notes shall be used in any manner that causes or might cause such Notes or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

Section 4.29 Anti-Money Laundering. The operations of the Company and its Subsidiaries during the prior five (5) years have been conducted at all times in compliance with applicable Anti-Money Laundering Laws.

Section 4.30 Government Investigations and Inquiries. At no time during the prior five (5) years has any Note Party or its Subsidiaries, officers, directors or, to the knowledge of the Company, its agents, been the subject of current, pending, or threatened investigation, inquiry or enforcement proceedings for violations of Anti-Money Laundering Laws or anti-corruption laws, or violated or received any notice, request, or citation for any actual or potential noncompliance with anti-corruption laws, Anti-Money Laundering Laws or Anti-Terrorism Laws.

Section 4.31 Private Offering. Assuming the accuracy of the representations and warranties of each Initial Investor set forth in Article XI, to the knowledge of Issuer the sale of the Notes pursuant to this Agreement is exempt from the registration requirements of the Securities Act. Neither Issuer nor any Person authorized to act on behalf of Issuer has taken or will knowingly take any action that would subject the Notes issued pursuant to this Agreement on the date hereof to the registration requirements of the Securities Act.

Section 4.32 Eligibility Requirements. The Notes will not, on the Closing Date, be of the same class as securities listed on a national securities exchange registered under the Exchange Act.

Section 4.33 Closing Date. As of the Closing Date, Issuer has delivered to Investors a complete and correct copy of the SVB Financing Agreement and all agreements, documents and instruments executed and/or delivered pursuant thereto or in connection therewith as of the Closing Date (including all schedules, exhibits, amendments, supplements, modification and assignments).

ARTICLE V

AFFIRMATIVE COVENANTS

Each Note Party covenants and agrees that until payment in full of all Obligations (other than unasserted indemnification obligations) or until no Notes remain outstanding, each Note Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article V.

Section 5.1 Financial Statements and Other Reports. Unless otherwise provided below, Company will deliver to each Investor:

(a) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the unaudited consolidated and consolidating balance sheets of Company and its Subsidiaries as at the end of such Fiscal Quarter and the related unaudited consolidated (and with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP), together with a Financial Officer Certification and a Narrative Report with respect thereto;

(b) Annual Financial Statements. As soon as available, and in any event within 150 days after the end of each Fiscal Year, (i) the consolidated and consolidating balance sheets of Company and its Subsidiaries as at the end of such Fiscal Year and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of KPMG LLP or other independent certified public accountants of recognized national standing selected by Company, and reasonably satisfactory to the Required Investors (which report shall be unqualified as to going concern and scope of audit (other than (i) a "going concern" qualification pertaining to the maturity of the Obligations or any other Indebtedness permitted hereunder occurring within twelve (12) months of the relevant audit or (ii) a breach or potential breach of any financial maintenance covenant in any agreement governing any Indebtedness permitted hereunder), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(c) Compliance Certificate. Together with each delivery of financial statements of Company and its Subsidiaries pursuant to Section 5.1(a) or Section 5.1(b), a duly executed and completed Compliance Certificate, (i) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 5.1(b) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, (ii) stating that no Default or Event of Default then exists or existed during the period covered by such financial statements, or if a Default or Event of Default does or did exist, providing a description of such Default or Event of Default and the steps, if any, taken or being taken to cure it, and (iii) in the case of a Compliance Certificate delivered together with financial statements of Company and its Subsidiaries pursuant to Section 5.1(b), setting forth the amount of Qualified Cash and attaching supporting documentation;

(d) [Reserved].

(e) Notice of Default. Promptly (but in any event within five (5) Business Days) upon any officer of Issuer obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Issuer with respect thereto; (ii) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b); or (iii) of the occurrence of any event or change that has caused or would reasonably be expected to result in, in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Issuer has taken, is taking and proposes to take with respect thereto;

(f) Notice of Litigation. Promptly (but in any event within five (5) Business Days) upon any officer of Company obtaining knowledge of (i) the institution of, or non-frivolous threat of, any material Adverse Proceeding or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii), relates to the Collateral, or which seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Company to enable Investors and their counsel to evaluate such matters;

(g) ERISA. Promptly (but in any event within five (5) Business Days) upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof, what action a Note Party or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(h) Notice of Change in Board of Directors. With reasonable promptness, written notice of any change in the Board of Directors (or similar governing body) of Company;

(i) Information Regarding Collateral. Company will furnish to Collateral Agent prompt written notice within thirty (30) days after any change (a) in any Note Party's legal name, (b) in any Note Party's corporate identity or structure or (c) in any Note Party's Federal Taxpayer Identification Number and will cooperate with any necessary filings under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as and to the extent contemplated in the Collateral Documents. Company also agrees promptly to notify Collateral Agent and each Investor if any material portion of the Collateral is damaged or destroyed;

(j) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.1(b), Company shall deliver to Collateral Agent and each Investor an officer's certificate either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section 5.1(j) and/or identifying such changes;

(k) Other Information. (A) Promptly upon their becoming available and in any event within five (5) Business Days of Company's receipt thereof, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Company to its security holders or by any Subsidiary of Company to its security holders, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed, including confidentially, by Company or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, and (iii) copies of all amendments, waivers, consents and notices of default with respect to any Material Debt, (B) promptly after submission to any Governmental Authority or receipt from any Governmental Authority, to the extent not prohibited by applicable law, all material documents and information furnished to or received from such Governmental Authority in connection with any material investigation of any Note Party (other than a routine inquiry), and (C) such other information and data with respect to Company or any of its Subsidiaries as from time to time may be reasonably requested by the Required Investors.

Section 5.2 Existence. Except as otherwise permitted under Section 6.7, each Note Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and Governmental Authorizations, qualifications, franchises, licenses and permits material to its business and necessary to conduct its business in each jurisdiction in which its business is conducted, except, in the case of such rights, Governmental Authorizations, qualifications, franchises, licenses and permits, as would not reasonably be expected to result in a Material Adverse Effect; provided, no Note Party or any of its Subsidiaries shall be required to preserve any such existence, right or Governmental Authorizations, qualifications, franchise, licenses and permits if such Person's Board of Directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Investors.

Section 5.3 Payment of Taxes and Claims. Company will, and will cause each of its Subsidiaries to, file all material federal, state and other material Tax returns required to be filed by Company or any of its Subsidiaries and pay, discharge or otherwise satisfy all material federal, state and other Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserves in accordance with GAAP are being maintained by Company or such Subsidiary, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 5.4 Maintenance of Properties. Each Note Party will, and will cause each of its Subsidiaries to (a) maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of each Note Party and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, and (b) comply at all times with the provisions of all material leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

Section 5.5 Insurance.

(a) The Note Parties will maintain or cause to be maintained, with financially sound and reputable insurers, insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Note Parties as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Subject to Section 5.13, each such policy of insurance shall (1) name Collateral Agent, on behalf of Investors as an additional insured thereunder as its interests may appear, and (2) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Required Investors, that names Collateral Agent, on behalf of Secured Parties as the loss payee thereunder.

(b) The Note Parties will use their commercially reasonable efforts to cause, by endorsement, each of the insurance policies required to be maintained under this Section 5.5 to provide for at least thirty (30) days' prior written notice to Collateral Agent of the cancellation or substantial modification thereof. Receipt of such notice shall entitle Collateral Agent at the direction of the Required Investors (but Collateral Agent shall not be obligated) to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to this Section 5.5 or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Note Parties.

Section 5.6 Books and Records; Inspections. Each Note Party will, and will cause each of its Subsidiaries to, (a) maintain at all times at the chief executive office of Company copies of all books and records of Company and its Subsidiaries, (b) keep adequate books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (c) permit any representatives designated by the Required Investors (including employees of the Investors or any consultants, auditors, accountants, lawyers and appraisers retained by the Investors) to visit any of the properties of any Note Party and any of its Subsidiaries to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent accountants and auditors, all upon reasonable notice and at such reasonable times during normal business hours; provided that, except during the continuation of an Event of Default, only one such visit shall be permitted in any Fiscal Year. The Note Parties agree to pay the reasonable and documented out-of-pocket costs and expenses incurred by the examiner in connection therewith. Notwithstanding anything to the contrary in this Section 5.6, none of Company or any of its Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to any Investor (or their respective representatives or contractors) is prohibited by law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 5.7 Investor Meetings and Conference Calls. Within 20 days after the delivery of annual financial statements and other information required to be delivered pursuant to Section 5.1(b), Company shall, upon request by the Required Investors, cause its chief financial officer or other Authorized Officers to participate in a conference call upon reasonable notice and at a reasonable time with all Investors who choose to participate in such conference call, during which conference call the chief financial officer or such Authorized Officer shall review the financial condition of Company and its Subsidiaries and such other matters not constituting material non-public information, as any Investor may reasonably request.

Section 5.8 Compliance with Laws. Each Note Party will comply, and shall cause each of its Subsidiaries, and take all commercially reasonable steps to cause all other Persons, if any, on or occupying any of their real property, to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), non-compliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.9 Environmental.

(a) Each Note Party shall (i) keep any owned and (to the extent within the Note Party's reasonable control) leased real property free of any Environmental Liens, except as any such failure could not reasonably be expected to result in a Material Adverse Effect; (ii) comply, and take all commercially reasonable steps to cause all tenants and other Persons who may come upon any property owned or operated by it to comply, with all Environmental Laws in all material respects and provide to the Investors any documentation of such compliance which the Investors may reasonably request, except as any such failure could not reasonably be expected to result in a Material Adverse Effect; (iii) maintain and comply in all material respects with all Governmental Authorizations required under applicable Environmental Laws, except as any such failure could not reasonably be expected to result in a Material Adverse Effect; (iv) take all steps within its reasonable control to prevent any Release of Hazardous Materials from any property owned or operated by any Note Party, except as any such failure could not reasonably be expected to result in a Material Adverse Effect; and (v) undertake or cause to be undertaken any and all Remedial Actions in response to any Environmental Claim, Release of Hazardous Materials or violation of Environmental Law, in any case to the extent required by Environmental Law or any Governmental Authority, consistent with the current use of the affected real property and, upon request of the Investors, provide the Investors all data, information and reports generated in connection therewith, except as any such failure could not reasonably be expected to result in a Material Adverse Effect.

(b) The Note Parties shall promptly (but in any event within ten (10) Business Days) (i) except as to any matter as could not reasonably be expected to result in a Material Adverse Effect, notify the Investors in writing (A) if any becomes aware of a Release in violation of Environmental Laws in, at, on, under or from any part of the real property currently owned or operated by any Note Party or any improvements constructed thereon, (B) upon receiving written notice of any Environmental Claims asserted against any Note Party, including any with respect to any real property currently owned or formerly owned or operated by a Note Party, (C) upon receiving written notice of any occurrence or condition on or affecting any real property currently owned or operated by any Note Party that would reasonably be expected to result in any restrictions on the ownership, occupancy, transferability or use thereof under any applicable Environmental Laws, and (D) upon receiving written notice of an Environmental Lien with respect to Environmental Liabilities and Costs filed against any real property owned or (if relating to the conduct of any Note Party) leased by any Note Party, and (ii) provide such other documents and information as reasonably requested by the Investors in relation to any matter pursuant to Section 5.9(b)(i).

Section 5.10 Subsidiaries. In the event that any Person becomes a Subsidiary of Company (other than an Excluded Subsidiary), or in the event that any other Subsidiary (other than an Excluded Subsidiary) of Company becomes a guarantor of, or otherwise provides credit support for, any Indebtedness of any Note Party permitted under clause (h) of the definition of "Permitted Indebtedness" which is secured by all or substantially all Collateral, Company shall (a) within sixty (60) days (or such later date as the Collateral Agent may agree, acting at the direction of the Required Investors) of such Person becoming a Subsidiary, cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Collateral Agent and each Investor a Counterpart Agreement and a Pledge Supplement (as defined in the Pledge and Security Agreement), and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are similar to those described in Section 3.1(c), and Section 5.13(b)(i). With respect to each such Subsidiary, Company shall promptly send to Collateral Agent and the Investors written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Company or a guarantor or provider of credit support, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Company; provided, such written notice shall be deemed to supplement Schedules 4.1 and 4.2 for all purposes hereof.

Section 5.11 Further Assurances. At any time or from time to time upon the request of the Required Investors, each Note Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Required Investors may reasonably request in order to effect fully the purposes of the Note Documents, including providing Investors with any information reasonably requested pursuant to Section 10.22. In furtherance and not in limitation of the foregoing, each Note Party shall take such actions as Collateral Agent or the Required Investors may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by the Collateral of the Note Parties.

Section 5.12 Board Observation Rights. Until the consummation of a Qualified IPO, a Non-Qualified IPO, a Qualified Sale of Company or a Non-Qualified Sale of Company, and to the extent that and as long as Baupost Investor holds Notes with an aggregate principal amount equal to at least 50% of the aggregate original principal amount of the Notes held by Baupost Investor as of the Closing Date, Baupost Investor shall be entitled to designate one observer (the “Board Observer”) to attend any regular meeting (a “BOD Meeting”) of the Board of Directors of Company (or its direct or indirect ultimate parent holding company), except that the Board Observer shall not be entitled to vote on matters presented to or discussed by the Board of Directors of Company (or its direct or indirect ultimate parent holding company) at any such meetings; provided that the Board Observer may be excluded from access to any material or meeting or portion thereof: (x) if the Board of Directors reasonably determines in good faith after seeking the advice of legal counsel that such material or information discussed at such meeting is not appropriate to be discussed in the presence of or to be disclosed to, as applicable, the Board Observer in order to avoid an actual conflict of interest in the part of Baupost Investor, so long as Company notifies the Board Observer of such determination, and if requested by the Board Observer, uses reasonable efforts to provide a general description of the information discussed at such meeting or materials; and (y) with respect to any discussions or material constituting material non-public information that would prohibit the Baupost Investor’s ability to provide an order to purchase shares of Common Stock in a Qualified IPO or a Non-Qualified IPO. The Board Observer shall be timely notified of the time and place of any BOD Meetings and will be given written notice of all proposed actions to be taken by the Board of Directors of Company (or its direct or indirect ultimate parent holding company) at such meeting or by any written consent of the Board of Directors as if the Board Observer were a member thereof. Such notice shall describe in reasonable detail the nature and substance of the matters to be discussed and/or voted upon at such meeting (or the proposed actions to be taken by written consent without a meeting). The Board Observer shall have the right to receive all information provided to the members of the Board of Directors of Company (or its direct or indirect ultimate parent holding company) (i) in anticipation of or at such meeting (regular or special and whether telephonic or otherwise) and (ii) in connection with seeking and entering into any written consent in lieu thereof, in addition to copies of the records of the proceedings or minutes of such meeting, when provided to the members, and the Board Observer shall keep such materials and information confidential in accordance with Section 10.17. Company shall reimburse the Board Observer for all reasonable and documented out-of-pocket costs and expenses incurred in connection with its participation in any such BOD Meeting. For avoidance of doubt, the Board Observer shall have no fiduciary duty to Company, its Affiliates or its equityholders and the provisions of this Section 5.12 shall not be deemed to prohibit or restrict the right of any Note Party to act by written consent in lieu of a meeting of the Board of Directors.

Section 5.13 Post-Closing Matters.

(a) Company shall, and shall cause each of the Note Parties to, satisfy the requirements set forth on Schedule 5.13 on or before the date specified for such requirement or such later date to be determined by the Required Investors.

(b) Subject to Section 10.25, on the date that is no later than 60 days following the Closing Date (or such later date as the Required Investors may agree in their reasonable discretion):

(i) Company shall, and shall cause each of the Note Parties to, deliver or caused to be delivered to Collateral Agent and each Investor:

(A) a copy of the Pledge and Security Agreement originally executed (or, in the discretion of the Required Investors, executed electronically);

(B) evidence reasonably satisfactory to the Required Investors of the compliance by each Note Party of their obligations under the Pledge and Security Agreement (including, without limitation, their obligations to authorize and deliver UCC financing statements and delivery of certificated securities, along with appropriate endorsements, instruments and chattel paper); provided that, notwithstanding any other provision of this Agreement or any other Note Document, neither Issuer nor any Grantor will be required to deliver landlord lien waivers, estoppels or collateral access letters unless the same shall have been delivered under any Permitted Senior Indebtedness in which case Issuer or the applicable Grantor will deliver Collateral Access Agreements for the benefit of the Investors substantially in the form so delivered under such Permitted Senior Indebtedness;

(C) a completed Perfection Certificate dated the Closing Date and executed by an Authorized Officer of each Note Party, together with all attachments contemplated thereby;

(D) the results of a recent search of all effective UCC financing statements (or equivalent filings) made with respect to any assets or property of any Note Party in the jurisdictions specified in the Perfection Certificate, together with copies of all such filings disclosed by such search;

(E) a certificate from Company's insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming Collateral Agent, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5 in each case, in form and substance reasonably satisfactory to the Required Investors; and

(F) duly executed copies of the favorable written opinion of Mayer Brown LLP, counsel for Note Parties, relating to the Collateral, deliverables under this Section 5.13 or Guaranty in form and substance reasonably satisfactory to the Investors (and each Note Party hereby instructs such counsel to deliver such opinions to the Investors);

(ii) each Subsidiary that is not an Excluded Subsidiary shall have become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Collateral Agent and each Investor a Counterpart Agreement and a Pledge Supplement (as defined in the Pledge and Security Agreement) or in the case of a Foreign Subsidiary, a Counterpart Agreement and a Pledge Supplement and similar documentation providing for a perfected security interest (subject to no Liens other than Permitted Liens) on all assets of such Foreign Subsidiary governed, in the case of such similar documentation, by the laws of the jurisdiction of its organization, and shall have taken all such actions and execute and deliver, or cause to be executed and delivered, all such documents and certificates as are similar to those described in Section 3.1(c) to the extent applicable in its jurisdiction of organization;

(iii) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest, subject to no Liens other than Permitted Liens, in all Capital Stock that is not an Excluded Asset of each direct, wholly owned Subsidiary of the Issuer, and

(iv) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest, subject to no Liens other than Permitted Liens, in substantially all tangible and intangible personal property of Issuer and each Guarantor (including accounts receivable, inventory, equipment, investment property, contract rights, applications and registrations of intellectual property, other general intangibles and proceeds of the foregoing, in each case, other than Excluded Assets), in each case, with the priority required by the applicable Collateral Documents, in each case subject to exceptions and limitations otherwise set forth in this Agreement and the applicable Collateral Documents; provided, that any such security interests in Collateral shall be subject to the terms of the applicable Subordination Agreement.

Section 5.14 Additional Material Real Property. In the event that any Note Party acquires or holds Material Real Property then, subject to any applicable Subordination Agreement, such Note Party shall promptly (and in any event within 120 days thereafter or such longer period as may be agreed to by the Required Investors and as shall be automatically extended in the event that applicable agent and requisite lenders under the Permitted Senior Indebtedness agree to provide an extension to such deadline), take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgage Deliverables with respect to each such Material Real Property that the Required Investors shall reasonably request to create in favor of Collateral Agent, for the benefit of the Investors, a valid and, subject to any filing and/or recording referred to herein, perfected first priority security interest (subject to Permitted Liens) in such Material Real Property.

Section 5.15 Cash Management.

(a) Subject to any applicable Subordination Agreement, on or prior to the date that is 60 days after the Closing Date (as such date may be extended pursuant to Section 5.13), each Note Party shall enter into, and shall cause each securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account) to enter into one or more Control Agreements with respect to each Deposit Account and Securities Account of such Note Party existing on the Closing Date, other than any Excluded Account.

(b) Subject to any applicable Subordination Agreement, the Note Parties may open new Deposit Accounts and Securities Accounts; provided that, Company or the applicable Note Party shall use commercially reasonable efforts to enter into, and shall cause the applicable securities intermediary or bank to enter into a Control Agreement with respect to such account, unless such account is an Excluded Account, immediately upon opening such account; provided, further, that in any event, on or prior to the date that is 60 days (or such later date agreed to by the Required Investors) after the date Company or such Note Party opens such new account, the applicable Note Party shall enter into, and shall cause the applicable securities intermediary or bank to enter into a Control Agreement with respect to such account, unless such account is an Excluded Account.

(c) On or prior to the date that is 60 days (or such later date agreed to by the Required Investors) after the date of acquisition by Company or any Subsidiary of any Person that becomes a Note Party, such Note Party shall enter into, and shall cause each securities intermediary or bank, as applicable, to enter into one or more Control Agreements with respect to each Deposit Account and Securities Account of such Person, other than any Excluded Account.

(d) Following the establishment of the Control Agreements in accordance with the foregoing clauses (a) through (c), Company and each Subsidiary shall deposit or cause to be deposited promptly in the ordinary course of business all cash, checks, electronic fund transfers, drafts or other similar items of payment relating to or constituting payments made to each Note Party, into one or more Control Accounts, other than any such items permitted to be deposited into an Excluded Account, and Company and each Subsidiary shall hold all of its cash and Cash Equivalents in a Control Account other than any cash or Cash Equivalents held in an Excluded Account.

(e) With respect to each Control Agreement, Collateral Agent will not deliver to the relevant depository institution or securities intermediary a notice or other instruction which provides for exclusive control over such account by Collateral Agent until an Event of Default has occurred and is continuing and such action is not prohibited under any applicable Subordination Agreement.

Section 5.16 Investor Participation in IPO. The Investors hereby agree to submit a non-binding indication of interest to purchase shares of Common Stock in a Non-Qualified IPO or a Qualified IPO at the IPO Price equal to the lesser of (i) 9.9% of the total shares offered and sold by Company in the IPO and (ii) shares having an aggregated purchase price of \$20,000,000; and further consent to being identified in any prospectus, test the waters presentation materials, or roadshow or press release relating to such a Non-Qualified IPO or Qualified IPO as having submitted the forgoing non-binding indication of interest.

Notwithstanding anything in this Agreement to the contrary, the covenants in this Article V shall cease to be applicable in their entirety once the PubCo Notes are issued and the Notes are exchanged therefor in accordance with Section 2.8. The covenants, agreements and terms of or relating to the PubCo Notes, once issued, shall be exclusively governed by or pursuant to the PubCo Notes Indenture, and not this Agreement.

ARTICLE VI

NEGATIVE COVENANTS

Each Note Party covenants and agrees that until payment in full of all Obligations (other than unasserted indemnification obligations) or until no Notes remain outstanding, such Note Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article VI.

Section 6.1 Indebtedness. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except Permitted Indebtedness.

Section 6.2 Liens. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any state or under any similar recording or notice statute, except Permitted Liens.

Section 6.3 No Further Negative Pledges or Restrictions on Subsidiary Dividends. No Note Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of Company to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company, (ii) create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations, or (iii) with respect to Subsidiaries of Company, repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, other than (a) specific property encumbered to secure payment of particular Indebtedness or other obligations or to be sold pursuant to an executed agreement with respect to an Asset Sale permitted under Section 6.7, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements (or in easements, rights of way or similar rights or encumbrances) entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be), (c) restrictions imposed by any Note Document, (d) (i) restrictions existing on the Closing Date identified on Schedule 6.3, (ii) any agreements that does not materially expand the scope of any such encumbrance or restriction (as determined in good faith by the Issuer) beyond those restrictions applicable on the Closing Date and do not expand the scope of the property or assets or identity of the Note Party or Subsidiary so restricted or (iii) with respect to any Subsidiary, any restriction that is not materially more restrictive (as determined by the Issuer in good faith) than the restrictions applicable to such Subsidiary existing on the Closing Date identified on Schedule 6.3 and do not expand the scope of the property or assets or identity of the Subsidiary so restricted, (e) restrictions imposed by agreements relating to Indebtedness of any Subsidiary in existence at the time such Subsidiary became a Subsidiary of Company and any amendments or modifications thereof that do not materially expand the scope of any such restriction (provided that, such restriction apply only to such Subsidiary), (f) any restriction arising under or in connection with any agreement or instrument of any joint venture (including with respect to Capital Stock therein), (g) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions apply only to the property or assets securing such Indebtedness, (h) customary provisions in purchase money obligations and capitalized lease obligations on the property acquired pursuant thereto, (i) restrictions on cash or other deposits (including escrowed funds) or net worth imposed under contracts entered into in the ordinary course of business or consistent with industry practice, (j) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business, (k) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of a Subsidiary pending the closing of such sale or disposition and such restrictions apply only to the property or assets to be sold or disposed of, (l) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business to the extent each such restriction applies only to the properties or assets subject to such leases, licenses or agreements and such underlying transaction is permitted pursuant to Section 6.7; (m) customary provisions restricting subletting or assignment of any lease governing a leasehold interest; (n) customary provisions restricting the assignment, mortgaging or hypothecation of an agreement entered into in the ordinary course of business, (o) restrictions contained in any document governing Indebtedness hereunder and (p) restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (q) of this Section 6.3; provided that such amendments or refinancings do not materially expand the scope of any such restriction. No Note Party shall, nor shall it permit its Subsidiaries to, enter into any Contractual Obligations which would prohibit a Subsidiary of Company that is not an Excluded Subsidiary from being a Note Party.

Section 6.4 Restricted Junior Payments. No Note Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except:

(a) Secondary share repurchases funded by proceeds of the sale by Issuer of the Notes, in an amount not to exceed \$100,000,000;

(b) the Issuer may repurchase, redeem, retire or otherwise acquire or retire for value Capital Stock of the Issuer held by any future, present or former employee, director, officer or consultant (or any immediate family member thereof) of the Issuer or any Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement:

(1) with cash and Cash Equivalents (and including, to the extent constituting a Restricted Junior Payment, amounts paid in respect of Indebtedness issued to evidence an obligation to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of the Issuer held by any future, present or former employee, director, officer or consultant (or any immediate family member thereof) of the Issuer or any Subsidiary of any of the foregoing) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement in an amount not to exceed \$10,000,000, which, if not used in such Fiscal Year, may be carried forward to succeeding Fiscal Years; provided that the aggregate amount of Restricted Junior Payments in any Fiscal Year pursuant to this clause (1) shall not exceed \$15,000,000;

(2) with the proceeds of any sale or issuance of the Capital Stock (other than Disqualified Capital Stock) of the Issuer; and/or

(3) with the net proceeds of any key person life insurance policy;

(c) any person may make non-cash repurchases of Capital Stock deemed to occur upon exercise or settlement of stock options or other Capital Stock to the extent such Capital Stock represent a portion of the exercise price of or withholding obligation with respect to such options or other Capital Stock;

(d) so long as no Event of Default is continuing or would result therefrom, Restricted Junior Payments may be made pursuant to this clause (d) from a substantially concurrent receipt of proceeds of any cash equity contribution (that is not in exchange for Disqualified Capital Stock) not otherwise applied hereunder and received by the Issuer after the Closing Date;

(e) any payments in connection with a Permitted Convertible Indebtedness Call Transaction;

(f) Restricted Junior Payments may be made to make payments, in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Capital Stock of any such person;

(g) Restricted Junior Payments made to (i) redeem, repurchase, retire or otherwise acquire any Capital Stock ("Treasury Capital Stock") of the Issuer and/or any Subsidiary in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Issuer and/or any Subsidiary) of, Qualified Capital Stock of the Issuer ("Refunding Capital Stock") and (ii) declare and pay dividends on any Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to the Issuer or a Subsidiary) of any Refunding Capital Stock;

(h) Restricted Junior Payments to repurchase Capital Stock upon the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock if such Capital Stock represents all or a portion of the exercise price of such warrants, options or other securities convertible into or exchangeable for Capital Stock as part of a "cashless" exercise or required withholding Taxes;

(i) to the extent constituting a Restricted Junior Payment, payments of cash upon settlements of conversions or exchanges of convertible notes permitted under Section 6.1 (including the PubCo Notes); and

(j) Tax Distributions.

Section 6.5 [Reserved].

Section 6.6 Investments. Company shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture and any Foreign Subsidiary, except Permitted Investments.

Section 6.7 Fundamental Changes; Disposition of Assets. No Note Party shall, nor shall it permit any of its Subsidiaries to, (x) enter into any transaction of merger or consolidation, or liquidate, restructure, reorganize or recapitalize, (y) wind up or dissolve itself (or suffer any liquidation or dissolution), or (z) Dispose, convey, sell, lease or sub lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, in each case, involving assets with a fair market value in excess of \$5,000,000 in the aggregate, except that this Section 6.7 shall not prohibit the following:

(a) any Subsidiary of Company may be merged with or into Company or any wholly-owned Subsidiary (and any non-wholly owned Subsidiary of Company may be merged with or into another non-wholly owned Subsidiary), or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise Disposed of, in one transaction or a series of transactions, to Company or any wholly-owned Subsidiary (or to the extent such Subsidiary of Company is not wholly-owned, to any other non-wholly owned Subsidiary of Company); provided, in the case of such a merger involving a Note Party, a Note Party shall be the continuing or surviving Person; provided further that, in the case of such a disposition by a Note Party of its business, property or assets to a Subsidiary that is not a Note Party, such Disposition shall reduce on a dollar-for-dollar basis, and the aggregate amount of all such dispositions shall not exceed, the amount available under clause (v) of the definition of Permitted Intercompany Investment;

(b) sales, transfers and other Dispositions of inventory or equipment or other assets (including on an intercompany basis), used, worn out, obsolete or surplus property, Cash and Cash Equivalents in the ordinary course of business and the cancellation or abandonment of intellectual property in the ordinary course of business that is, in the reasonable judgment of Company, no longer economically practicable to maintain or useful in the conduct of the business of Company and its Subsidiaries, taken as a whole;

(c) the discount or sale, in each case without recourse and in the ordinary course of business, of past due receivables arising in the ordinary course of business, but only in connection with the compromise or collection thereof consistent with customary industry practice (and not as part of any bulk sale or financing of receivables);

(d) leases, licenses or subleases or sublicenses of property to other Persons in the ordinary course of business not materially interfering with the business of Company and its Subsidiaries taken as a whole;

(e) Dispositions or abandonment of Intellectual Property of the Company and its Subsidiaries determined in good faith by the management of the Issuer to be no longer economically practicable to maintain or useful or necessary in the operation of the business of the Company or any of the Subsidiaries;

(f) Permitted Liens;

(g) Permitted Investments;

(h) dispositions of property as a result of a casualty event involving such property or any disposition of real property to a Governmental Authority as a result of a condemnation of such real property;

(i) termination of Interest Rate Agreements;

(j) dispositions in connection with Permitted Receivables Financings;

(k) the settlement or early termination of any Permitted Convertible Indebtedness Call Transaction

(l) Dispositions to the extent that (i) the relevant property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of the relevant Disposition are promptly applied to the purchase price of such replacement property in the ordinary course of business;

(m) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between joint venture parties set forth in the relevant joint venture arrangements and/or similar binding arrangements;

(n) Dispositions and/or terminations of leases, subleases, licenses or sublicenses (including the provision of software under any open source license), (i) the Disposition or termination of which will not materially interfere with the business of Issuer and any of the Subsidiaries or (ii) which relate to closed facilities or the discontinuation of any product line;

(o) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(p) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(q) Dispositions or consignments of equipment, inventory or other assets (including leasehold interests in real property) with respect to facilities that are temporarily not in use, held for sale or closed (or otherwise in connection with the closing or sale of any facility); and

(r) Dispositions or Asset Sales not otherwise permitted pursuant to this Section 6.7; provided that:

(i) at the time of such Disposition or Asset Sale, no Default or Event of Default shall exist or would result from such Disposition or Asset Sale,

(ii) such Disposition or Asset Sale is made for fair market value (as reasonably determined by Issuer and measured as of the date a legally binding commitment for such Disposition was entered into),

(iii) the consideration received shall be no less than 75% in cash or Cash Equivalents, as such percentages are measured as of the date a legally binding commitment for such Disposition was entered into, provided that for purposes of this clause (iii), each of the following shall be deemed to be Cash Equivalents:

(A) the amount of any liabilities (as shown on the Issuer's or such Subsidiary's most recent balance sheet or in the notes thereto) (other than contingent liabilities and liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee of any such assets or are otherwise cancelled in connection with such transaction, and in each case, Issuer or such Subsidiary are released from further liability;

(B) any notes or other obligations or other securities or assets received by the Issuer or such Subsidiary from the transferee that are converted by the Issuer or such Subsidiary into cash within 120 days after receipt thereof (to the extent of the cash and Cash Equivalents received); and

(C) any Designated Non-Cash Consideration outstanding received by the Issuer or Subsidiary having an aggregate fair market value not to exceed, in the aggregate for all Dispositions under this clause (C), not to exceed the greater of (x) \$2,500,000 and (y) 2.0% of TTM EBITDA for the most recently ended Test Period when received; and

(iv) Within 365 days after the Issuer's or Subsidiary's receipt of the net cash proceeds of such Disposition or Asset Sale, the Issuer or such Subsidiary applies an amount equal to such net cash proceeds, at its option, to: (A) reduce secured Indebtedness (other than Indebtedness which is subordinated in right of payment to the Obligations or secured by a lien that is junior to the lien securing the Obligations), (B) make an investment in its or any one or more businesses, assets, or property or capital expenditures, in each case used or useful in a Similar Business; (C) make an investment in its or any one or more businesses, assets, or property or capital expenditures, that replace the businesses, properties and/or assets that are the subject of such Disposition or Asset Sale or (D) any combination of the foregoing; provided that the requirements of items (iii) and (iv) of this Section 6.7(r) shall not apply to the extent that such Asset Sale or Disposition would not cause the pro forma Net Leverage Ratio to exceed 3.00 to 1.00.

Notwithstanding the foregoing, nothing in this Agreement shall be deemed to permit Company or any of its Subsidiaries to sell, out-license rights, or dispose of any material portion of intellectual property, other than (i) pursuant to non-exclusive out-licenses of Intellectual Property (as defined in the Pledge and Security Agreement) in the ordinary course of Company's or any Subsidiary's business on arms' length terms; provided that such out-licenses are not to an Affiliate of Company which is not a Subsidiary of Company or (ii) pursuant to Section 6.7(b).

Section 6.8 Sales and Lease Backs. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Note Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Company or any of its Subsidiaries) or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Note Party to any Person (other than Company or any of its Subsidiaries) in connection with such lease unless (a) the sale or transfer of the property thereunder is permitted by Section 6.7, (b) any Capital Lease arising in connection therewith are permitted by Section 6.1, and (c) any Liens arising in connection therewith (including Liens deemed to arise in connection with any such Capital Lease) are permitted by Section 6.2.

Section 6.9 Transactions with Affiliates. No Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) or series of related transactions involving an aggregate payment of consideration in excess of \$1,000,000 with any Affiliate of Company, other than on fair and reasonable terms substantially as favorable to the Note Party as would be obtainable by the Note Party at the time in a comparable arm's length transaction with a Person other than an Affiliate, as determined by the Company in good faith; provided, that the foregoing restrictions shall not apply to any of the following:

(a) any transaction between or among the Note Parties;

(b) any transaction among the Note Parties and their Subsidiaries which constitutes a Permitted Intercompany Investment (it being understood that to the extent that any Affiliate other than Company or its Subsidiaries has an interest, directly or indirectly, in any such transaction, whether as a minority investor in a Subsidiary of Company or otherwise, the terms of such arrangement must be permitted under the introductory paragraph of this Section 6.9 as to such Affiliate);

- (c) reasonable and customary fees, reasonable out-of-pocket costs and indemnifications paid to officers, employees and members of the Board of Directors (or similar governing body) of Company and its Subsidiaries in the ordinary course of business;
 - (d) compensation and other employment agreements and arrangements for officers and other employees of Company and its Subsidiaries entered into in the ordinary course of business and consistent with industry standards;
 - (e) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of a Note Party;
 - (f) transactions described on Schedule 6.10;
 - (g) any Restricted Junior Payment permitted by Section 6.4
 - (h) Investments permitted by Section 6.6 in Subsidiaries and joint venture or other minority interest entities;
 - (i) so long as Company is subject to the filing requirements of the Securities and Exchange Commission, any transaction that is otherwise permitted by any Company policy regarding such transactions to the extent such policy was approved by Company's Board of Directors;
 - (j) any payments or other transaction pursuant to any tax sharing agreement between Company and any other Person with which Company files a consolidated tax return or with which Company is part of a consolidated group for tax purposes;
 - (k) guarantees, indemnities, bankers acceptances, surety bonds and letters of credit issued by, or for the account of, and Liens granted for the benefit of, Company or a Subsidiary for the benefit of Company or a Subsidiary, in each case otherwise permitted by this Agreement;
 - (l) the issuance of Qualified Capital Stock of Company or any Subsidiary to any Person;
 - (m) to the extent constituting affiliate transactions, the consummation of the transactions contemplated by the Note Documents;
- and
- (n) intercompany transactions undertaken in good faith for the purpose of improving the consolidated Tax efficiency of Company and its Subsidiaries and not for the purpose of circumventing any covenant set forth herein.

Section 6.10 Conduct of Business. From and after the Closing Date, no Note Party shall, nor shall it permit any of its Subsidiaries to, engage to any material extent in any business other than the businesses of the type engaged in by such Note Party and its Subsidiaries on the Closing Date and businesses reasonably related thereto or similar or complementary thereto or reasonable extensions thereof.

Section 6.11 Changes to Certain Agreements and Organizational Documents. No Note Party shall (i) amend, restate, supplement or otherwise modify any Note Party's Organizational Documents if such amendment, restatement, supplement or modification would be materially adverse to the Investors; (ii) amend, terminate (unless replaced with another agreement that, taken as a whole, is on better terms for such Note Party) or waive any provision of, the SVB Financing Agreement if such amendment, termination, or waiver would be materially adverse to the Investors or would violate the SVB Subordination Agreement; or (iii) amend, terminate (unless replaced with another agreement that, taken as a whole, is on better terms for such Note Party) or waive any provision of, any Permitted Senior Indebtedness if such amendment, termination, or waiver would violate the applicable Subordination Agreement.

Section 6.12 Accounting Methods. The Note Parties will not and will not permit any of their Subsidiaries to modify or change its fiscal year or its method of accounting (other than as permitted under GAAP).

Section 6.13 Anti-Terrorism Laws. None of the Note Parties, nor any Significant Subsidiary shall:

(a) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, in each case, in violation of any OFAC Sanctions Program, or,

(b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the OFAC Sanctions Programs, in violation of any OFAC Sanctions Program.

Section 6.14 Anti-Corruption. Each Note Party agrees that it shall not, and shall cause its Significant Subsidiaries to not, act in violation of applicable anti-corruption laws, including the FCPA or offer, pay, promise to pay, authorize the payment of, receive, or solicit anything of value under circumstances such that all or a portion of such thing of value would be offered, given, or promised, directly or indirectly, to any Person to obtain any improper advantage.

Section 6.15 Anti-Layering. No Note Party shall incur any Indebtedness that is contractually subordinated to any obligations in respect of Permitted Senior Indebtedness in right of payment, including as to rights and remedies, or incur any Indebtedness secured by a Lien that is contractually subordinated to any Lien securing any obligations in respect of Permitted Senior Indebtedness, unless, in each case as applicable, such Indebtedness is contractually subordinated to the Notes in right of payment, including as to rights and remedies, or the Lien securing such Indebtedness is contractually subordinated to the Lien securing the Notes, in each case pursuant to terms satisfactory to the Required Investors; provided, subject to the terms of the Subordination Agreement or any applicable intercreditor agreement, in no event shall this provision restrict the ability of the Note Parties, or any first lien agent or first lien claimholders (as described in such Subordination Agreement or intercreditor agreement) from at any time or from time to time without the consent of or notice to the Required Investors and without violating this Agreement or any other Note Document or creating any Event of Default, amend the payment waterfall provisions contained in the agreements governing the Permitted Senior Indebtedness, create or add new tranches of first lien obligations under and within agreements governing the Permitted Senior Indebtedness, and/or reallocate all or a portion of the Permitted Senior Indebtedness to the principal amount of one or more newly created loan tranches under and within the agreements governing Permitted Senior Indebtedness, each of which may be contractually senior, junior or *pari passu* to the then existing or thereafter arising Permitted Senior Indebtedness and contain such terms and provisions to be determined and agreed among the Note Parties (or any one or more of them), the first lien agent, and any relevant first lien claimholder; *provided*, however, that any such amendments, creations, additions, reallocations and modifications shall be subject to the limitations in the Subordination Agreement or the intercreditor agreement.

Section 6.16 IPO. Company shall not consummate any underwritten public offering or any other direct listing of Common Stock upon which the Common Stock is not listed on the New York Stock Exchange or the Nasdaq Stock Exchange.

Notwithstanding anything in this Agreement to the contrary, the covenants in this Article VI shall cease to be applicable in their entirety once the PubCo Notes are issued and the Notes are exchanged therefor in accordance with Section 2.8. The covenants, agreements and terms of or relating to, the PubCo Notes, once issued, shall be exclusively governed by or pursuant to the PubCo Notes Indenture, and not this Agreement.

ARTICLE VII

GUARANTY

Section 7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty, in favor of Collateral Agent for the ratable benefit of each Investor, the due and punctual payment in full of all Obligations of Issuer when the same shall become due, whether at stated maturity, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "Guaranteed Obligations").

Section 7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the Guaranteed Obligations. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 7.2, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

Section 7.3 Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Issuer to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Collateral Agent for the ratable benefit of each Investor, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Issuer's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Issuer for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Investors as aforesaid.

Section 7.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Collateral Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Issuer and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Issuer and the obligations of any other guarantor (including any other Guarantor) of the obligations of Issuer, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Issuer or any of such other guarantors and whether or not Issuer is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Collateral Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations, in each case, to the extent permitted by the Note Documents; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect of the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or non-judicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Issuer or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Note Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Note Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Note Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Note Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the Note Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Company or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which Issuer may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

Section 7.5 Waivers by Guarantors. Each Guarantor hereby waives, to the extent permitted by applicable law, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Issuer, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Issuer, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of Issuer or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Issuer or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Issuer or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith or willful misconduct; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder other than as a result of payment in full of the Guaranteed Obligations, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Issuer and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

Section 7.6 Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Issuer or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Issuer with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Issuer and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Issuer or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Issuer, to all right, title and interest any Beneficiary may have in any such collateral or security and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Collateral Agent on behalf of Beneficiaries and shall forthwith be paid over to Collateral Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

Section 7.7 Subordination of Other Obligations. Any Indebtedness of Issuer or any Guarantor now or hereafter held by any Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by such Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Collateral Agent on behalf of Beneficiaries and shall forthwith be paid over to Collateral Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of such Guarantor under any other provision hereof.

Section 7.8 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

Section 7.9 Authority of Guarantors or Issuer. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Issuer or the officers, directors or agents acting or purporting to act on behalf of any of them.

Section 7.10 Financial Condition of Issuer. Any purchase of Notes may be made from Issuer or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of Issuer at the time of any such grant or continuation is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Issuer. Each Guarantor has adequate means to obtain information from Issuer on a continuing basis concerning the financial condition of Issuer and their ability to perform their obligations under the Note Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Issuer and of all circumstances bearing upon the risk of non-payment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Issuer now known or hereafter known by any Beneficiary.

Section 7.11 Bankruptcy, etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Collateral Agent acting pursuant to the instructions of Required Investors, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Issuer or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Issuer or any other Guarantor or by any defense which Issuer or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Issuer of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Collateral Agent, or allow the claim of Collateral Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Issuer, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Section 7.12 Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such sale or disposition.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Issuer (i) to make any payment of principal or any applicable Make-Whole Premium as and when required to be paid hereunder, or (ii) to make any required payment in respect of interest, fees or any other amount due and payable hereunder or under any other Note Document, in each case with respect to amounts referenced in clause (ii), within five (5) Business Days of such amount being due.

(b) Default in Other Agreements. (i) Failure of any Note Party or any Significant Subsidiary to pay when due any principal of or interest on or any other amount payable in respect of any Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an aggregate principal amount of \$10,000,000 or more of a Note Party or a Significant Subsidiary (“Material Debt”), in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Note Party with respect to any other term of (A) such Material Debt, or (B) any agreement governing such Material Debt, in each case beyond the grace period, if any, provided therefor, or any change of control or other liquidity event, if the effect of such breach, default, change of control or other liquidity event is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) or to require the prepayment, redemption, repurchase or defeasance of, or to cause a Note Party or a Significant Subsidiary to make any offer to prepay, redeem, repurchase or defease such Indebtedness, prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided that in the case of clause (ii) any such default under any Permitted Senior Indebtedness shall only be an Event of Default hereunder if the applicable Permitted Senior Indebtedness has been accelerated or commitments thereunder terminated; or

(c) Breach of Certain Covenants. Failure of any Note Party to perform or comply with any term or condition contained in Section 2.2, Section 2.8, Section 5.1, Section 5.2 (with respect to Issuer), Section 5.5, Section 5.10, Section 5.12, Section 5.13, or Article VI; or

(d) Material Breach of Representations. Any representation or warranty made by any Note Party in any Note Document or in any certificate at any time given by any Note Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) as of the date made; or

(e) Other Defaults Under Note Documents. Any Note Party shall default in the performance of or compliance with any term contained herein or any of the other Note Documents, other than any such term referred to in any other subsection of this Section 8.1, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an officer of such Note Party becoming aware of such default, or (ii) receipt by Company of notice from Collateral Agent or any Investor of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or any Significant Subsidiary in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Company or any Significant Subsidiary under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or any Significant Subsidiary, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or any Significant Subsidiary for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or any Significant Subsidiary, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Company or any Significant Subsidiary shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Company or any Significant Subsidiary shall make any assignment for the benefit of creditors; or (ii) Company or any Significant Subsidiary shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors (or similar governing body) of Company or any Significant Subsidiary shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving in the aggregate at any time an amount in excess of \$10,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage), shall be entered or filed against Company or any Significant Subsidiary or any of their respective assets in connection with an Adverse Proceeding and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Note Party or any Significant Subsidiary decreeing the dissolution or split up of such Note Party or any Significant Subsidiary and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Guaranties, Collateral Documents and other Note Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations or release of a Guarantor under and pursuant to the terms of this Agreement (solely in respect of such Guarantor), shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Note Party shall contest the validity or enforceability of any Note Document in writing or falsely deny in writing that it has any further liability, including with respect to future advances by Investors, under any Note Document to which it is a party; or

Section 8.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Collateral Agent may, and shall at the request of the Required Investors:

(a) declare all or any portion of the unpaid principal amount of all outstanding Notes, all interest accrued and unpaid thereon, the Make-Whole Premium (if applicable) and all other amounts owing or payable hereunder or under any other Note Document to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Note Party; and/or

(b) exercise on behalf of themselves and the Investors all rights and remedies available to them and the Investors under the Note Documents or applicable law;

provided, that upon the occurrence of any event specified in Section 8.1(f) or Section 8.1(g) above, the unpaid principal amount of all outstanding Notes and all interest and other amounts as aforesaid shall automatically become due and payable without further act of Collateral Agent or any Investor.

Section 8.3 Rights Not Exclusive. The rights provided for in this Agreement and the other Note Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE IX

COLLATERAL AGENT

Section 9.1 Appointment of Collateral Agent.

(a) The Bank of New York Mellon is hereby appointed Collateral Agent hereunder and under the other Note Documents and each Investor hereby authorizes The Bank of New York Mellon, in such capacity, to act as its agent in accordance with the terms hereof and the other Note Documents to perform, exercise and enforce any and all other rights and remedies of the Investors with respect to the Note Parties, the Obligations or otherwise related to any of same to the extent reasonably incidental to the exercise by Collateral Agent of the rights and remedies specifically authorized to be exercised by Collateral Agent by the terms of this Agreement or any other Note Document. In addition, to the extent necessary in furtherance of the purposes of this Agreement or any other Note Document in relation to Collateral located outside the United States or England, the Required Investors may from time to time appoint one or more additional Collateral Agents to act on behalf of Investors.

(b) Collateral Agent hereby agrees to act upon the express conditions contained herein and the other Note Documents, as applicable. The provisions of this Article IX are solely for the benefit of Collateral Agent, the Investors and the other Secured Parties and no Note Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Collateral Agent shall act solely as an agent of Investors and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any of its Subsidiaries.

Section 9.2 Powers and Duties.

(a) Each Investor irrevocably authorizes Collateral Agent to take such action on such Investor's behalf and to exercise such powers, rights and remedies hereunder and under the other Note Documents as are specifically delegated or granted to Collateral Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Collateral Agent shall have only those duties and responsibilities that are expressly specified herein and the other Note Documents. Collateral Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Collateral Agent shall not have, by reason hereof or any of the other Note Documents, a fiduciary relationship in respect of any Investor. Nothing herein or in any of the other Note Documents, expressed or implied, is intended to or shall be so construed as to impose upon Collateral Agent any obligations in respect hereof or any of the other Note Documents except as expressly set forth herein or therein.

(b) Collateral Agent shall act as the "collateral agent" under the Note Documents, and each of the Secured Parties hereby irrevocably appoints and authorizes Collateral Agent to act as the agent of such Secured Party for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Note Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Investors, and by accepting the benefits of the Collateral Documents, any other Secured Parties, hereby expressly authorize Collateral Agent to (i) at the direction of the Required Investors, execute any and all documents (including releases and subordination agreements) with respect to the Collateral (including any amendment, supplement, modification or joinder with respect thereto) and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by Collateral Agent shall bind the Secured Parties and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Secured Parties in their capacity as such, at the direction of the Required Investors, which negotiation, enforcement or settlement will be binding upon each Secured Party. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Secured Party hereby grants to Collateral Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction.

(c) The duties of Collateral Agent shall be mechanical and administrative in nature; and Collateral Agent shall not have, by reason of any Note Document, a fiduciary relationship in respect of any Investor or any Secured Party. Without limiting the generality of the foregoing, the use of the term “agent” in this Agreement or the other Note Documents with reference to Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties.

Section 9.3 General Immunity.

(a) No Responsibility for Certain Matters. Collateral Agent shall not be responsible to any Investor for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or of any other Note Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Collateral Agent to Investors or by or on behalf of any Note Party to Collateral Agent or any Investor in connection with the Note Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Note Party or any other Person liable for the payment of any Obligations, nor shall Collateral Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Note Documents or as to the use of the proceeds of the Notes or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Collateral Agent shall not have any liability arising from confirmations of the amount of outstanding Notes or the component amounts thereof.

(b) Exculpatory Provisions.

(i) Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Note Documents. Without limiting the generality of the foregoing, Collateral Agent:

(A) shall not be subject to any fiduciary or other implied duties or obligations, regardless of whether a Default or Event of 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 Note Documents that Collateral Agent is required to exercise as directed in writing by the Required Investors (or such other number or percentage of the Investors as shall be necessary, or as Collateral Agent shall believe in good faith shall be necessary); provided that Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may (i) expose Collateral Agent to liability or that is contrary to any Note Document or applicable law or (ii) be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency, reorganization, or relief of debtors; provided, further, that if Collateral Agent so requests, it shall first be indemnified and provided with adequate security to its sole satisfaction (including reasonable advances as may be requested by Collateral Agent) by the Investors against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such directed action; provided, further, that Collateral Agent may seek clarification or further direction from the Required Investors prior to taking any such directed action and may refrain from acting until such clarification or further direction has been provided;

(C) shall not, except as expressly set forth herein and in the other Note Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Company or any of its Affiliates that is communicated to or obtained by the Person serving as Collateral Agent or any of its Affiliates in any capacity;

(D) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Investors (or such other number or percentage of the Investors as shall be necessary, or as Collateral Agent shall believe in good faith shall be necessary) (and such consent or request and such action or action not taken pursuant thereto shall be binding upon all the Investors) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable judgment (which shall not include any action taken or omitted to be taken in accordance with clause (i), for which Collateral Agent shall have no liability);

(E) shall not be responsible or liable for or have any duty to ascertain or inquire into or monitor (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Note 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, the use of proceeds of the Notes, or the occurrence of any Default or Event of Default, (iv) the execution, validity, enforceability, effectiveness, genuineness, collectability or sufficiency of this Agreement, any other Note Document or any other agreement, instrument or document, or the creation, preservation, perfection, maintenance or continuation of perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, (vi) whether the Collateral exists, is owned by Company or its Subsidiaries, is cared for, protected, or insured or has been encumbered, or meets the eligibility criteria applicable in respect thereof, (vii) the satisfaction of any condition set forth in Article IV or elsewhere, other than to confirm receipt of items expressly required to be delivered to Collateral Agent, or (viii) the financial condition or business affairs of any Note Party or any other Person liable for the payment of any Obligations; and

(F) shall not have any liability arising from confirmations of the amount of outstanding Notes or any component amounts thereof.

(ii) Nothing in this Agreement or any other Note Document shall require Collateral Agent to account to any Investor for any sum or the profit element of any sum received by Collateral Agent for its own account.

(iii) Nothing in this Agreement or any other Note Document shall require Collateral Agent or its Affiliates to expend or risk their own funds or otherwise incur any financial liability in the performance of any duties or in the exercise of any rights or powers hereunder.

(iv) If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Agreement or any other Note Document, or Collateral Agent is in doubt as to the action to be taken hereunder, Collateral Agent may, at its option, after sending written notice of the same to the other parties to this Agreement, refuse to act until such time as it receives a final non-appealable order of a court of competent jurisdiction directing Collateral Agent, as applicable, to take such action or is fully indemnified for taking such action.

(v) Collateral Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement or any other Note Document, in each case, arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(vi) For the avoidance of doubt, and without limiting the other protections set forth in this Article IX, with respect to any determination, designation, or judgment to be made by Collateral Agent herein or in the other Note Documents, Collateral Agent shall be entitled to request that the Required Investors (or such other number or percentage of the Investors as shall be necessary, or as Collateral Agent shall believe in good faith shall be necessary) make or confirm such determination, designation, or judgment.

(vii) Collateral Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Note Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Collateral Agent shall have received instructions in respect thereof from Required Investors (or such other Investors as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Required Investors (or such other Investors, as the case may be), Collateral Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any notice, orders, request, certificate, consent, statement, instrument, letter, document or other writing (including any electronic message, Internet website posting or other distribution) believed by it in good faith to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person, and shall not incur any liability for relying thereon. Collateral Agent shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Company and its Subsidiaries), accountants, experts and other professional advisors 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; and (ii) no Investor shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent acting or (where so instructed) refraining from acting hereunder or any of the other Note Documents in accordance with the instructions of Required Investors (or such other Investors as may be required to give such instructions under Section 10.5).

(c) Notice of Default. Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to Events of Default in the fees required to be paid to Collateral Agent, unless Collateral Agent shall have received written notice delivered in accordance with Section 10.1 from an Investor or the Note Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” Collateral Agent will notify the Investors of its receipt of any such notice. Collateral Agent shall take such action with respect to any such Default or Event of Default as may be directed by the Required Investors in accordance with Article VIII; provided, however, that unless and until Collateral Agent has received any such direction, Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Investors.

Section 9.4 Company’s Business with Collateral Agent. Collateral Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Investors.

Section 9.5 Investors’ Representations, Warranties and Acknowledgment.

(a) Each Investor represents and warrants that it has made its own independent investigation of the financial condition and affairs of Company and its Subsidiaries in connection with purchasing their pro rata share of Notes hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Company and its Subsidiaries. Collateral Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Investors or to provide any Investor with any credit or other information with respect thereto, whether coming into its possession before the purchasing of the Notes or at any time or times thereafter, and Collateral Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Investors.

(b) Each Investor, by delivering its signature page to this Agreement and purchasing Notes on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Note Document and each other document required to be approved by Collateral Agent, Required Investors or Investors, as applicable on the Closing Date.

(c) Each Investor (i) represents and warrants that as of the Closing Date neither such Investor nor its Affiliates or Related Funds owns or controls, or owns or controls any Person owning or controlling, any trade debt or Indebtedness of any Note Party other than the Obligations or any Capital Stock of any Note Party and (ii) covenants and agrees that from and after the Closing Date neither such Investor nor its Affiliates and Related Funds shall purchase any trade debt or Indebtedness of any Note Party other than the Obligations or Capital Stock described in clause (i) above without the prior written consent of the Required Investors.

Section 9.6 Right to Indemnity. EACH INVESTOR, IN PROPORTION TO ITS PRO RATA SHARE, SEVERALLY AGREES TO INDEMNIFY COLLATERAL AGENT, ITS AFFILIATES AND ITS RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, TRUSTEES, EMPLOYEES AND AGENTS OF COLLATERAL AGENT (EACH, AN “INDEMNITEE AGENT PARTY”), TO THE EXTENT THAT SUCH INDEMNITEE AGENT PARTY SHALL NOT HAVE BEEN REIMBURSED BY ANY NOTE PARTY, FOR AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES (INCLUDING COUNSEL FEES AND DISBURSEMENTS, AND REGARDLESS OF WHETHER A CLAIM AGAINST THE INDEMNITEE AGENT PARTY IS BROUGHT BY AN INVESTOR, THE COMPANY, OR ANY OTHER PARTY) OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SUCH INDEMNITEE AGENT PARTY IN EXERCISING ITS POWERS, RIGHTS AND REMEDIES OR PERFORMING ITS DUTIES HEREUNDER OR UNDER THE OTHER NOTE DOCUMENTS OR OTHERWISE IN ITS CAPACITY AS SUCH INDEMNITEE AGENT PARTY IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER NOTE DOCUMENTS, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY; PROVIDED, NO INVESTOR SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS RESULTING FROM SUCH INDEMNITEE AGENT PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL, NON-APPEALABLE ORDER. IF ANY INDEMNITY FURNISHED TO ANY INDEMNITEE AGENT PARTY FOR ANY PURPOSE SHALL, IN THE OPINION OF SUCH INDEMNITEE AGENT PARTY, BE INSUFFICIENT OR BECOME IMPAIRED, SUCH INDEMNITEE AGENT PARTY MAY CALL FOR ADDITIONAL INDEMNITY AND CEASE, OR NOT COMMENCE, TO DO THE ACTS INDEMNIFIED AGAINST UNTIL SUCH ADDITIONAL INDEMNITY IS FURNISHED; PROVIDED, IN NO EVENT SHALL THIS SENTENCE REQUIRE ANY INVESTOR TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSES OR DISBURSEMENT IN EXCESS OF SUCH INVESTOR’S PRO RATA SHARE THEREOF; AND PROVIDED FURTHER, THIS SENTENCE SHALL NOT BE DEEMED TO REQUIRE ANY INVESTOR TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSE OR DISBURSEMENT DESCRIBED IN THE PROVISIO IN THE IMMEDIATELY PRECEDING SENTENCE.

(a) Collateral Agent may resign at any time by giving thirty (30) days' (or such shorter period as shall be agreed by the Required Investors) prior written notice thereof to Investors and Company and the Required Investors may terminate and replace Collateral Agent at any time by giving thirty (30) days' prior written notice to Collateral Agent, Company and the Investors. Upon any such notice of resignation or termination, as applicable, the Required Investors shall have the right, upon five (5) Business Days' notice to Company, to appoint a successor Collateral Agent subject (to the extent that such successor Collateral Agent is not an Investor or an Affiliate of an Investor and so long as no Event of Default has occurred and is continuing) to the written consent of Company. In the case of a resignation or termination of Collateral Agent, the resigning or terminated Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Note Documents. In the case of a resignation by Collateral Agent, if no successor shall have been so appointed by the Required Investors and shall have accepted such appointment within thirty (30) days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Investors appoint a successor Collateral Agent; provided, that if the retiring Collateral Agent shall notify Company and the Investors that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and all payments, communications and determinations provided to be made by, to or through the retiring Collateral Agent shall instead be made by or to each Investor directly, until such time as the Required Investors appoint a successor Collateral Agent as provided for above in this Section 9.7. In the case of a termination of Collateral Agent, all payments, communications and determinations provided to be made by, to or through the terminated Collateral Agent shall instead be made by or to each Investor directly, until such time as the Required Investors appoint a successor Collateral Agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or terminated Collateral Agent, and the retiring or terminated Collateral Agent shall promptly (i) transfer to such successor Collateral Agent all sums, securities or Capital Stock and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under the Note Documents, and (ii) execute and deliver to such successor Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring or terminated Collateral Agent shall be discharged from its duties and obligations hereunder. After any retiring or terminated Collateral Agent's resignation or termination hereunder as Collateral Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent hereunder.

(b) After the retiring or terminated Collateral Agent's resignation or terminated hereunder and under the other Note Documents, the provisions of this Article IX and Section 10.2 and all other rights, privileges, protections, immunities, and indemnities granted to Collateral Agent hereunder shall continue in effect for the benefit of such retiring or terminated Collateral Agent, its co-agents, sub-agents and attorneys-in-fact and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while the retiring or terminated Collateral Agent was acting as Collateral Agent.

(c) Collateral Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Note Document by or through any one or more co-agent, sub-agents, or attorneys-in-fact appointed by Collateral Agent. Collateral Agent and any such co-agent, sub-agent and attorney's-in-fact may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. Any corporation or association into which The Bank of New York Mellon may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which The Bank of New York Mellon is a party, will be and become the successor Collateral Agent under this Agreement and will have and succeed to the rights, privileges, protections, immunities, and indemnities of Collateral Agent hereunder and the other Note Documents, without the execution or filing of any instrument or paper or the performance of any further act.

(d) Notwithstanding anything herein to the contrary, with respect to each co-agent, sub-agent or attorney-in-fact appointed by Collateral Agent, (i) such co-agent, sub-agent or attorney-in-fact shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory and rights to indemnification) and shall have all of the rights, benefits and privileges of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Note Parties and the Investors, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such co-agent, sub-agent or attorney-in-fact, and (iii) such co-agent, sub-agent or attorney-in-fact shall only have obligations to Collateral Agent and not to any Note Party, Investor or any other Person and no Note Party, Investor or any other Person shall have the rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent. Collateral Agent shall not be responsible for the negligence or misconduct of any such co-agents, sub-agents and attorneys-in-fact except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Collateral Agent acted with gross negligence or willful misconduct in the selection of such co-agents, sub-agents and attorneys-in-fact.

(a) Collateral Agent under Collateral Documents and Guaranty. Each Investor hereby further authorizes Collateral Agent on behalf of and for the benefit of Investors, to be the agent for and representative of Investors with respect to the Guaranty, the Collateral and the Collateral Documents, and authorizes and directs Collateral Agent to execute such documents, as applicable. Subject to Section 10.5, without further written consent or authorization from Investors, Collateral Agent may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that becomes an Excluded Asset or that is the subject of a sale or other disposition of assets permitted hereby or to which Required Investors (or such other Investors as may be required to give such consent under Section 10.5) have otherwise consented, or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Required Investors (or such other Investors as may be required to give such consent under Section 10.5) have otherwise consented; provided, that (1) Collateral Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Collateral Agent's opinion or the opinion of its counsel, could expose Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, (2) the Liens on the Collateral that becomes an Excluded Asset or is subject to such a permitted sale or other disposition shall be automatically be released upon consummation thereof, and any Guarantor whose Capital Stock is so sold or otherwise disposed of shall automatically released from its obligations hereunder and (3) the Note Parties shall provide Collateral Agent with such certifications, legal opinions or documents as Collateral Agent shall reasonably request in order to demonstrate that the requested release is permitted under this Section 9.8. Upon request by Collateral Agent at any time, the Required Investors (or such other Investors as may be required to give such consent under Section 10.5) will confirm in writing Collateral 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 Guaranty.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Note Documents to the contrary notwithstanding, Company, Collateral Agent and each Investor hereby agree that (i) no Investor shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Collateral Agent, on behalf of Investors in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale or any sale of the Collateral in a case under the Bankruptcy Code (or equivalent foreign Debtor Relief Law), Collateral Agent or any Investor may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Investor or Investors in its or their respective individual capacities unless Required Investor shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

(c) The Collateral Agent, acting at the direction of the Required Investors, may grant extensions of time for the creation or perfection of security interests in, or obtaining of title insurance or taking other actions with respect to, particular assets or any other compliance with the requirements of the provisions of the Note Documents relating to the Collateral where it reasonably determines in writing, in consultation with the Note Parties, that the creation or perfection of security interests, or obtaining of title insurance or taking other actions, or any other compliance with the requirements of provisions of the Note Documents relating to the Collateral cannot be accomplished without undue delay, burden or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Section 9.9 Agency for Perfection. Each Investor hereby appoints Collateral Agent as agent and bailee for the purpose of perfection the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and Collateral Agent and each Investor hereby acknowledges that, unless held by the “First Lien Representative” (or similar term, as defined in the applicable Subordination Agreement) pursuant to the Subordination Agreement, it holds possession of or otherwise controls any such Collateral for the benefit of the Investors as secured party. Should any Investor obtain possession or control of any such Collateral, such Investor shall notify Collateral Agent thereof, and, promptly upon Collateral Agent’s request therefore shall deliver such Collateral to Collateral Agent or in accordance with Collateral Agent’s instructions. In addition, Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable federal, state or non-U.S. law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Note Documents. Each Note Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 9.10 Collateral Agent May File Proofs of Claim.

(a) In case of the pendency of any proceeding with respect to any Note Party under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or any other proceeding relative to any Note Party, Collateral Agent (irrespective of whether the principal of any Note shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Collateral Agent shall have made any demand on Company) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes 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 Investors and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Investors and Collateral Agent and their respective Affiliates and all other amounts due the Investors and Collateral Agent under Sections 2.6 and 10.2) allowed in such proceeding;

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(iii) and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Investor and each other Secured Party to make such payments to Collateral Agent and, if Collateral Agent shall consent to the making of such payments directly to the Investors or the other Secured Parties, to pay to Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Collateral Agent and its Affiliates, and any other amounts due to Collateral Agent and its Affiliates under the Note Documents (including all amounts due under Sections 2.6 and 10.2).

(b) Nothing contained herein shall be deemed to authorize Collateral Agent to authorize or consent to or accept or adopt on behalf of any Investor any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Investor or to authorize Collateral Agent to vote in respect of the claim of any Investor in any such proceeding.

Section 9.11 Survival. The agreements in this Article IX shall survive the resignation of Collateral Agent, the repayment, satisfaction or discharge of all the other Obligations, and the termination of this Agreement.

Section 9.12 Subordination Agreement. Each Investor hereby grants to Collateral Agent all requisite authority to enter into or otherwise become bound by any applicable Subordination Agreement and to bind each Investor thereto by Collateral Agent's entering into or otherwise becoming bound thereby, and no further consent or approval on the part of any Investor or Collateral Agent is or will be required in connection with the performance by Collateral Agent of any applicable Subordination Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices.

(a) Notices Generally. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Note Party or Collateral Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Note Document, and in the case of any Investor, the address as indicated on Appendix B or otherwise indicated to Collateral Agent in writing. Each notice hereunder shall be in writing and may be personally served, or sent by facsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to Collateral Agent or any Investor shall be effective until received by Collateral Agent or any Investor, as applicable.

(b) Electronic Communications.

(i) Collateral Agent and Company 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. Notices and other communications to the Investors hereunder may be delivered or furnished by Electronic Means pursuant to procedures approved by Collateral Agent, provided that the foregoing shall not apply to notices to any Investor pursuant to Article II if such Investor has notified Collateral Agent that it is incapable of receiving notices under such Article by Electronic Means.

(ii) The Collateral Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions"), given pursuant to this Agreement and the Note Documents and delivered using Electronic Means; provided, however, that the Company and/or the Investors, as applicable, shall provide to the Collateral Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Company and/or the Investors, as applicable, whenever a person is to be added or deleted from the listing. If the Company and/or the Investors, as applicable, elects to give the Collateral Agent Instructions using Electronic Means and the Collateral Agent in its discretion elects to act upon such Instructions, the Collateral Agent's understanding of such Instructions shall be deemed controlling. The Company and the Investors understand and agree that the Collateral Agent cannot determine the identity of the actual sender of such Instructions and that the Collateral Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Collateral Agent have been sent by such Authorized Officer. The Company and the Investors shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Collateral Agent and that the Company, the Investors and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Company and/or the Investors, as applicable. The Collateral Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Collateral Agent's reasonable and good faith reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction subject to the duty of care applicable to such Person acting in such capacity. The Company and the Investors agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Collateral Agent, including without limitation the risk of the Collateral Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Collateral Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Company and/or the Investors, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Collateral Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

(iii) (A) 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 the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email 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.

Section 10.2 Expenses. Company agrees to pay, promptly, subject in the case of Transaction Costs to the limitations set forth in the definition thereof, (a) all of Collateral Agent's and the Investors' actual, reasonable and documented out-of-pocket costs and expenses of preparation of the Note Documents and any consents, amendments, waivers or other modifications thereto (in the case of amendments, whether or not the transactions contemplated thereby are consummated); (b) all the actual, reasonable and documented out-of-pocket fees, expenses and disbursements of one primary external counsel to Collateral Agent (and, if necessary, any regulatory or subject matter expert counsel and one additional counsel in each relevant material jurisdiction) and one primary external counsel to the Investors (and, if necessary, any regulatory or subject matter expert counsel and one additional counsel in each relevant material jurisdiction) in connection with the negotiation, preparation, execution and administration of the Note Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (c) all the actual costs and documented out-of-pocket expenses of creating, maintaining and perfecting Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and Taxes, stamp or documentary Taxes, search fees, title insurance premiums and the actual, reasonable and documented out-of-pocket fees, expenses and disbursements of one counsel in each relevant material jurisdiction providing customary legal opinions that Collateral Agent or Required Investors may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (d) all of Collateral Agent's actual, reasonable and documented out-of-pocket fees and expenses for, and disbursements of any of Collateral Agent's auditors, accountants, consultants or appraisers; (e) all the actual, reasonable and documented out-of-pocket costs and expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (f) all the actual, reasonable and documented out-of-pocket costs and expenses of Collateral Agent and Investors in connection with the attendance at any meetings in connection with this Agreement and the other Note Documents (including the meetings referred to in Section 5.7); (g) all other actual and reasonable and documented out-of-pocket costs and expenses incurred by Collateral Agent and Investors in connection with the negotiation, preparation and execution of the Note Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all actual and documented out-of-pocket costs and expenses, including attorneys' fees and costs of settlement, incurred by Collateral Agent and Investors in enforcing any Obligations of or in collecting any payments due from any Note Party hereunder or under the other Note Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy or receivership cases or proceedings.

Section 10.3 Indemnity.

(a) IN ADDITION TO THE PAYMENT OF EXPENSES PURSUANT TO SECTION 10.2, WHETHER OR NOT THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSUMMATED, EACH NOTE PARTY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS, COLLATERAL AGENT AND EACH INVESTOR, THEIR AFFILIATES AND THEIR RESPECTIVE OFFICERS, PARTNERS, MEMBERS, INVESTORS, ADVISORS, REPRESENTATIVES, DIRECTORS, TRUSTEES, EMPLOYEES AND AGENTS, INCLUDING THE BOARD OBSERVER (EACH, AN “INDEMNITEE”), FROM AND AGAINST ANY AND ALL INDEMNIFIED LIABILITIES, REGARDLESS OF WHETHER A CLAIM AGAINST THE INDEMNITEE IS BROUGHT BY A PARTY HERETO OR BY ANY THIRD PARTY; PROVIDED, NO NOTE PARTY SHALL HAVE ANY OBLIGATION TO ANY INDEMNITEE HEREUNDER WITH RESPECT TO ANY INDEMNIFIED LIABILITIES TO THE EXTENT SUCH INDEMNIFIED LIABILITIES ARISE FROM THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL, NON-APPEALABLE ORDER, OF THAT INDEMNITEE. TO THE EXTENT THAT THE UNDERTAKINGS TO DEFEND, INDEMNIFY AND HOLD HARMLESS SET FORTH IN THIS SECTION 10.3 MAY BE UNENFORCEABLE IN WHOLE OR IN PART BECAUSE THEY ARE VIOLATIVE OF ANY LAW OR PUBLIC POLICY, THE APPLICABLE NOTE PARTY SHALL CONTRIBUTE THE MAXIMUM PORTION THAT IT IS PERMITTED TO PAY AND SATISFY UNDER APPLICABLE LAW, WITHOUT ANY FURTHER LIABILITY, TO THE PAYMENT AND SATISFACTION OF ALL INDEMNIFIED LIABILITIES INCURRED BY INDEMNITEES OR ANY OF THEM.

(b) To the extent permitted by applicable law, no party hereto shall assert, and each other party hereto hereby waives, any claim against any other party and such party’s respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto hereby waives, releases and agrees not to sue upon any such claim (for the sake of clarification amounts in respect of any damages incurred or paid by an Indemnitee to a third party or for any out-of-pocket expenses shall be deemed to be direct, actual damages) or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Investor, and their respective Affiliates is hereby authorized by each Note Party at any time or from time to time subject to the consent of the Required Investors, without notice to any Note Party or to any other Person (other than Collateral Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts (in whatever currency)) and any other Indebtedness at any time held or owing by such Investor to or for the credit or the account of any Note Party (in whatever currency) against and on account of the obligations and liabilities of any Note Party to such Investor hereunder, the participations under the other Note Documents, including all claims of any nature or description arising out of or connected hereto, or with any other Note Document, irrespective of whether or not (a) such Investor shall have made any demand hereunder, (b) the principal of or the interest in respect of the Notes or any other amounts due hereunder shall have become due and payable pursuant to Article II and although such obligations and liabilities, or any of them, may be contingent or unmatured or (c) such obligation or liability is owed to a branch or office of such Investor different from the branch or office holding such deposit or obligation or such Indebtedness. Each Investor agrees to notify Company promptly of its exercise of any rights under this Section 10.4, but the failure to provide such notice shall not otherwise limit its rights under this Section 10.4 or result in any liability to such Investor.

Section 10.5 Amendments and Waivers.

(a) Required Investors' Consent. Subject to Section 10.5(b), no amendment, modification, termination or waiver of any provision of the Note Documents, or consent to any departure by any Note Party therefrom, shall in any event be effective without the written concurrence of the Required Investors.

(b) Affected Investors' Consent. Without the written consent of each Investor, no amendment, modification or termination of the Note Documents, or consent to any departure by any Note Party therefrom shall be effective if the effect thereof would:

- (i) extend or shorten the scheduled final maturity of any Note;
- (ii) waive, reduce or postpone any scheduled repayment;
- (iii) reduce the rate of interest in respect of any Note (other than any waiver of any increase in the interest rate applicable to any Note pursuant to Section 2.5 or any fee payable hereunder);
- (iv) reduce the principal amount of any Note;
- (v) extend the time for payment of any such interest or fees;
- (vi) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(b)(i);

- (vii) amend the definition of “Required Investors” or “Pro Rata Share”;
- (viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Note Documents;
- (ix) subordinate any of the Obligations; or
- (x) release Issuer of any of its obligations under any Note Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Note Documents, or consent to any departure by any Note Party therefrom, shall, unless in writing and signed by Collateral Agent in addition to the Investors in Section 10.5(a) or Section 10.5(b), as applicable, adversely affect the rights or duties of, or any fees or other amounts payable to, Collateral Agent under this Agreement or any other Note Document; provided, that Collateral Agent shall be provided with a copy of any amendment, modification, termination, waiver or consent to any Note Document which has been effectuated by Company and any Investor.

(d) Execution of Amendments, etc. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Note Party in any case shall entitle any Note Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Investor at the time outstanding, each future Investor and, if signed by a Note Party, on such Note Party.

Section 10.6 Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Investors. No Note Party’s rights or obligations hereunder nor any interest therein may be assigned or delegated by any Note Party without the prior written consent of all Investors and Collateral Agent. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 9.6, Indemnitees under Section 10.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of Collateral Agent and Investors) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company, Collateral Agent and Investors shall deem and treat the Persons listed as Investors in the Register as the holders and owners of the corresponding Notes listed therein for all purposes hereof, and no assignment or transfer of any such Note shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by the Required Investors and recorded in the Register as provided in Section 10.6(e), provided that Company shall record an assignment or transfer upon receipt of an executed Assignment Agreement from an Investor. Prior to such recordation, all amounts owed with respect to the applicable Note shall be owed to the Investor listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as an Investor shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Notes absent manifest error, and Company shall promptly correct any such errors upon notice from the Investors.

(c) Right to Assign. Each Investor shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of the Notes held by it:

(i) to any Person meeting the criteria of clause (a) of the definition of the term “Eligible Assignee” upon the giving of notice to Company; and

(ii) to any Person otherwise constituting an Eligible Assignee upon the giving of notice to Company; provided, each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than \$1,000,000 and increments of \$1,000,000 (or such lesser amount as may be agreed to by Company and the Required Investors).

(d) Mechanics. The assigning Investor and the assignee thereof shall execute and deliver to the Required Investors an Assignment Agreement, all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act and such forms or certificates reasonably requested by the Required Investors or Company with respect to United States federal Tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to the Required Investors pursuant to Section 2.12(d).

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, any forms or certificates required by this Agreement in connection therewith, and the recordation and processing fee, Company shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to each Investor and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Investor, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the purchasing of notes such as the applicable Notes; (iii) it is purchasing Notes for its own account in the ordinary course of its business and without a view to distribution of such Notes within the meaning of the Securities Act or the Exchange Act or other federal securities laws; and (iv) such Investor does not own or control, or own or control any Person owning or controlling, any trade debt or Indebtedness of any Note Party other than the Obligations or any Capital Stock of any Note Party.

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the later (i) of the “Effective Date” specified in the applicable Assignment Agreement or (ii) the date such assignment is recorded in the Register: (A) the assignee thereunder shall have the rights and obligations of a “Investor” hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a “Investor” for all purposes hereof; (B) the assigning Investor thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Investor’s rights and obligations hereunder, such Investor shall cease to be a party hereto; provided, anything contained in any of the Note Documents to the contrary notwithstanding, such assigning Investor shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Investor as an Investor hereunder); and (C) if any such assignment occurs after the issuance of any Note hereunder, the assigning Investor shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Collateral Agent for cancellation, and thereupon Company shall issue and deliver new Notes, if so requested by the assignee and/or assigning Investor, to such assignee and/or to such assigning Investor, with appropriate insertions, to reflect the new outstanding principal amount of Notes of the assignee and/or the assigning Investor.

(h) Participations.

(i) Each Investor shall have the right at any time, without the consent of, or notice to, Issuer or Collateral Agent, to sell one or more participations to any Person (other than Company, any of its Subsidiaries or any of its Affiliates) in all or any part of its Notes or in any other Obligation. The holder of any such participation, other than an Affiliate of the Investor granting such participation, shall not be entitled to require such Investor to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of such participation, and that an increase in any Note shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Note Party of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Note Documents) supporting the Notes hereunder in which such participant is participating. Issuer agrees that each participant shall be entitled to the benefits of Section 2.11 and Section 2.12 to the same extent as if it were an Investor and had acquired its interest by assignment pursuant to Section 10.6(c); provided that each participant complies with Section 2.12 as though it were an Investor (and any forms required to be provided by such participant pursuant to Section 2.12 shall be delivered to Investor as though it were Issuer) and provided that such participant shall not be entitled to receive any greater payment under Section 2.11 and Section 2.12, with respect to any participation, than its participating Investor would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in applicable law that occurs after the participant acquired the applicable participation. To the extent permitted by applicable law, each participant also shall be entitled to the benefits of Section 10.4 as though it were an Investor, provided such participant agrees to be subject to Section 2.10 as though it were an Investor.

(ii) In the event that any Investor sells participations in its Notes or in any other Obligation hereunder, such Investor shall, acting solely for this purpose as a non-fiduciary agent of Issuer, maintain a register on which it enters the name of all participants in the Notes or Obligations held by it and the principal amount (and stated interest thereon) of the portion of such Notes or Obligations which are the subject of the participation (the "Participant Register"), provided that no Investor 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 loans, letters of credit or its other obligations under any Note Document) to any Person except to the extent that such disclosure is necessary to establish that such loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Notes or Obligation hereunder may be participate in whole or in part only by registration of such participation on the Participant Register (and each Note shall expressly so provide). The entries in the Participant Register shall be conclusive absent manifest error, and such Investor 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.

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, any Investor may assign (subject to recordation in the Participant Register, as appropriate), pledge and/or grant a security interest in, all or any portion of its Notes, the other Obligations owed by or to such Investor, and its Notes, if any, to secure obligations of such Investor or any of its Affiliates to any Person providing any loan, letter of credit or other extension of credit or financial arrangement to or for the account of such Investor or any of its Affiliates and any agent, trustee or representative of such Person (without the consent of, or notice to, or any other action by, any other party hereto), including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Investor, as between Issuer and such Investor, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge; provided further, in no event shall such Person, agent, trustee or representative of such Person or the applicable Federal Reserve Bank be considered to be a “Investor” or be entitled to require the assigning Investor to take or omit to take any action hereunder.

Section 10.7 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the issuance of any Notes hereunder. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Note Party set forth in Section 2.11, Section 2.12, 10.2, 10.3, 10.4, and 10.10 and the agreements of Investors set forth in Section 2.10, 9.3(b) and 9.6 shall survive the payment of the Notes and the termination hereof.

Section 10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of Collateral Agent or any Investor in the exercise of any power, right or privilege hereunder or under any other Note Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Collateral Agent and each Investor hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Note Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Section 10.10 Marshalling; Payments Set Aside. Neither Collateral Agent nor any Investor shall be under any obligation to marshal any assets in favor of any Note Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Note Party makes a payment or payments to the Investors, or Collateral Agent or Investors enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy, insolvency or receivership law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 10.11 Severability. In case any provision in or obligation hereunder or any Note or other Note Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 10.12 Obligations Several; Independent Nature of Investors' Rights. The obligations of Investors hereunder are several and no Investor shall be responsible for the obligations of any other Investor hereunder. Nothing contained herein or in any other Note Document, and no action taken by Investors pursuant hereto or thereto, shall be deemed to constitute Investors as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Investor shall be a separate and independent debt, and, subject to Section 9.8, each Investor shall be entitled to protect and enforce its rights arising under this Agreement and the other Note Documents and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose.

Section 10.13 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 10.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 10.15 CONSENT TO JURISDICTION.

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY NOTE PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER NOTE DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH NOTE PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NON-EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ISSUER AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1 IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE NOTE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (iv) AGREES THAT COLLATERAL AGENT AND INVESTORS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY NOTE PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

(b) ANY AND ALL SERVICE OF PROCESS AND ANY OTHER NOTICE IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE EFFECTIVE AGAINST ANY NOTE PARTY IF GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY OTHER MEANS OR MAIL WHICH REQUIRES A SIGNED RECEIPT, POSTAGE PREPAID, MAILED AS PROVIDED ABOVE.

Section 10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER NOTE DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR THE INVESTOR/ISSUER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE NOTES PURCHASED HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 10.17 Confidentiality. Collateral Agent and each Investor shall hold all non-public information regarding Company and its Subsidiaries and their businesses in accordance with Collateral Agent's and such Investor's customary procedures for handling confidential information of such nature, it being understood and agreed by Company that, in any event, Collateral Agent or Investor may make, in each case on a confidential basis other than pursuant to clauses (v) and (vi) below, (i) disclosures of such information to Affiliates of Collateral Agent or an Investor and to their agents, attorneys, auditors, advisors, officers, representatives, directors, investors and shareholders and to other Persons authorized by Collateral Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17 (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), (ii) subject to an agreement containing provisions not less restrictive than those of this Section 10.17 which shall in any event require "click through" or other affirmative actions on the part of recipient to access such information, disclosures of such information reasonably required by any bona fide or potential assignee, transferee, successor or participant in connection with the contemplated assignment, transfer or participation by Collateral Agent or any such Investor of any Notes or any participations therein, (iii) disclosure to any rating agency when required by it; provided that, prior to any disclosure, such rating agency shall undertake to preserve the confidentiality of any confidential information regarding Company and its Subsidiaries and their businesses received by it from such Person, (iv) disclosures of such information to any actual or prospective investors, financing sources and partners of any Investor or any of its Affiliates; provided that prior to any disclosure, such Person is informed of the confidential nature of the information and is subject to customary confidential obligations, (v) as may be necessary or advisable in connection with any enforcement of rights under any Note Document and (vi) disclosure required in connection with any public filings, whether pursuant to any securities laws or regulations or rules promulgated therefor (including the Investment Company Act of 1940 or otherwise) or representative or by the National Association of Insurance Commissioners (and any successor thereto) thereof or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, Collateral Agent and Investor shall make reasonable efforts to notify Company of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of Collateral Agent or such Investor by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitations of any kind, the Tax treatment and Tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other Tax analyses) that are provided by any such party relating to Tax treatment and Tax structure. However, any information relating to the Tax treatment or Tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "Tax structure" means any facts relevant to the federal income Tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates. Notwithstanding the foregoing, on or after the Closing Date, Collateral Agent or any Investor may, at its own expense, issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Note Parties).

Section 10.18 Press Releases and Related Matters. No Note Party shall, and no Note Party shall permit any of its Affiliates to, issue any press release or other public disclosure using the name, logo or otherwise referring to Collateral Agent, any Investor or any of its Affiliates without the consent of Collateral Agent or such Investor, except to the extent required to do so under applicable Requirements of Law and then, if practicable, only after consulting with Collateral Agent or such Investor. Notwithstanding the foregoing, on or promptly following the Closing Date, each of the parties agree that the Company may issue a press release, in such form as mutually acceptable to the Baupost Investor and the Company, announcing certain terms of this Agreement and the closing of the transactions contemplated hereby, and no party shall make any statement inconsistent with such press release.

Section 10.19 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Notes made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Notes purchased hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Issuer shall pay to the Investors an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Investors and Issuer to conform strictly to any applicable usury laws. Accordingly, if any Investor contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Investor's option be applied to the outstanding amount of the Notes made hereunder or be refunded to Investor. In determining whether the interest contracted for, charged, or received by an Investor exceeds the Highest Lawful 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 and (b) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder. Each of the Note Parties hereby waives, and agrees not to assert, any defense to payment of the Obligations on the basis of any usury laws.

Section 10.20 Counterparts; Electronic Records. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Without notice to or consent of Company, Collateral Agent and each Investor may create electronic images of any Note Documents and destroy paper originals of any such imaged documents. Such images have the same legal force and effect as the paper originals and are enforceable against Company and any other parties thereto. Collateral Agent and each Investor may convert any Note Document into a “transferrable record” as such term is defined under, and to the extent permitted by, UETA, with the image of such instrument in Collateral Agent’s or such Investor’s possession constituting an “authoritative copy” under UETA. If the Investors (or the Required Investors, if applicable) agree, in their sole discretion, to accept delivery by telecopy or “.pdf” or “.tif” file of an executed counterpart of a signature page of any Note Document or other document required to be delivered under the Note Documents, such delivery will be valid and effective as delivery of an original manually executed counterpart of such document for all purposes. If the Investors (or the Required Investors, if applicable) agree, in their sole discretion, to accept any electronic signatures of any Note Document or other document required to be delivered under the Note Documents, the words “execution,” “signed,” and “signature,” and words of like import, in or referring to any document so signed will be deemed to include electronic signatures and/or the keeping of records in electronic form, which will be of the same legal effect, validity and enforceability as a manually executed signature and/or the use of a paper-based recordkeeping system, to the extent and as provided for in any applicable law, including UETA, E-SIGN, or any other state laws based on, or similar in effect to, such acts. Collateral Agent and each Investor may rely on any such electronic signatures without further inquiry.

Section 10.21 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Collateral Agent of written or telephonic notification of such execution and authorization of delivery thereof.

Section 10.22 PATRIOT Act Notice. Each Investor and Collateral Agent (for itself and not on behalf of any Investor) hereby notifies the Note Parties that pursuant to the requirements of the PATRIOT Act, it may be required to obtain, verify and record information that identifies each Note Party, which information includes the name and address of the Note Parties and other information that will allow such Investor or Collateral Agent, as applicable, to identify the Note Parties in accordance with the PATRIOT Act.

Section 10.23 Tax Treatment. The Investors and the Note Parties agree (i) that the Notes and the PubCo Notes are debt for U.S. federal income Tax purposes that are part of the same debt instrument for U.S. federal income tax purposes, (ii) that the U.S. federal income Tax treatment of the Notes is governed by the rules set out in Treasury Regulations Section 1.1275-4(b), and (iii) not to file any Tax return, report or declaration inconsistent with the foregoing. The Issuer has determined that the “comparable yield” of the Notes and the PubCo Notes, as defined in Treasury Regulations Section 1.1275-4(b)(4), is 7.68% per annum compounded quarterly (the “Comparable Yield”), and the projected payment schedule of the Notes and the PubCo Notes consists of payments equal to the Comparable Yield during each accrual period.

Section 10.24 Release of Liens and Guarantees. A Guarantor shall automatically be released from its obligations under the Note Documents upon the consummation of any transaction permitted by this Agreement as a result of which such Guarantor ceases to be a Subsidiary; provided that, if so required by this Agreement, the Required Investors shall have consented to such transaction and the terms of such consent shall not have provided otherwise. Upon (a) the payment and satisfaction in full in cash of all Obligations, (b) any disposition (other than any lease or license) by any Note Party (other than to Company or any Subsidiary) of any Collateral (i) in a transaction permitted under this Agreement or (ii) in connection with any exercise of remedies of Collateral Agent and the Investors pursuant to Article VIII, (c) any property of a Note Party becoming an Excluded Asset or (d) the effectiveness of any written consent to the release of the security interest created under any Collateral Document in any Collateral pursuant to Section 10.5, the security interests in such Collateral shall be automatically released. Any termination or release pursuant to this Section 10.2424 shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of Company or any Subsidiary in respect of) all interests retained by Company or any Subsidiary, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral. Collateral Agent (with the consent of the Required Investors) shall take all actions reasonably requested by Company in order to effect the foregoing at the sole cost and expense of Company and without recourse to or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect the foregoing).

Section 10.25 Subordination Agreement Controls. Notwithstanding anything herein to the contrary, this Agreement and each Note Document are subject to the provisions of each applicable Subordination Agreement. In the event of any conflict between the terms of any Subordination Agreement and this Agreement or any other Note Document, the terms of such Subordination Agreement shall govern and control.

ARTICLE XI

INITIAL INVESTOR REPRESENTATIONS

Each Initial Investor represents and warrants to Issuer on the Closing Date as follows:

(a) Experience. It (i) is knowledgeable, sophisticated and experienced in financial and business matters, in making, and is qualified to make, decisions with respect to investments in securities representing an investment decision like that involved in the purchase of the Notes, including investments in securities issued by the Company and comparable entities, and has the ability to bear the economic risks of an investment in the Notes; (ii) is acquiring the Notes in the ordinary course of its business and for its own account for investment only; (iii) will not, directly or indirectly, offer, sell, pledge, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of) any Notes, absent compliance with the Securities Act and any applicable state securities laws; and (iv) has had an opportunity to discuss this investment with representatives of the Company and ask questions of them.

(b) Institutional Accredited Investor. At the time it was offered the Notes, as of the date of this Agreement and as of the Closing Date, it is either (i) an institutional "accredited investor" as that term is defined in Rule 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) of the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A under the Securities Act and that, in each case, in making the purchases contemplated herein, it is specifically understood and agreed that such Investor is acquiring the Notes for the purpose of investment and not with a view towards the sale or distribution thereof within the meaning of the Securities Act.

(c) Reliance on Exemptions. It understands that the Notes will not be registered under the Securities Act by reason of their issuance by Issuer in a transaction exempt from the registration requirements of the Securities Act and that it may have to hold the Notes indefinitely unless a subsequent disposition thereof is registered under the Securities Act and applicable state securities laws or is exempt from registration or qualification by prospectus. It understands that Company is relying upon the truth and accuracy of, and such Initial Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Initial Investor set forth herein in order to determine the availability of such exemptions and the eligibility of such Initial Investor to acquire the Notes.

(d) No Reliance. In making a decision to purchase the Notes, it is: (i) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving securities; (ii) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons; and (iii) confirms that it has undertaken an independent analysis of the merits and risks of an investment in the Company, based on such Initial Investor's own financial circumstances.

(e) Investment Decision. It understands that nothing in this Agreement or any other materials presented to the Initial Investor in connection with the purchase and sale of the Notes constitutes legal, tax or investment advice. It has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Notes.

(f) Authority; Validity; Enforceability. It has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and the Note Documents and has taken all required action to authorize the execution and delivery of this Agreement and the other Note Documents. This Agreement, when executed and delivered by it, will constitute valid and legally binding obligations of each Initial Investor, enforceable in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(g) Rule 144. Such Initial Investor further understands that the exemption from registration afforded by Rule 144 promulgated under the Securities Act depends on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts.

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

OUTBRAIN INC.,
as Issuer

By: /s/ David Kostman

Name: David Kostman

Title: Co-CEO

[Signature Page to Senior Subordinated Secured Note Purchase Agreement]

The Bank of New York Mellon,
as Collateral Agent

By: /s/ Latoya S. Elvin

Name: Latoya S. Elvin

Title: Vice President

[Signature Page to Senior Subordinated Secured Note Purchase Agreement]

BAUPOST PRIVATE INVESTMENTS A-2, L.L.C., as an Investor

By: Baupost Limited Partnership 1983 A-1,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

BAUPOST PRIVATE INVESTMENTS B-2, L.L.C., as an Investor

By: Baupost Limited Partnership 1983 B-1,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

BAUPOST PRIVATE INVESTMENTS C-2, L.L.C., as an Investor

By: Baupost Limited Partnership 1983 C-1,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

[Signature Page to Senior Subordinated Secured Note Purchase Agreement]

BAUPOST PRIVATE INVESTMENTS P-2, L.L.C., as an Investor

By: PB Institutional Limited Partnership,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

BAUPOST PRIVATE INVESTMENTS Y-2, L.L.C., as an Investor

By: YB Institutional Limited Partnership,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

BAUPOST PRIVATE INVESTMENTS BVI-2, L.L.C., as an Investor

By: Baupost Value Partners, L.P.-I,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

[Signature Page to Senior Subordinated Secured Note Purchase Agreement]

BAUPOST PRIVATE INVESTMENTS BVII-2, L.L.C., as an Investor

By: Baupost Value Partners, L.P.-II,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

BAUPOST PRIVATE INVESTMENTS BVIII-2, L.L.C., as an Investor

By: Baupost Value Partners, L.P.-III,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

BAUPOST PRIVATE INVESTMENTS BVIV-2, L.L.C., as an Investor

By: Baupost Value Partners, L.P.-IV,
its sole member

By: The Baupost Group, L.L.C.,
its managing general partner

By: /s/ Michael M. Sperling
Name: Michael M. Sperling
Title: Partner

[Signature Page to Senior Subordinated Secured Note Purchase Agreement]

Note N-[]
Original Principal Amount: [\$]
Investor: []

FORM OF NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER MAY NOT OFFER, SELL, TRANSFER, ASSIGN, PLEDGE, HYPOTHECATE, OR OTHERWISE DISPOSE OF OR ENCUMBER THIS NOTE EXCEPT (I) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR PROSPECTUS UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAW, RESPECTIVELY, OR WITH AN EXEMPTION FROM SUCH REGISTRATION OR PROSPECTUS REQUIREMENT AND (II) IN COMPLIANCE WITH SECTION 2.3 OF THAT CERTAIN SENIOR SUBORDINATED SECURED NOTE PURCHASE AGREEMENT (THE "NOTE PURCHASE AGREEMENT") DATED JULY 1, 2021, AMONG ISSUER, THE COLLATERAL AGENT, THE INVESTORS AND THE OTHER NOTE PARTIES PARTY THERETO (EACH AS DEFINED THEREIN).

THE FOLLOWING INFORMATION IS PROVIDED PURSUANT TO TREAS. REG. SECTION 1.1275-3: THIS DEBT INSTRUMENT IS ISSUED WITH ORIGINAL ISSUE DISCOUNT. THE TREASURER (OR ANOTHER OFFICER) OF THE ISSUER, AS A REPRESENTATIVE OF THE ISSUER, WILL MAKE AVAILABLE ON REQUEST TO THE HOLDER OF THIS NOTE THE FOLLOWING INFORMATION; ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, YIELD, COMPARABLE YIELD AND PROJECTED PAYMENT SCHEDULE. THE ADDRESS OF THE ISSUER IS PROVIDED IN SECTION 10.1 OF THE NOTE PURCHASE AGREEMENT.

THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN (X) THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO TIME, THE "SVB SUBORDINATION AGREEMENT") DATED AS OF JULY 1, 2021 BETWEEN SILICON VALLEY BANK AND THE BANK OF NEW YORK MELLON, TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE OBLIGORS DESCRIBED THEREIN PURSUANT TO THAT CERTAIN AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 15, 2014 AMONG OUTBRAIN INC. AND SILICON VALLEY BANK, AS SUCH LOAN AND SECURITY AGREEMENT HAS BEEN AND HEREAFTER MAY BE AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS UNDER THAT AGREEMENT AS CONTEMPLATED BY THE NOTE PURCHASE AGREEMENT AND (Y) ANY ADDITIONAL SUBORDINATION AGREEMENT (AS DEFINED IN THE NOTE PURCHASE AGREEMENT) ENTERED INTO FROM TIME TO TIME; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SVB SUBORDINATION AGREEMENT AND THE NOTE PURCHASE AGREEMENT.

EXHIBIT A TO
SENIOR SUBORDINATED SECURED NOTE PURCHASE AGREEMENT

Note N-[]
Original Principal Amount: [\$]
Investor: []

NOTE

Investor: [NAME OF INVESTOR]
Principal Amount: \$_____

New York, New York
_____, 202[●]

FOR VALUE RECEIVED, the undersigned, Outbrain Inc., a Delaware corporation (the “Issuer”), hereby promises to pay to the Investor set forth above (the “Investor”) the principal amount set forth above, plus PIK Interest as provided in the Note Purchase Agreement referred to below (the “Note”), payable at such times and in such amounts as are specified in the Note Purchase Agreement (as defined below).

The Issuer promises to pay interest on the unpaid principal amount of this Note from the date of issuance until such principal amount is paid in full, payable at such times and at such interest rates as are specified in the Note Purchase Agreement. Demand, diligence, presentment, protest and notice of non-payment and protest are hereby waived by the Issuer.

Both principal and interest are payable in Dollars to the Investor, at the address set forth in the Note Purchase Agreement, in immediately available funds.

This Note is one of the Notes referred to in, and is entitled to the benefits of, the Senior Subordinated Secured Note Purchase Agreement, dated as of July 1, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Note Purchase Agreement”), among the Issuer, the other Note Parties party thereto, the Investors party thereto and The Bank of New York Mellon, as Collateral Agent. Capitalized terms used herein without definition are used as defined in the Note Purchase Agreement.

The Note Purchase Agreement, among other things, (a) provides for the sale by the Issuer and purchase by the Investor of this Note and (b) contains provisions for acceleration of the maturity of the unpaid principal amount of this Note upon the happening of certain stated events and also for prepayments on account of the principal hereof prior to the maturity hereof upon the terms and conditions specified therein.

This Note is a Note Document, is entitled to the benefits of the Note Documents and is subject to certain provisions of the Note Purchase Agreement, including Sections 10.15 (Consent to Jurisdiction), 10.16 (Waiver of Jury Trial) and 10.11 (Severability) thereof.

This Note is a registered obligation, transferable only upon notation in the Register, and no assignment hereof shall be effective until recorded therein.

This Note shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Issuer has caused this Note to be executed and delivered by its duly authorized officer as of the day and year set forth above.

OUTBRAIN INC.

By: _____
Name:
Title:

OUTBRAIN INC.,

and

THE BANK OF NEW YORK MELLON,

as Trustee

INDENTURE

Dated as of [July [●], 2021]¹

[2.95]²% Convertible Senior Notes due 20[26]³

¹ Note: Date of closing of the IPO

² Note: Coupon subject to potential adjustment on date of Indenture/issuance of PubCo Notes based on the following formula if the resulting coupon is higher than 2.95%:

2.95% *plus* ((x) the closing yield of the 5 year U.S. Treasury Rate as of the business day immediately prior to the date of the Indenture *minus* (y) 0.80%), rounded up to the next highest 0.05% increment

³ Note: Maturity Date is 5 years from issuance of PubCo Notes.

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EXHIBITS

Exhibit A: Form of Note

Exhibit B-1: Form of Restricted Note Legend

Exhibit B-2: Form of Global Note Legend

Exhibit B-3: Form of Non-Affiliate Legend

Exhibit B-4: Form of Tax Legend

INDENTURE, dated as of [July [●], 2021], between Outbrain Inc., a Delaware corporation, as issuer (the “**Company**”) and The Bank of New York Mellon, not in its individual capacity but solely as trustee (the “**Trustee**”).

Each party to this Indenture (as defined below) agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company’s [2.95]% Convertible Senior Notes due 20[26] (the “**Notes**”).

Article 1

DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01 DEFINITIONS.

“**Additional Interest**” means any interest that accrues on any Note pursuant to **Section 3.04**.

“**Affiliate**” has the meaning set forth in Rule 144 as in effect on the Issue Date.

“**Authorized Denomination**” means, with respect to a Note, a principal amount thereof equal to \$1,000 or any integral multiple of \$1,000 in excess thereof.

“**Bankruptcy Law**” means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

“**Business Day**” means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Capital Markets Indebtedness**” means any indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (a) a public offering registered under the Securities Act, (b) a private placement to institutional investors that is resold in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC, or (c) a private placement to institutional investors. For the avoidance of doubt, the term “Capital Markets Indebtedness” does not include any indebtedness under commercial bank facilities, indebtedness incurred in connection with a sale and lease-back transaction, indebtedness incurred in the ordinary course of business of the Company, Capitalized Lease Obligations or recourse transfer of any financial asset or any other type of Indebtedness incurred in a manner not customarily viewed as a “securities offering.”

“**Capital Stock**” of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Common Equity**” of any person means capital stock of such person that is generally entitled (i) if such person is a corporation, to vote in the election of directors of such person or (ii) if such person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such person.

“**Common Stock**” means the common stock of the Company, par value \$0.001 per share, at the date of this Indenture, subject to **Section 5.09**.

“**Company**” means the Person named as such in the first paragraph of this Indenture and, subject to **Article 6**, its successors and assigns.

“**Company Order**” means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

“**Conversion Date**” means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** to convert such Note are satisfied, subject to **Section 5.03(C)**.

“**Conversion Price**” means, as of any time, an amount equal to (A) one thousand dollars (\$1,000) *divided by* (B) the Conversion Rate in effect at such time.

“**Conversion Rate**” initially means [●]⁴ shares of Common Stock per \$1,000 principal amount of Notes; *provided, however*, that the Conversion Rate is subject to adjustment pursuant to **Article 5**; *provided, further*, that whenever this Indenture refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be equal to the Conversion Rate immediately after the Close of Business on such date.

“**Conversion Share**” means any share of Common Stock issued or issuable upon conversion of any Note.

“**Corporate Trust Office**” means the designated corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, presently located at 240 Greenwich Street, New York, NY 10286, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time, or the designated corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice).

“**Daily Cash Amount**” means, with respect to any VWAP Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such VWAP Trading Day.

“**Daily Conversion Value**” means, with respect to any VWAP Trading Day, one-fortieth (1/40th) of the product of (A) the Conversion Rate on such VWAP Trading Day; and (B) the Daily VWAP per share of Common Stock on such VWAP Trading Day.

“**Daily Maximum Cash Amount**” means, with respect to the conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such conversion by (B) forty (40).

“**Daily Share Amount**” means, with respect to any VWAP Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such VWAP Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such VWAP Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such VWAP Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

⁴ Note: Initial Conversion Rate will be that number of shares of Common Stock equivalent to a conversion price equal to 125% of IPO Price. As an example, if the IPO Price is \$100 per share, then 125% of the IPO Price is \$125 per share, and hence the initial Conversion Rate will be 8 shares of Common Stock i.e. \$1,000 principal amount of Notes divided by \$125 per share = 8 shares.

“**Daily VWAP**” means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “OB <EQUITY> AQR” (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm or independent valuation firm selected by the Company, which may include any of Citigroup Global Markets Inc. and Jefferies LLC). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

“**De-Legending Deadline Date**” means, with respect to any Note, the fifteenth (15th) day after the Free Trade Date of such Note; *provided, however*, that if such fifteenth (15th) day is after a Regular Record Date and on or before the next Interest Payment Date, then the De-Legending Deadline Date for such Note will instead be the Business Day immediately after such Interest Payment Date.

“**Default**” means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

“**Default Settlement Method**” means, initially, Combination Settlement with a Specified Dollar Amount of \$1,000 per \$1,000 principal amount of Notes; *provided, however*, that (x) subject to **Section 5.03(A)(iii)**, the Company may, from time to time, change the Default Settlement Method by sending written notice of the new Default Settlement Method to the Holders, the Trustee and the Conversion Agent (if other than the Trustee) (it being understood that no such change will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to this Indenture); and (y) the Default Settlement Method will be subject to **Section 5.03(A)(ii)**.

“**Depository**” means DTC or its successor.

“**Depository Participant**” means any member of, or participant in, the Depository.

“**Depository Procedures**” means, with respect to any conversion, transfer, exchange or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depository applicable to such conversion, transfer, exchange or transaction.

“**DTC**” means The Depository Trust Company.

“**Electronic Means**” shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Ex-Dividend Date**” means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Free Trade Date**” means, with respect to any Note, the date that is one (1) year after the Last Original Issue Date of such Note.

“**Freely Tradable**” means, with respect to any Note, that such Note would be eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise if held by a Person that is not an Affiliate of the Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act (except that, during the six (6) month period beginning on, and including, the date that is six (6) months after the Last Original Issue Date of such Note, any such requirement as to the availability of current public information will be disregarded if the same is satisfied at that time); *provided, however*, that from and after the Free Trade Date of such Note, such Note will not be “Freely Tradable” unless such Note (x) is not identified by a “restricted” CUSIP or ISIN number; and (y) is not represented by any certificate that bears the Restricted Note Legend. For the avoidance of doubt, whether a Note is deemed to be identified by a “restricted” CUSIP or ISIN number or to bear the Restricted Note Legend is subject to **Section 2.12**.

“**Fundamental Change**” means any of the following events:

(A) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, files any report with the SEC indicating that such person or group has become the direct or indirect “beneficial owner” (as defined below) of shares of the Common Equity representing more than fifty percent (50%) of the voting power of all of the Company’s Common Stock;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided, however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly “beneficially owned” (as defined below) all classes of the Company’s Common Equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, more than fifty percent (50%) of all classes of Common Equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company’s stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(D) the Common Stock ceases to be listed on any of The New York Stock Exchange, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors);

provided, however, that a transaction or event described in **clause (A) or (B)** above will not constitute a Fundamental Change if at least ninety percent (90%) of the consideration received or to be received by the holders of Common Stock (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event, consists of shares of common stock listed on any of The New York Stock Exchange, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors), or that will be so listed when issued or exchanged in connection with such transaction or event, and such transaction or event constitutes a Common Stock Change Event whose Reference Property consists of such consideration.

If any transaction in which the Common Stock is replaced by the securities of another entity occurs, following completion of any related Make-Whole Fundamental Change Conversion Period (or, in the case of a transaction that would have been a Fundamental Change or a Make-Whole Fundamental Change but for the proviso to the immediately preceding paragraph, following the effective date of such transaction), references to the Company for purposes of this definition of “Fundamental Change” shall instead be references to such other entity.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i) or (ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a “**beneficial owner**” and whether shares are “**beneficially owned**” will be determined in accordance with Rule 13d-3 under the Exchange Act.

“**Fundamental Change Repurchase Date**” means the date fixed for the repurchase of any Notes by the Company pursuant to a Repurchase Upon Fundamental Change.

“**Fundamental Change Repurchase Notice**” means a notice (including a notice substantially in the form of the “Fundamental Change Repurchase Notice” set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.02(F)(i)** and **Section 4.02(F)(ii)**.

“**Fundamental Change Repurchase Price**” means the cash price payable by the Company to repurchase any Note upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 4.02(D)**.

“**Global Note**” means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depository or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depository.

“**Global Note Legend**” means a legend substantially in the form set forth in **Exhibit B-2**.

“**Holder**” means a person in whose name a Note is registered on the Registrar’s books.

“**Indenture**” means this Indenture, as amended or supplemented from time to time.

“**Interest Payment Date**” means, with respect to a Note, each [January [●] and July [●]]⁵ of each year, commencing on [January [●], 2022]⁶ (or commencing on such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

“**Issue Date**” means [July [●], 2021].

“**Last Original Issue Date**” means (A) with respect to any Notes issued on the Issue Date, and any Notes issued in exchange therefor or in substitution thereof, the Issue Date; and (B) with respect to any additional Notes issued pursuant to **Section 2.03(B)**, and any Notes issued in exchange therefor or in substitution thereof, either (i) the date such additional Notes are originally issued; or (ii) such other date as is specified in an Officer’s Certificate delivered to the Trustee before the original issuance of such additional Notes.

“**Last Reported Sale Price**” of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from each of at least three (3) nationally recognized independent investment banking firms selected by the Company, which may include any of Citigroup Global Markets Inc. and Jefferies LLC. Neither the Trustee nor the Conversion Agent will have any duty to determine the Last Reported Sale Price. The Last Reported Sale Price will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“**Make-Whole Fundamental Change**” means (A) a Fundamental Change (determined after giving effect to the proviso immediately after **clause (D)** of the definition thereof, but without regard to the proviso to **clause (B)(ii)** of such definition); or (B) the sending of a Redemption Notice pursuant to **Section 4.03(G)**; *provided, however*, that, the sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called (or deemed to be called pursuant to **Section 4.03**) for Redemption pursuant to such Redemption Notice and not with respect to any other Notes.

“**Make-Whole Fundamental Change Conversion Period**” has the following meaning: (A) in the case of a Make Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, means the period from, and including, the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change to, and including, the thirty-fifth (35th) Trading Day after such Make-Whole Fundamental Change Effective Date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change, to, but excluding, the related Fundamental Change Repurchase Date); (B) in the case of a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the period from, and including, the Redemption Notice Date for the related Redemption to, and including, the Business Day immediately before the related Redemption Date; *provided, however*, that if the Conversion Date for the conversion of a Note that has been called (or deemed called) for Redemption occurs during the Make-Whole Fundamental Change Conversion Period for both a Make-Whole Fundamental Change occurring pursuant to **clause (i)** of the definition of “Make-Whole Fundamental Change” and a Make-Whole Fundamental Change resulting from such Redemption pursuant to **clause (B)** of such definition, then, solely for purposes of such conversion, (x) such conversion date will be deemed to occur solely during the Make-Whole Fundamental Change Conversion Period for the Make-Whole Fundamental Change with the earlier Make-Whole Fundamental Change Effective Date; and (y) the Make-Whole Fundamental Change with the later Make-Whole Fundamental Change Effective Date will be deemed not to have occurred.

⁵ Note: Interest payment dates will be the month and day (i) when PubCo Notes are first issued and (ii) the day and month six months thereafter.

⁶ Note: This will be the first Interest Payment Date after the PubCo Notes are issued.

“**Make-Whole Fundamental Change Effective Date**” means (A) with respect to a Make Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, the date on which such a Make-Whole Fundamental Change occurs or becomes effective; and (B) with respect to a Make Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the applicable Redemption Notice Date.

“**Market Disruption Event**” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange (or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is listed for trading or trades), of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**Maturity Date**” means [July [●], 2026]⁷.

“**Non-Affiliate Legend**” means a legend substantially in the form set forth in **Exhibit B-3**.

“**Note Agent**” means any Registrar, Paying Agent or Conversion Agent.

“**Notes**” means the [2.95]% Convertible Senior Notes due 20[26] issued by the Company pursuant to this Indenture.

“**Observation Period**” means, with respect to any Note to be converted, (A) subject to **clause (B)** below, if the Conversion Date for such Note occurs before [January [●], 2026]⁸, the forty (40) consecutive VWAP Trading Days beginning on, and including, the second (2nd) VWAP Trading Day immediately after such Conversion Date; and (B) if such Conversion Date occurs on or after the date the Company has sent a Redemption Notice calling such Note for Redemption pursuant to **Section 4.03(F)** and before the related Redemption Date, the forty (40) consecutive VWAP Trading Days beginning on, and including, the forty-first (41st) Scheduled Trading Day immediately before such Redemption Date; and (C) subject to **clause (B)** above, if such Conversion Date occurs on or after [January [●], 2026]⁹, the forty (40) consecutive VWAP Trading Days beginning on, and including, the forty-first (41st) Scheduled Trading Day immediately before the Maturity Date.

⁷ Note: The maturity date is the fifth anniversary date of the original issuance of the PubCo Notes.

⁸ Note: This will be the Interest Payment Date prior to the Maturity Date i.e. a date that is 6 months before maturity.

⁹ Note: This will be the Interest Payment Date prior to the Maturity Date.

“**Officer**” means the Chairman of the Board of Directors, any of the Co-Chief Executive Officers, the Chief Financial Officer, Chief Technology Officer, General Manager, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

“**Officer’s Certificate**” means a certificate that is signed on behalf of the Company by one (1) of its Officers and that meets the requirements of **Section 11.03**.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Opinion of Counsel**” means an opinion, from legal counsel (including an employee of, or counsel to, the Company or any of its Subsidiaries) that meets the requirements of **Section 11.03**, subject to customary qualifications and exclusions.

“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Indenture.

“**Physical Note**” means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by an authorized signatory of the Trustee.

“**Redemption**” means the repurchase of *any* Note by the Company pursuant to **Section 4.03**.

“**Redemption Date**” means the date fixed, pursuant to **Section 4.03(D)**, for the settlement of the repurchase of any Notes by the Company pursuant to a Redemption.

“**Redemption Notice Date**” means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.03(F)**.

“**Redemption Price**” means the cash price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.03(E)**.

“**Regular Record Date**” with respect to any Interest Payment Date means the [January [●] or July [●]]¹⁰ (whether or not such day is a Business Day) immediately preceding the applicable [January [●] or July [●]] Interest Payment Date, respectively.

“**Repurchase Upon Fundamental Change**” means the repurchase of any Note by the Company pursuant to **Section 4.02**.

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee (or any successor group of the Trustee), including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

¹⁰ Note: These will be 15 calendar days prior to the next relevant Interest Payment Date.

“**Restricted Note Legend**” means a legend substantially in the form set forth in **Exhibit B-1**.

“**Restricted Stock Legend**” means, with respect to any Conversion Share, a legend substantially to the effect that the offer and sale of such Conversion Share have not been registered under the Securities Act and that such Conversion Share cannot be sold or otherwise transferred except pursuant to a transaction that is registered under the Securities Act or that is exempt from, or not subject to, the registration requirements of the Securities Act.

“**Rule 144**” means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then “Scheduled Trading Day” means a Business Day.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**Security**” means any Note or Conversion Share.

“**Settlement Method**” means Cash Settlement, Physical Settlement or Combination Settlement.

“**Significant Subsidiary**” means, with respect to any Person, any Subsidiary of such Person that constitutes, or any group of Subsidiaries of such Person that, in the aggregate, would constitute, a “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

“**Special Interest**” means any interest that accrues on any Note pursuant to **Section 7.03**.

“**Specified Dollar Amount**” means, with respect to the conversion of a Note to which Combination Settlement applies, the maximum cash amount per \$1,000 principal amount of such Note deliverable upon such conversion (excluding cash in lieu of any fractional share of Common Stock).

“**Stock Price**” has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is pursuant to **clause (B)** of the definition of “Fundamental Change,” then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change.

“Subsidiary” means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

“Tax Legend” means a legend substantially in the form set forth in Exhibit B-4.

“Trading Day” means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“Transfer-Restricted Security” means any Security that constitutes a “restricted security” (as defined in Rule 144); *provided, however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(A) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(B) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

(C) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice.

The Trustee is under no obligation to determine whether any Security is a Transfer-Restricted Security and shall receive and be entitled to conclusively rely on an Officer’s Certificate with respect thereto.

“Trust Indenture Act” means the U.S. Trust Indenture Act of 1939, as amended.

“Trustee” means the Person named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture and, thereafter, means such successor.

“VWAP Market Disruption Event” means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate during the regular trading session, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

“VWAP Trading Day” means a day on which (A) there is no VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then “VWAP Trading Day” means a Business Day.

“Wholly Owned Domestic Subsidiary” means any Wholly Owned Subsidiary of the Company that is incorporated or organized under the laws of the United States of America or any state thereof or the District of Columbia.

“Wholly Owned Subsidiary” of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 1.02 OTHER DEFINITIONS.

<u>Term</u>	<u>Defined in Section</u>
“Additional Shares”	5.07(A)
“Business Combination Event”	6.01(A)
“Cash Settlement”	5.03(A)
“Combination Settlement”	5.03(A)
“Common Stock Change Event”	5.09(A)
“Conversion Agent”	2.06(A)
“Conversion Consideration”	5.03(B)
“Default Interest”	2.05(B)
“Defaulted Amount”	2.05(B)
“Designated Financial Institution”	5.08(A)
“Event of Default”	7.01(A)
“Exchange Election”	5.08(A)
“Expiration Date”	5.05(A)(v)
“Expiration Time”	5.05(A)(v)
“Fundamental Change Notice”	4.02(E)
“Fundamental Change Repurchase Right”	4.02(A)
“Initial Notes”	2.03(A)
“Paying Agent”	2.06(A)
“Physical Settlement”	5.03(A)
“Redemption Notice”	4.03(G)
“Reference Property”	5.09(A)
“Reference Property Unit”	5.09(A)
“Register”	2.06(B)
“Registrar”	2.06(A)
“Reporting Event of Default”	7.03(A)

<u>Term</u>	<u>Defined in Section</u>
“Specified Courts”	11.07
“Spin-Off”	5.05(A)(iii)(2)
“Spin-Off Valuation Period”	5.05(A)(iii)(2)
“Stated Interest”	2.05(A)
“Successor Corporation”	6.01(A)
“Successor Person”	5.09(A)
“Tender/Exchange Offer Valuation Period”	5.05(A)(v)

Section 1.03 RULES OF CONSTRUCTION.

For purposes of this Indenture:

- (A) “or” is not exclusive;
- (B) “including” means “including without limitation”;
- (C) “will” expresses a command;
- (D) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;
- (F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (G) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture, unless the context requires otherwise;
- (H) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;
- (I) the exhibits, schedules and other attachments to this Indenture are deemed to form part of this Indenture; and
- (J) the term “**interest**,” when used with respect to a Note, includes any Additional Interest and Special Interest, unless the context requires otherwise.

Article 2

THE NOTES

Section 2.01 FORM, DATING AND DENOMINATIONS.

The Notes and the Trustee's certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section 2.09** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depository. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes. Global Notes may be exchanged for Physical Notes, and Physical Notes may be exchanged for Global Notes, only as provided in **Section 2.10**.

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of this Indenture, and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, agree to such terms and to be bound thereby; *provided, however*, that, to the extent that any provision of any Note conflicts with the provisions of this Indenture, the provisions of this Indenture will control for purposes of this Indenture and such Note.

Section 2.02 EXECUTION, AUTHENTICATION AND DELIVERY.

(A) *Due Execution by the Company.* At least one (1) duly Authorized Officer will sign the Notes on behalf of the Company by manual, electronic (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., **www.docusign.com**) or facsimile signature. A Note's validity will not be affected by the failure of any Officer whose signature is on any Note to hold, at the time such Note is authenticated, the same or any other office at the Company.

(B) *Authentication by the Trustee and Delivery.*

(i) No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually, electronically (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., **www.docusign.com**), or by facsimile signs the certificate of authentication of such Note.

(ii) The Trustee will cause an authorized signatory of the Trustee (or a duly appointed authenticating agent) to manually, electronically (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docuSign.com), or by facsimile sign the certificate of authentication of a Note only if (1) the Company delivers such Note to the Trustee; (2) such Note is executed by the Company in accordance with **Section 2.02(A)**; and (3) the Company delivers a Company Order to the Trustee that (a) requests the Trustee to authenticate such Note; and (b) sets forth the name of the Holder of such Note and the date as of which such Note is to be authenticated. If such Company Order also requests the Trustee to deliver such Note to any Holder or to the Depository, then the Trustee will promptly deliver such Note in accordance with such Company Order.

(iii) The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. A duly appointed authenticating agent may authenticate Notes whenever the Trustee may do so under this Indenture, and a Note authenticated as provided in this Indenture by such an agent will be deemed, for purposes of this Indenture, to be authenticated by the Trustee. Each duly appointed authenticating agent will have the same rights to deal with the Company as the Trustee would have if it were performing the duties that the authentication agent was validly appointed to undertake.

(iv) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, subject to the second sentence of Section 2.10(B)(i) and to Section 2.12, all Notes shall be represented by one or more Notes in global form registered in the name of the Depository or the nominee of the Depository and all such Global Notes will be issued in reliance on Rule 144A of the Securities Act. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note will be effected through the Depository (but not the Trustee or the custodian) in accordance with this Indenture and the procedures of the Depository therefor.

Section 2.03 INITIAL NOTES AND ADDITIONAL NOTES.

(A) *Initial Notes.* On the Issue Date, there will be originally issued $[[\bullet] (\$[\bullet])]$ ¹¹ aggregate principal amount of Notes, subject to the provisions of this Indenture (including **Section 2.02**). Notes issued pursuant to this **Section 2.03(A)**, and any Notes issued in exchange therefor or in substitution thereof, are referred to in this Indenture as the “**Initial Notes**.”

(B) *Additional Notes.* Without the consent of any Holder, the Company may, subject to the provisions of this Indenture (including **Section 2.02**), issue additional Notes with the same terms as the Initial Notes (except, to the extent applicable, with respect to the date as of which interest begins to accrue on such additional Notes and the first Interest Payment Date and the Last Original Issue Date of such additional Notes), which additional Notes will, subject to the foregoing, be considered to be part of the same series of, and rank equally and ratably with all other, Notes issued under this Indenture; *provided, however*, that if any such additional Notes (and any Notes that are resold after such Notes have been purchased or otherwise acquired by the Company or its Subsidiaries) are not fungible with other Notes issued under this Indenture for U.S. federal income tax purposes or U.S. federal securities laws purposes, then such additional Notes (or resold Notes) will be identified by a separate CUSIP number or by no CUSIP number.

¹¹ Note to Draft: Principal amount of Notes will be calculated as set forth in Section 2.08(a) of that certain Senior Subordinated Secured Note Purchase Agreement, dated as of July 1, 2021, is entered into by and among Issuer, certain subsidiaries of the Issuer from time to time, as guarantors, the investors from time to time party thereto and The Bank of New York Mellon, as collateral agent.

Section 2.04 METHOD OF PAYMENT.

(A) *Global Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds to the registered holder thereof (which, in the case of global notes registered in the name of or held by DTC or its nominee, will be to DTC or its nominee), no later than the time the same is due as provided in this Indenture.

(B) *Physical Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration due upon conversion of, any Physical Note no later than the time the same is due as provided in this Indenture as follows: (i) if the principal amount of such Physical Note is at least five million dollars (\$5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Physical Note entitled to such payment has delivered to the Paying Agent or the Trustee, no later than the time set forth in the immediately following sentence, a written request that the Company make such payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and (ii) in all other cases, by check mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register. To be timely, such written request must be so delivered no later than the Close of Business on the following date: (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; (y) with respect to any cash Conversion Consideration due upon conversion, the applicable Conversion Date; and (z) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

Section 2.05 ACCRUAL OF INTEREST; DEFAULTED AMOUNTS; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

(A) *Accrual of Interest.* Each Note will accrue interest at a rate per annum equal to [2.95]% (the “**Stated Interest**”), plus any Additional Interest and Special Interest that may accrue pursuant to **Sections 3.04** and **7.03**, respectively. Stated Interest on each Note will (i) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the date set forth in the certificate representing such Note as the date from, and including, which Stated Interest will begin to accrue in such circumstance) to, but excluding, the date of payment of such Stated Interest; and (ii) be, subject to Sections 4.02(D), 4.03(E) and 5.02(D) (but without duplication of any payment of interest), payable semi-annually in arrears on each Interest Payment Date, beginning on the first Interest Payment Date set forth in the certificate representing such Note, to the Holder of such Note as of the Close of Business on the immediately preceding Regular Record Date. Stated Interest, and, if applicable, Additional Interest and Special Interest, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts.* If the Company fails to pay any amount (a “**Defaulted Amount**”) payable on a Note on or before the due date therefor as provided in this Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest (“**Default Interest**”) will accrue on such Defaulted Amount at a rate per annum equal to the rate per annum at which Stated Interest accrues, from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest; (iii) such Defaulted Amount and Default Interest will be paid on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that such special record date must be no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (iv) at least fifteen (15) calendar days before such special record date, the Company will send notice to the Trustee and the Holders that states such special record date, such payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date. Notwithstanding the foregoing, any interest which is paid prior to the expiration of the 30 day period set forth in Section 7.01(A)(ii) shall be paid to Holders as of the record date for the Interest Payment Date for which interest has not been paid.

(C) *Delay of Payment when Payment Date is Not a Business Day.* If the due date for a payment on a Note as provided in this Indenture is not a Business Day, then, notwithstanding anything to the contrary in this Indenture or the Notes, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a “Business Day.”

Section 2.06 REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

(A) *Generally.* The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the “**Registrar**”); (ii) an office or agency in the continental United States where Notes may be presented for payment (the “**Paying Agent**”); and (iii) an office or agency in the continental United States where Notes may be presented for conversion (the “**Conversion Agent**”). The Company hereby designates the Corporate Trust Office, as such office. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, then the Trustee will act as such and will receive compensation therefor in accordance with this Indenture and any other agreement between the Trustee and the Company. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar, Paying Agent or Conversion Agent.

(B) *Duties of the Registrar.* The Registrar will keep a record (the “**Register**”) of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company's Right to Appoint Successor Registrars, Paying Agents and Conversion Agents.* The Company may appoint one or more co-Registrars, co-Paying Agents and co-Conversion Agents, each of whom will be deemed to be a Registrar, Paying Agent or Conversion Agent, as applicable, under this Indenture. Subject to **Section 2.06(A)**, the Company may change any Registrar, Paying Agent or Conversion Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) in writing of the name and address of each Note Agent, if any, not a party to this Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of this Indenture that relate to such Note Agent.

(D) *Initial Appointments.* The Company appoints the Trustee as the initial Paying Agent, the initial Registrar and the initial Conversion Agent.

Section 2.07 PAYING AGENT AND CONVERSION AGENT TO HOLD PROPERTY IN TRUST.

The Company will require each Paying Agent or Conversion Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of Holders or the Trustee all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee in writing of any default by the Company in making any such payment or delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent or Conversion Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent (if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (A) it will segregate and hold in a separate trust fund for the benefit of the Holders or the Trustee all money and other property held by it as Paying Agent or Conversion Agent; and (B) references in this Indenture or the Notes to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to **clause (ix) or (x) of Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent or Conversion Agent), the Trustee will serve as the Paying Agent or Conversion Agent, as applicable, for the Notes.

Section 2.08 HOLDER LISTS.

If the Trustee is not the Registrar, the Company will furnish to the Trustee, no later than seven (7) Business Days before each Interest Payment Date, and at such other times as the Trustee may request, a list, in such form and as of such date or time as the Trustee may reasonably require, of the names and addresses of the Holders.

Section 2.09 **LEGENDS.**

(A) *Global Note Legend.* Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with this Indenture, required by the Depository for such Global Note).

(B) *Non-Affiliate Legend.* Each Note will bear the Non-Affiliate Legend.

(C) *Restricted Note Legend.* Subject to **Section 2.12**,

(i) each Note that is a Transfer-Restricted Security will bear the Restricted Note Legend; and

(ii) if a Note is issued in exchange for, in substitution of, or to effect a partial conversion of, another Note (such other Note being referred to as the “old Note” for purposes of this **Section 2.09(C)(ii)**), including pursuant to **Section 2.10(B)**, **2.10(C)**, **2.11** or **2.13**, then such Note will bear the Restricted Note Legend if such old Note bore the Restricted Note Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable; *provided, however*, that such Note need not bear the Restricted Note Legend if such Note does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(D) *Tax Legend.* Each Note will bear the Tax Legend.

(E) *Other Legends.* A Note may bear any other legend or text, not inconsistent with this Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(F) *Acknowledgment and Agreement by the Holders.* A Holder’s acceptance of any Note bearing any legend required by this **Section 2.09** will constitute such Holder’s acknowledgment of, and agreement to comply with, the restrictions set forth in such legend.

(G) *Restricted Stock Legend.*

(i) Each Conversion Share will bear the Restricted Stock Legend if the Note upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer-Restricted Security at the time such Conversion Share was issued; *provided, however*, that such Conversion Share need not bear the Restricted Stock Legend if the Company determines, in its reasonable discretion, that such Conversion Share need not bear the Restricted Stock Legend.

(ii) Notwithstanding anything to the contrary in this **Section 2.09(F)**, a Conversion Share need not bear a Restricted Stock Legend if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto, *provided* the Company takes measures (including the assignment thereto of a “restricted” CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in the Restricted Stock Legend.

Section 2.10 TRANSFERS AND EXCHANGES; CERTAIN TRANSFER RESTRICTIONS.

(A) *Provisions Applicable to All Transfers and Exchanges.*

(i) Subject to this **Section 2.10**, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time. The Registrar will record each such transfer or exchange of Physical Notes in the Register.

(ii) Each Note issued upon transfer or exchange of any other Note (such other Note being referred to as the “old Note” for purposes of this **Section 2.10(A)(ii)**) or portion thereof in accordance with this Indenture will be the valid obligation of the Company, evidencing the same indebtedness, and entitled to the same benefits under this Indenture, as such old Note or portion thereof, as applicable.

(iii) The Company, the Trustee and the Note Agents will not impose any service charge on any Holder for any transfer, exchange or conversion of Notes, but the Company, the Trustee, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Notes, other than exchanges pursuant to **Section 2.11, 2.17** or **8.05** not involving any transfer.

(iv) Notwithstanding anything to the contrary in this Indenture or the Notes, a Note may not be transferred or exchanged in part unless the portion to be so transferred or exchanged is in an Authorized Denomination.

(v) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any transfer restrictions imposed under this Indenture or applicable law (including, but not limited to, state or federal securities laws) with respect to any Security, other than to require the delivery of such certificates or other documentation or evidence as expressly required by this Indenture and to examine the same to determine substantial compliance as to form with the requirements of this Indenture.

(vi) Each Note issued upon transfer of, or in exchange for, another Note will bear each legend, if any, required by **Section 2.09**.

(vii) Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Note, the Registrar will cause such transfer or exchange to be effected as soon as reasonably practicable after the date of such satisfaction.

(viii) For the avoidance of doubt, and subject to the terms of this Indenture, as used in this **Section 2.10**, an “exchange” of a Global Note or a Physical Note includes (x) an exchange effected for the sole purpose of removing any Restricted Note Legend affixed to such Global Note or Physical Note; and (y) if such Global Note or Physical Note is identified by a “restricted” CUSIP number, an exchange effected for the sole purpose of causing such Global Note or Physical Note to be identified by an “unrestricted” CUSIP number. Neither the Trustee nor the Registrar shall be responsible for making any Notes eligible at the Depository after the Issue Date.

(ix) Neither the Trustee nor any Note Agent will have any responsibility, nor incur any liability, for any action taken or not taken by the Depository.

(x) The Trustee and the Paying Agent will have no responsibility or obligation to any beneficial owner of a Global Note or a Depository Participant or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any Redemption Notice) or the payment of any amount, under or with respect to such Notes. The rights of beneficial owners in any Global Note will be exercised only through the Depository subject to the Depository Procedures. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(B) *Transfers and Exchanges of Global Notes.*

(i) Subject to the immediately following sentence, no Global Note may be transferred or exchanged in whole except (x) by the Depository to a nominee of the Depository; (y) by a nominee of the Depository to the Depository or to another nominee of the Depository; or (z) by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. No Global Note (or any portion thereof) may be transferred to, or exchanged for, a Physical Note; *provided, however*, that a Global Note will be exchanged, pursuant to customary procedures, for one or more Physical Notes if:

(1) (x) the Depository notifies the Company or the Trustee that the Depository is unwilling or unable to continue as depository for such Global Note or (y) the Depository ceases to be a “clearing agency” registered under Section 17A of the Exchange Act and, in each case, the Company fails to appoint a successor Depository within ninety (90) days of such notice or cessation;

(2) an Event of Default has occurred and is continuing and the Company, the Trustee or the Registrar has received a written request from the Depository, or from a holder of a beneficial interest in such Global Note, to exchange such Global Note or beneficial interest, as applicable, for one or more Physical Notes; or

(3) the Company, in its sole discretion, permits the exchange of any beneficial interest in such Global Note for one or more Physical Notes at the request of the owner of such beneficial interest.

In connection with any proposed transfer outside the book-entry only system, the Company or the Depository shall provide to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under the Internal Revenue Code Section 6045. The Trustee may conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(ii) Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Global Note (or any portion thereof):

(1) the Trustee will reflect any resulting decrease of the principal amount of such Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note (and, if such notation results in such Global Note having a principal amount of zero, the Company may (but is not required to) instruct the Trustee in writing to cancel such Global Note pursuant to **Section 2.15**);

(2) if required to effect such transfer or exchange, then the Trustee will reflect any resulting increase of the principal amount of any other Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such other Global Note;

(3) if required to effect such transfer or exchange, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Global Note bearing each legend, if any, required by **Section 2.09**; and

(4) if such Global Note (or such portion thereof), or any beneficial interest therein, is to be exchanged for one or more Physical Notes, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Global Note to be so exchanged; (y) are registered in such name(s) as the Depositary specifies (or as otherwise determined pursuant to customary procedures); and (z) bear each legend, if any, required by **Section 2.09**.

(iii) Each transfer or exchange of a beneficial interest in any Global Note will be made in accordance with the Depositary Procedures.

(C) *Transfers and Exchanges of Physical Notes.*

(i) Subject to this **Section 2.10**, a Holder of a Physical Note may (x) transfer such Physical Note (or any portion thereof in an Authorized Denomination) to one or more other Person(s); (y) exchange such Physical Note (or any portion thereof in an Authorized Denomination) for one or more other Physical Notes in Authorized Denominations having an aggregate principal amount equal to the aggregate principal amount of the Physical Note (or portion thereof) to be so exchanged; and (z) if then permitted by the Depositary Procedures, transfer such Physical Note (or any portion thereof in an Authorized Denomination) in exchange for a beneficial interest in one or more Global Notes; *provided, however*, that, to effect any such transfer or exchange, such Holder must:

(1) surrender such Physical Note to be transferred or exchanged to the designated Corporate Trust Office of the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Trustee or the Registrar; and

(2) deliver such certificates, documentation or evidence as may be required pursuant to **Section 2.10(D)**.

(ii) Upon the satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Physical Note (such Physical Note being referred to as the “old Physical Note” for purposes of this **Section 2.10(C)(ii)**) of a Holder (or any portion of such old Physical Note in an Authorized Denomination):

(1) such old Physical Note will be promptly cancelled pursuant to **Section 2.15**;

(2) if such old Physical Note is to be so transferred or exchanged only in part, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such old Physical Note not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**;

(3) in the case of a transfer:

(a) to the Depositary or a nominee thereof that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Global Notes, the Trustee will reflect an increase of the principal amount of one or more existing Global Notes by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note(s), which increase(s) are in Authorized Denominations and aggregate to the principal amount to be so transferred, and which Global Note(s) bear each legend, if any, required by **Section 2.09**; *provided, however*, that if such transfer cannot be so effected by notation on one or more existing Global Notes (whether because no Global Notes bearing each legend, if any, required by **Section 2.09** then exist, because any such increase will result in any Global Note having an aggregate principal amount exceeding the maximum aggregate principal amount permitted by the Depositary or otherwise), then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Global Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; and (y) bear each legend, if any, required by **Section 2.09**; and

(b) to a transferee that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Physical Notes, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 2.09**; and

(4) in the case of an exchange, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so exchanged; (y) are registered in the name of the Person to whom such old Physical Note was registered; and (z) bear each legend, if any, required by **Section 2.09**.

(D) *Requirement to Deliver Documentation and Other Evidence.* If a Holder of any Note that is identified by a “restricted” CUSIP number or that bears a Restricted Note Legend or is a Transfer-Restricted Security requests to:

- (i) cause such Note to be identified by an “unrestricted” CUSIP number;
- (ii) remove such Restricted Note Legend; or
- (iii) register the transfer of such Note to the name of another Person,

then the Company, the Trustee and the Registrar may refuse to effect such identification, removal or transfer, as applicable, unless the Holder reasonably promptly delivers to the Company, the Trustee and the Registrar the certificate(s) and/or representation letter(s) attached to the Indenture or such certificates or other documentation or evidence as the Company, the Trustee and the Registrar may reasonably require for the Company to determine that such identification, removal or transfer, as applicable, complies with the Securities Act and other applicable securities laws; *provided, however*, that no such certificates, documentation or evidence need be so delivered on and after the Free Trade Date with respect to such Note unless the Company determines, in its reasonable discretion, that such Note is not eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act.

(E) *Transfers of Notes Subject to Redemption, Repurchase or Conversion.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that (i) has been surrendered for conversion, except to the extent that any portion of such Note is not subject to conversion; (ii) is subject to a Fundamental Change Repurchase Notice validly delivered, and not withdrawn, pursuant to **Section 4.02(F)**, except to the extent that any portion of such Note is not subject to such notice or the Company fails to pay the applicable Fundamental Change Repurchase Price when due; or (iii) has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due.

Section 2.11 EXCHANGE AND CANCELLATION OF NOTES TO BE CONVERTED OR TO BE REPURCHASED PURSUANT TO A REPURCHASE UPON FUNDAMENTAL CHANGE OR REDEMPTION.

(A) *Partial Conversions of Physical Notes and Partial Repurchases of Physical Notes Pursuant to a Repurchase Upon Fundamental Change or Redemption.* If only a portion of a Physical Note of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, as soon as reasonably practicable after such Physical Note is surrendered for such conversion, Redemption or repurchase, as applicable, the Company will cause such Physical Note to be exchanged, pursuant and subject to **Section 2.10(C)**, for (i) one or more Physical Notes that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted, redeemed or repurchased, as applicable, and deliver such Physical Note(s) to such Holder; and (ii) a Physical Note having a principal amount equal to the principal amount to be so converted, redeemed or repurchased, as applicable, which Physical Note will be converted, redeemed or repurchased, as applicable, pursuant to the terms of this Indenture; provided, however, that the Physical Note referred to in this **clause (ii)** need not be issued at any time after which such principal amount subject to such conversion, Redemption or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section 2.18**.

(B) *Cancellation of Notes that Are Converted and Notes that Are Repurchased Pursuant to a Repurchase Upon Fundamental Change or Redemption.*

(i) *Physical Notes.* If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.11(A)**) of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.18** and the time such Physical Note is surrendered for such conversion or repurchase, as applicable, (1) such Physical Note will be cancelled pursuant to **Section 2.15**; and (2) in the case of a partial conversion, Redemption or repurchase, as applicable, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**.

(ii) *Global Notes.* If a Global Note (or any portion thereof) is to be converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.18**, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so converted, redeemed or repurchased, as applicable, by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to **Section 2.15**).

Section 2.12 REMOVAL OF TRANSFER RESTRICTIONS.

Without limiting the generality of any other provision of this Indenture (including **Section 3.04**), the Restricted Note Legend affixed to any Note will be deemed, pursuant to this **Section 2.12** and the footnote to such Restricted Note Legend, to be removed therefrom upon the Company's delivery to the Trustee of written notice, signed on behalf of the Company by one (1) of its Officers, to such effect (and, for the avoidance of doubt, such notice need not be accompanied by an Officer's Certificate or an Opinion of Counsel in order to be effective to cause such Restricted Note Legend to be deemed to be removed from such Note unless a new note is to be authenticated in connection therewith). If such Note bears a "restricted" CUSIP or ISIN number at the time of such delivery, then, upon such delivery, such Note will be deemed, pursuant to this **Section 2.12** and the footnotes to the CUSIP and ISIN numbers set forth on the face of the certificate representing such Note, to thereafter bear the "unrestricted" CUSIP and ISIN numbers identified in such footnotes; *provided, however*, that if such Note is a Global Note and the Depositary thereof requires a mandatory exchange or other procedure to cause such Global Note to be identified by "unrestricted" CUSIP and ISIN numbers in the facilities of such Depositary, then (i) the Company will effect such exchange or procedure as soon as reasonably practicable; and (ii) for purposes of **Section 3.04** and the definition of Freely Tradable, such Global Note will not be deemed to be identified by "unrestricted" CUSIP and ISIN numbers until such time as such exchange or procedure is effectuated.

Section 2.13 REPLACEMENT NOTES.

If a Holder of any Note claims that such Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a replacement Note upon surrender to the Trustee of such mutilated Note, or upon delivery to the Trustee of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Trustee and the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company and the Trustee may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company to protect the Company and that is satisfactory to the Trustee to protect the Trustee from any loss that any of them may suffer if such Note is replaced. Every replacement Note issued pursuant to this **Section 2.13** will be an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and ratably with all other Notes issued under this Indenture.

Section 2.14 REGISTERED HOLDERS; CERTAIN RIGHTS WITH RESPECT TO GLOBAL NOTES.

Only the Holder of a Note will have rights under this Indenture as the owner of such Note. Without limiting the generality of the foregoing, Depositary Participants will have no rights as such under this Indenture with respect to any Global Note held on their behalf by the Depositary or its nominee, or by the Trustee as its custodian, and the Company, the Trustee and the Note Agents, and their respective agents, may treat the Depositary as the absolute owner of such Global Note for all purposes whatsoever; *provided, however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depositary Participants and Persons that hold interests in Notes through Depositary Participants, to take any action that such Holder is entitled to take with respect to such Global Note under this Indenture or the Notes; and (B) the Company and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depositary.

Section 2.15 CANCELLATION.

The Company may at any time deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent will forward to the Trustee each Note duly surrendered to them for transfer, exchange, payment or conversion. The Trustee will promptly cancel all Notes so surrendered to it in accordance with its then customary procedures. Without limiting the generality of **Section 2.03(B)**, the Company may not originally issue new Notes to replace Notes that it has paid or that have been cancelled upon transfer, exchange, payment or conversion.

Section 2.16 NOTES HELD BY THE COMPANY OR ITS AFFILIATES.

Without limiting the generality of **Section 2.18**, in determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any of its Affiliates will be deemed not to be outstanding; *provided, however*, that, for purposes of determining whether the Trustee is protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned will be so disregarded.

Section 2.17 TEMPORARY NOTES.

Until definitive Notes are ready for delivery, the Company may issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. The Company will promptly prepare, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, definitive Notes in exchange for temporary Notes. Until so exchanged, each temporary Note will in all respects be entitled to the same benefits under this Indenture as definitive Notes.

Section 2.18 OUTSTANDING NOTES.

(A) *Generally.* The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee for cancellation in accordance with **Section 2.15**; (ii) assigned a principal amount of zero by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of any Global Note representing such Note; (iii) paid in full (including upon conversion) in accordance with this Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B), (C) or (D)** of this **Section 2.18**.

(B) *Replaced Notes.* If a Note is replaced pursuant to **Section 2.13**, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a “*bona fide* purchaser” under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase.* If, on a Redemption Date, a Fundamental Change Repurchase Date or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price, Fundamental Change Repurchase Price or principal amount, respectively, together, in each case, with the aggregate interest, in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided in **Sections 4.02(D), 4.03(E) or 5.02(D)**; and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price, Fundamental Change Repurchase Price or principal amount, as applicable, of, and accrued and unpaid interest on, such Notes (or such portions thereof), in each case as provided in this Indenture.

(D) *Notes to Be Converted.* At the Close of Business on the Conversion Date for any Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(B)** or **Section 5.02(D)**, upon such conversion) be deemed to cease to be outstanding, except to the extent provided in **Section 5.02(D)** or **Section 5.08**.

(E) *Cessation of Accrual of Interest.* Except as provided in **Sections 4.02(D), 4.03(E) or 5.02(D)**, interest will cease to accrue on each Note from, and including, the date that such Note is deemed, pursuant to this **Section 2.18**, to cease to be outstanding, unless there occurs a default in the payment or delivery of any cash or other property due on such Note.

Section 2.19 REPURCHASES BY THE COMPANY.

The Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions without delivering prior notice to Holders. Notes that the Company or any of its Subsidiaries have purchased or otherwise acquired will be deemed to remain outstanding (except to the extent provided in **Section 2.16**) until such time as such Notes are delivered to the Trustee for cancellation and, upon receipt of a written order from the Company, the Trustee will cause all Notes surrendered to be cancelled in accordance with Section 2.15. Any Note that is repurchased or owned by any Affiliate of the Company may not be resold by such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note no longer being a “restricted security” (as defined in Rule 144 under the Securities Act).

Section 2.20 CUSIP AND ISIN NUMBERS.

Subject to **Section 2.12**, the Company may use one or more CUSIP or ISIN numbers to identify any of the Notes, and, if so, the Company and the Trustee will use such CUSIP or ISIN number(s) in notices to Holders; *provided, however*, that (i) the Trustee makes no representation as to the correctness or accuracy of any such CUSIP or ISIN number; (ii) the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any notice, Note, or elsewhere; and (iii) the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number. The Company will promptly notify the Trustee in writing of any change in the CUSIP or ISIN number(s) identifying any Notes.

Article 3

COVENANTS

Section 3.01 PAYMENT ON NOTES.

(A) *Generally.* The Company will pay or cause to be paid all the principal of, the Fundamental Change Repurchase Price and Redemption Price for, interest on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in this Indenture.

(B) *Deposit of Funds.* Before 10:00 A.M., New York City time, on each Redemption Date, Fundamental Change Repurchase Date or Interest Payment Date, and on the Maturity Date or any other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

Section 3.02 EXCHANGE ACT REPORTS.

(A) *Generally.* The Company will send to the Trustee copies of all reports that the Company is required to file with or furnish to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act within fifteen (15) calendar days after the date that the Company is required to file or furnish the same (after giving effect to all applicable grace periods under the Exchange Act); *provided, however*, that the Company need not send to the Trustee any material for which the Company has received, or is seeking in good faith and has not been denied, confidential treatment by the SEC, or any correspondence with the SEC. Any report that the Company files with or furnishes to the SEC through the EDGAR system (or any successor thereto) will be deemed to be sent to the Trustee at the time such report is so filed or furnished via the EDGAR system (or such successor), it being understood that the Trustee shall not be responsible for determining whether such filings have been made or for their timeliness or their content. Upon the request of any Holder, the Company will provide to such Holder a copy of any report that the Company has sent the Trustee pursuant to this **Section 3.02(A)**, other than a report that is deemed to be sent to the Trustee pursuant to the preceding sentence.

(B) *Trustee's Disclaimer.* The Trustee will not be responsible for determining whether the Company has filed any material via the EDGAR system (or such successor) or for the timeliness of its content. Delivery of reports, information and documents to the Trustee is for informational purposes only and receipt of such reports and documents shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants under this Indenture (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall not be obligated whatsoever to monitor or confirm, on a continuing basis or otherwise, the Company's compliance with the covenants under this Indenture or the Notes or with respect to any reports or other documents filed with the SEC pursuant to **Section 3.02(A)** through the EDGAR system (or any successor thereto) or any website under this Indenture. The Trustee will not be obligated to participate in any conference calls.

Section 3.03 **RULE 144A INFORMATION.**

If the Company is not subject to Section 13 or 15(d) of the Exchange Act at any time when any Notes or shares of Common Stock issuable upon conversion of the Notes are outstanding and constitute “restricted securities” (as defined in Rule 144), then the Company (or its successor) will promptly provide, to the Trustee and, upon written request, to any Holder, beneficial owner or prospective purchaser of such Notes or shares, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares pursuant to Rule 144A.

Section 3.04 **ADDITIONAL INTEREST.**

(A) *Accrual of Additional Interest.*

(i) If, at any time during the six (6) month period beginning on, and including, the date that is six (6) months after the Last Original Issue Date of any Note,

(1) the Company fails to timely file any report (other than Form 8-K reports) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (after giving effect to all applicable grace periods thereunder); or

(2) such Note is not otherwise Freely Tradable, despite and after the relevant Holder having provided the relevant documentation required by Section 2.10(d) to cause such Note to be identified by an “unrestricted” CUSIP number or to remove the Restricted Note Legend from the Note, then Additional Interest will accrue on such Note for each day during such period on which such failure is continuing or such Note is not Freely Tradable.

(ii) In addition, Additional Interest will accrue on a Note on each day on which such Note is not Freely Tradable on or after the De-Legending Deadline Date for such Note.

(B) *Amount and Payment of Additional Interest.* Any Additional Interest that accrues on a Note pursuant to **Section 3.04(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however,* that in no event will Additional Interest that may accrue pursuant to **Section 3.04(A)**, together with any Special Interest that is payable at the Company’s election pursuant to **Section 7.03** as the sole remedy for any Reporting Event of Default, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%), regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest or Special Interest. For the avoidance of doubt, any Additional Interest that accrues on a Note pursuant to this **Section 3.04** will be in addition to the Stated Interest that accrues on such Note, subject to the proviso in the previous sentence, and in addition to any Special Interest that accrues on such Note pursuant to **Section 7.03**.

(C) *Notice of Accrual of Additional Interest; Trustee’s Disclaimer.* The Company will send notice to the Holder of each Note, and to the Trustee, of the commencement and termination of any period in which Additional Interest pursuant to this **Section 3.04** accrues on such Note. In addition, if Additional Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Additional Interest is to be paid, the Company will deliver an Officer’s Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Additional Interest pursuant to this **Section 3.04** on such Note on such date of payment; and (ii) the amount of such Additional Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Additional Interest is payable or the amount thereof.

(D) *Exclusive Remedy.* The accrual of Additional Interest pursuant to this **Section 3.04** will be the exclusive remedy available to Holders for the failure of their Notes to become Freely Tradable.

Section 3.05 COMPLIANCE AND DEFAULT CERTIFICATES.

(A) *Annual Compliance Certificate.* Within ninety (90) days after December 31, 2021 and each fiscal year of the Company ending thereafter, the Company will deliver an Officer's Certificate to the Trustee stating (i) that the signatory thereto has supervised a review of the activities of the Company and its Subsidiaries during such fiscal year with a view towards determining whether any Default or Event of Default has occurred; and (ii) whether, to such signatory's knowledge, a Default or Event of Default has occurred during such year or is continuing (and, if so, describing all such Defaults or Events of Default and what action the Company is taking or proposes to take with respect thereto).

(B) *Default Certificate.* If a Default or Event of Default occurs, then the Company will promptly deliver an Officer's Certificate to the Trustee describing the same and what action the Company is taking or proposes to take with respect thereto; *provided*, however, that the Company will not be required to deliver such notice if such Default or Event of Default, as applicable, has been cured within the applicable grace period, if any, provided in this Indenture.

Section 3.06 STAY, EXTENSION AND USURY LAWS.

To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Indenture; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Trustee by this Indenture, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 3.07 CORPORATE EXISTENCE.

Subject to **Article 6**, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 3.08 FUTURE GUARANTORS.

If, after the Issue Date, (A) any Wholly Owned Domestic Subsidiary (including any newly formed or newly acquired Wholly Owned Domestic Subsidiary) guarantees any Capital Markets Indebtedness of the Company with an aggregate principal amount in excess of \$150 million or (B) the Company otherwise elects to have any Subsidiary become a guarantor of the Notes, then, in each such case, the Company shall cause such Subsidiary to execute and deliver to the Trustee (in the case of **clause (A)**, by the date that is 60 days after becoming a guarantor under such Capital Markets Indebtedness; and in the case of **clause (B)**, by the date selected by the Company) a supplemental indenture in form reasonably satisfactory to the Trustee pursuant to which such Subsidiary shall unconditionally guarantee, on an unsecured basis and ranking *pari passu* with the Capital Markets Indebtedness, all of the Company's obligations under the Notes and this Indenture. Such guarantees will be subject to release and discharge prior to payment in full of the Notes, as may be provided in such supplemental indenture.

Article 4

REPURCHASE AND REDEMPTION

Section 4.01 NO SINKING FUND.

No sinking fund is required to be provided for the Notes.

Section 4.02 RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES UPON A FUNDAMENTAL CHANGE.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.* Subject to the other terms of this **Section 4.02**, if a Fundamental Change occurs, then each Holder will have the right (the “**Fundamental Change Repurchase Right**”) to require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Fundamental Change Repurchase Date for a Repurchase Upon Fundamental Change (including as a result of the payment of the related Fundamental Change Repurchase Price, and any related interest pursuant to the proviso to **Section 4.02(D)**, on such Fundamental Change Repurchase Date), then (i) the Company may not repurchase any Notes pursuant to this **Section 4.02**; and (ii) the Company will cause any Notes theretofore surrendered for such Repurchase Upon Fundamental Change to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes in accordance with the Depositary Procedures).

(C) *Fundamental Change Repurchase Date.* The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company’s choosing that is no more than forty five (45), nor less than twenty (20), Business Days after the date the Company sends the related Fundamental Change Notice pursuant to **Section 4.02(E)**.

(D) *Fundamental Change Repurchase Price.* The Fundamental Change Repurchase Price for any Note to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided, however*, that if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company’s election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Fundamental Change Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Fundamental Change Repurchase Price will include interest on Notes to be repurchased from, and including, such Interest Payment Date to, but excluding, the Fundamental Change Repurchase Date.

(E) *Fundamental Change Notice*. On or before the twentieth (20th) calendar day after the effective date of a Fundamental Change, the Company will send to each Holder, in writing, with a copy to the Trustee, the Conversion Agent (if other than the Trustee) and the Paying Agent a notice of such Fundamental Change (a “**Fundamental Change Notice**”). Substantially contemporaneously, the Company will issue a press release through such national newswire service as the Company then uses (or publish the same through such other widely disseminated public medium as the Company then uses, including its website) containing the information set forth in the Fundamental Change Notice.

Such Fundamental Change Notice must state:

- (i) briefly, the events causing such Fundamental Change;
- (ii) the effective date of such Fundamental Change;
- (iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.02**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;
- (iv) the Fundamental Change Repurchase Date for such Fundamental Change;
- (v) the Fundamental Change Repurchase Price per \$1,000 principal amount of Notes for such Fundamental Change (and, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.02(D)**);
- (vi) the name and address of the Paying Agent and the Conversion Agent;

- (vii) the Conversion Rate in effect on the date of such Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change (including pursuant to **Section 5.07**);
- (viii) that Notes for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent or tender agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;
- (ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Indenture; and
- (x) the CUSIP and ISIN numbers, if any, of the Notes.

Neither the failure to deliver a Fundamental Change Notice nor any defect in a Fundamental Change Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(F) *Procedures to Exercise the Fundamental Change Repurchase Right.*

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be Repurchased.* To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, the Holder thereof must deliver to the Paying Agent or the tender agent appointed to facilitate such repurchase:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note). The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices.* Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note; *provided, however*, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depository Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depository Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice.* A Holder that has delivered a Fundamental Change Repurchase Notice with respect to a Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent or tender agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

- (1) if such Note is a Physical Note, the certificate number of such Note;
- (2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and
- (3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination; *provided, however*, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent or tender agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent or tender agent, cause such Note (or such portion thereof in accordance with **Section 2.11**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depositary Procedures).

(G) *Payment of the Fundamental Change Repurchase Price.* Without limiting the Company's obligation to deposit the Fundamental Change Repurchase Price within the time prescribed by **Section 3.01(B)**, the Company will cause the Fundamental Change Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the later of (i) the applicable Fundamental Change Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be repurchased are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.02(D)** on any Note to be repurchased pursuant to a Repurchase Upon Fundamental Change must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.02(G)**.

(H) *Compliance with Applicable Securities Laws.* To the extent applicable, the Company will comply in all material respects with all U.S. federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in this Indenture. The Fundamental Change Repurchase Date shall be subject to postponement in order to allow the Company to comply with applicable law as a result of changes to such applicable law occurring after the date of this Indenture. However, to the extent that the Company's obligations to offer to repurchase or to repurchase Notes pursuant to **Section 4.02** conflict with any law or regulation that is applicable to the Company and enacted after the date the Company initially issues the Notes, the Company's compliance with such law or regulation will not be considered to be a breach of those obligations.

(I) *Repurchase in Part.* Subject to the terms of this **Section 4.02**, Notes may be repurchased pursuant to a Repurchase Upon Fundamental Change in part, but only in Authorized Denominations. Provisions of this **Section 4.02** applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

(J) *Repurchases by Third Party.* Notwithstanding anything to the contrary in this Section 4.02, the Company will not be required to repurchase, or make an offer to repurchase, the Notes upon a Fundamental Change if (i) one or more or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Notes otherwise required by this Section 4.02 in a manner that would have satisfied the Company's obligations to do the same if conducted directly by the Company; and (ii) an owner of a beneficial interest in the Notes would not receive a lesser amount (as a result of taxes, additional expenses or for any other reason) than such owner would have received had the Company repurchased such Notes.

Section 4.03 RIGHT OF THE COMPANY TO REDEEM THE NOTES.

(A) *No Right to Redeem Before [July [●], 2024]¹².* The Company may not redeem the Notes at its option at any time before [July [●], 2024].

(B) *Right to Redeem the Notes on or After [July [●], 2024].* Subject to the terms of this **Section 4.03**, the Company has the right, at its election, to redeem all, or any portion in an Authorized Denomination, of the Notes, at any time, and from time to time, on a Redemption Date on or after [July [●], 2024] and on or before the fortieth (40th) Scheduled Trading Day immediately before the Maturity Date, for a cash purchase price equal to the Redemption Price, but only if the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price on (i) each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before the Redemption Notice Date for such Redemption and (ii) the Trading Day immediately before such Redemption Notice Date. For the avoidance of doubt, the calling of any Notes for Redemption will constitute a Make-Whole Fundamental Change with respect to such Notes pursuant to **clause (B)** of the definition thereof.

¹² Note: Date This will be the third year anniversary from the issuance of the PubCo Notes.

(C) *Redemption Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Redemption Date (including as a result of the payment of the related Redemption Price, and any related interest pursuant to the proviso to **Section 4.03(E)**, on such Redemption Date), then (i) the Company may not call for Redemption or otherwise redeem any Notes pursuant to this **Section 4.03**; and (ii) the Company will cause any Notes theretofore surrendered for such Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depositary Procedures).

(D) *Redemption Date.* The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than sixty five (65), nor less than forty five (45), Scheduled Trading Days after the Redemption Notice Date for such Redemption; *provided, however*, that if the Company is then otherwise permitted to settle conversions of Notes by Physical Settlement (and, for the avoidance of doubt, has not irrevocably elected another Settlement Method), and the Company elects to settle all conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the Business Day immediately before the Redemption Date by Physical Settlement, then the Company may instead elect to choose a Redemption Date that is a Business Day no more than forty five (45), nor less than fifteen (15), Scheduled Trading Days after such Redemption Notice Date. The Redemption Date shall be a Business Day and the Company may not specify a Redemption Date that falls after the 40th Scheduled Trading Day immediately preceding the Maturity Date.

(E) *Redemption Price.* The Redemption Price for any Note called for Redemption is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Redemption Date for such Redemption; *provided, however*, that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of Section 2.05(C) and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with Section 2.05(C), on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date to, but excluding, such Redemption Date.

(F) *Notices to Trustee.* If the Company elects to redeem Notes pursuant to this Section 4.03, then it will furnish to the Trustee, at least three Business Days before the related Redemption Notice Date (unless a shorter notice period is satisfactory to the Trustee), an Officer's Certificate setting forth the Section of this Indenture pursuant to which the Redemption will occur, the applicable Redemption Date, the principal amount of Notes to be redeemed and the Redemption Price. If the Registrar is not the Trustee, then the Company will, concurrently with each Redemption Notice, deliver, or cause the Registrar to deliver, to the Trustee a certificate (upon which the Trustee may conclusively rely exclusively) setting forth the principal amounts of Notes held by each Holder.

(G) *Redemption Notice.* To call any Notes for Redemption, the Company must (x) send or cause to send to each Holder of such Notes, the Trustee and the Paying Agent a written notice of such Redemption (a “**Redemption Notice**”); and (y) substantially contemporaneously therewith, issue a press release through such national newswire service as the Company then uses (or publish the same through such other widely disseminated public medium as the Company then uses, including its website) containing the information set forth in the Redemption Notice.

Such Redemption Notice must state:

- (i) that such Notes have been called for Redemption, briefly describing the Company’s Redemption right under this Indenture;
- (ii) the Redemption Date for such Redemption;
- (iii) the Redemption Price per \$1,000 principal amount of Notes for such Redemption (and, if the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.03(E)**);
- (iv) the name and address of the Paying Agent and the Conversion Agent;
- (v) that Notes called for Redemption may be converted at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full);
- (vi) the Conversion Rate in effect on the Redemption Notice Date for such Redemption and a description and quantification of any adjustments to the Conversion Rate that may result from such Redemption (including pursuant to **Section 5.07**);
- (vii) the Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the Business Day before such Redemption Date; and
- (viii) the CUSIP and ISIN numbers, if any, of the Notes.

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee, the Paying Agent and the Conversion Agent.

(H) *Selection and Conversion of Notes to Be Redeemed in Part.* If less than all Notes then outstanding are called for Redemption, then:

(i) the Notes to be redeemed will be selected by the Company as follows: (1) in the case of Global Notes, in accordance with the Depositary Procedures; and (2) in the case of Physical Notes, the Company will select the Notes to be redeemed (in an Authorized Denomination) by lot, on a pro rata basis or in such other manner as it shall deem appropriate and fair; and

(ii) if only a portion of a Note is subject to Redemption and such Note is converted in part, then the converted portion of such Note will be deemed to be from the portion of such Note that was subject to Redemption.

(I) *Payment of the Redemption Price.* Without limiting the Company's obligation to deposit the Redemption Price by the time prescribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date. For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.03(E)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso.

Article 5

CONVERSION

Section 5.01 RIGHT TO CONVERT.

(A) *Generally.* Subject to the provisions of this **Article 5**, each Holder may, at its option, convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part.* Subject to the terms of this Indenture, Notes may be converted in part, but only in Authorized Denominations. Provisions of this **Article 5** applying to the conversion of a Note in whole will equally apply to conversions of a permitted portion of a Note.

(C) *When Notes May Be Converted.*

(i) *Generally.* Subject to **Section 5.01(C)(ii)**, a Holder may convert its Notes at any time from, and including, the Issue Date until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date.

(ii) *Limitations and Closed Periods.* Notwithstanding anything to the contrary in this Indenture or the Notes:

(1) Notes may be surrendered for conversion only after the Open of Business and before the Close of Business on a day that is a Business Day;

(2) in no event may any Note be converted after the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date;

(3) if the Company calls any Note for Redemption pursuant to **Section 4.03**, then the Holder of such Note may not convert such Note after the Close of Business on the Business Day immediately before the applicable Redemption Date, except to the extent the Company fails to pay the Redemption Price for such Note in accordance with this Indenture; and

(4) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 4.02(F)** with respect to any Note, then such Note may not be converted, except to the extent (a) such Note is not subject to such notice; (b) such notice is withdrawn in accordance with **Section 4.02(F)**; or (c) the Company fails to pay the Fundamental Change Repurchase Price for such Note (or a third party fails to make such payment in lieu of the Company in accordance with **Section 4.02(J)**) in accordance with this Indenture.

Section 5.02 CONVERSION PROCEDURES.

(A) *Generally.*

(i) *Global Notes.* To convert a beneficial interest in a Global Note that is convertible pursuant to **Section 5.01(C)**, the owner of such beneficial interest must (1) comply with the Depositary Procedures for converting such beneficial interest (at which time such conversion will become irrevocable unless the Company, in its sole and absolute discretion agrees to permit the owner of the beneficial interest to withdraw such conversion and such withdrawal is reasonably feasible pursuant to the Depositary Procedures); and (2) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(ii) *Physical Notes.* To convert all or a portion of a Physical Note that is convertible pursuant to **Section 5.01(C)**, the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the conversion notice attached to such Physical Note or a facsimile of such conversion notice; (2) deliver such Physical Note to the Conversion Agent (at which time such conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(B) *Effect of Converting a Note.* At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(B)** or **5.02(D)**, upon such conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to be a Holder of such Note (or such portion thereof) as of the Close of Business on such Conversion Date), except to the extent provided in **Section 5.02(D)**.

(C) *Holder of Record of Conversion Shares.* The Person in whose name any share of Common Stock is issuable upon conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on (i) the Conversion Date for such conversion, in the case of Physical Settlement; or (ii) the last VWAP Trading Day of the Observation Period for such conversion, in the case of Combination Settlement.

(D) *Interest Payable upon Conversion in Certain Circumstances.* If the Conversion Date of a Note is after a Regular Record Date and before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such conversion (and, for the avoidance of doubt, notwithstanding anything set forth in the proviso to this sentence), to receive, on or, at the Company's election, before such Interest Payment Date, unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (ii) the Holder surrendering such Note for conversion must deliver to the Conversion Agent, at the time of such surrender, an amount of cash equal to the amount of such interest referred to in clause (i) above; *provided, however,* that the Holder surrendering such Note for conversion need not deliver such cash (v) if the Company has specified a Redemption Date that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; (w) if such Conversion Date occurs after the Regular Record Date immediately before the Maturity Date; (x) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; or (y) to the extent of any overdue interest or interest that has accrued on any overdue interest. For the avoidance of doubt, as a result of, and without limiting the generality of, the foregoing, if a Note is converted with a Conversion Date that is after the Regular Record Date immediately before the Maturity Date, any Redemption Date and any Fundamental Change Repurchase Date described in clauses (v) through (x) above, then the Company will pay, as provided above, the interest that would have accrued on such Note to, but excluding, the Maturity Date or other applicable Interest Payment Date to Holders as of the Close of Business on the Regular Record Date immediately before the Maturity Date or other applicable Interest Payment Date. For the avoidance of doubt, if the Conversion Date of a Note to be converted is on an Interest Payment Date, then the Holder of such Note at the Close of Business on the Regular Record Date immediately before such Interest Payment Date will be entitled to receive, on such Interest Payment Date, the unpaid interest that has accrued on such Note to, but excluding, such Interest Payment Date, and such Note, when surrendered for conversion, need not be accompanied by any cash amount pursuant to the first sentence of this Section 5.02(D).

(E) *Taxes and Duties.* If a Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue or delivery of any shares of Common Stock upon such conversion; *provided, however,* that if any tax or duty is due because such Holder requested such shares to be registered in a name other than such Holder's name, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Conversion Agent may refuse to deliver any such shares to be issued in a name other than that of such Holder.

(F) *Conversion Agent to Notify Company of Conversions.* If any Note is submitted for conversion to the Conversion Agent or the Conversion Agent receives any notice of conversion with respect to a Note, then the Conversion Agent will promptly (and, in any event, no later than the Business Day following the date the Conversion Agent receives such Note or notice) notify the Company and the Trustee of such occurrence, together with any other information reasonably requested by the Company, and will cooperate with the Company to determine the Conversion Date for such Note.

Section 5.03 SETTLEMENT UPON CONVERSION.

(A) *Settlement Method.* Upon the conversion of any Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this **Article 5**, either (x) shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(1)** (a “**Physical Settlement**”); (y) solely cash as provided in **Section 5.03(B)(i)(2)** (a “**Cash Settlement**”); or (z) a combination of cash and shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(3)** (a “**Combination Settlement**”).

(i) *The Company’s Right to Elect Settlement Method.* The Company will have the right to elect the Settlement Method applicable to any conversion of a Note; *provided, however*, that:

(1) subject to **clause (3)** below, all conversions of Notes with a Conversion Date that occurs on or after [January [●], 2026]¹³ will be settled using the same Settlement Method, and the Company will send notice of such Settlement Method to Holders, the Trustee and the Conversion Agent no later than the Open of Business on [January [●], 2026];

(2) subject to **clause (3)** below, if the Company elects a Settlement Method with respect to the conversion of any Note whose Conversion Date occurs before [January [●], 2026], then the Company will send written notice of such Settlement Method to the Holder of such Note, the Trustee and the Conversion Agent (if other than the Trustee) no later than the Close of Business on the Business Day immediately after such Conversion Date;

(3) if any Notes are called for Redemption, then (1) the Company will specify, in the related Redemption Notice (and, in the case of a Redemption of less than all outstanding Notes, in a notice simultaneously sent to all Holders of Notes not called for Redemption) sent pursuant to **Section 4.03(G)**, the Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after the related Redemption Notice Date and on or before the Business Day before the related Redemption Date; and (2) if such Redemption Date occurs on or after [January [●], 2026], then such Settlement Method must be the same Settlement Method that, pursuant to **clause (1)** above, applies to all conversions of Notes with a Conversion Date that occurs on or after [January [●], 2026];

¹³ Note: This will be the Interest Payment Date prior to the Maturity Date i.e. a date that is 6 months before maturity.

(4) the Company will use the same Settlement Method for all conversions of Notes with the same Conversion Date (and, for the avoidance of doubt, the Company will not be obligated to use the same Settlement Method with respect to conversions of Notes with different Conversion Dates, except as provided in **clause (1)** or **(3)** above);

(5) if the Company does not timely elect a Settlement Method with respect to the conversion of a Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a Default or Event of Default);

(6) if the Company timely elects Combination Settlement with respect to the conversion of a Note but does not timely notify the Holder of such Note, the Trustee and the Conversion Agent (if other than the Trustee) in writing of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be \$1,000 per \$1,000 principal amount of Notes (and, for the avoidance of doubt, the failure to timely send such notification will not constitute a Default or Event of Default); and

(7) the Settlement Method will be subject to **Sections 4.03(D)** and **5.09(A)(2)**.

(ii) *The Company's Right to Irrevocably Fix the Settlement Method.* The Company will have the right, exercisable at its election by sending written notice of such exercise to the Holders (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)), to (1) irrevocably fix the Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders; or (2) irrevocably elect Combination Settlement to apply to all conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders, and eliminate a Specified Dollar Amount or range of Specified Dollar Amounts that will apply to such conversions, *provided*, in each case, that (w) the Settlement Method(s) so elected pursuant to **clause (1)** or **(2)** above must be a Settlement Method or Settlement Method(s), as applicable, that the Company is then permitted to elect (for the avoidance of doubt, including pursuant to, and subject to, the other provisions of this **Section 5.03(A)**); (x) no such irrevocable election will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to this Indenture (including pursuant to **Section 8.01(G)** or this **Section 5.03(A)**); (y) upon any such irrevocable election pursuant to **clause (1)** above, the Default Settlement Method will automatically be deemed to be set to the Settlement Method so fixed; and (z) upon any such irrevocable election pursuant to **clause (2)** above, the Company will, if needed, simultaneously change the Default Settlement Method to Combination Settlement with a Specified Dollar Amount that is consistent with such irrevocable election. Such notice, if sent, must set forth the applicable Settlement Method and expressly state that the election is irrevocable and applicable to all conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders. For the avoidance of doubt, such an irrevocable election, if made, will be effective without the need to amend this Indenture or the Notes, including pursuant to **Section 8.01(G)** (it being understood, however, that the Company may nonetheless choose to execute such an amendment at its option).

(iii) *Requirement to Publicly Disclose the Fixed or Default Settlement Method.* If the Company changes the Default Settlement Method pursuant to **clause (x)** of the proviso to the definition of such term or irrevocably fixes the Settlement Method(s) pursuant **Section 5.03(A)(ii)**, then the Company will either post the Default Settlement Method or fixed Settlement Method(s), as applicable, on its website or disclose the same in a Current Report on Form 8-K (or any successor form) that is filed with, or furnished to, the SEC.

(B) *Conversion Consideration.*

(i) *Generally.* Subject to **Section 5.03(B)(ii)** and **Section 5.03(B)(iii)**, the type and amount of consideration (the “**Conversion Consideration**”) due in respect of each \$1,000 principal amount of a Note to be converted will be as follows:

(1) if Physical Settlement applies to such conversion, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(2) if Cash Settlement applies to such conversion, cash in an amount equal to the sum of the Daily Conversion Values for each VWAP Trading Day in the Observation Period for such conversion; or

(3) if Combination Settlement applies to such conversion, consideration consisting of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each VWAP Trading Day in the Observation Period for such conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each VWAP Trading Day in such Observation Period.

(ii) *Cash in Lieu of Fractional Shares.* If Physical Settlement or Combination Settlement applies to the conversion of any Note and the number of shares of Common Stock deliverable pursuant to **Section 5.03(B)(i)** upon such conversion is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such conversion, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) (x) the Daily VWAP on the Conversion Date for such conversion (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), in the case of Physical Settlement; or (y) the Daily VWAP on the last VWAP Trading Day of the Observation Period for such conversion, in the case of Combination Settlement.

(iii) *Conversion of Multiple Notes by a Single Holder.* If a Holder converts more than one (1) Note on a single Conversion Date, then the Conversion Consideration due in respect of such conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depositary Procedures) be computed based on the total principal amount of Notes converted on such Conversion Date by such Holder.

(iv) *Notice of Calculation of Conversion Consideration.* If Cash Settlement or Combination Settlement applies to the conversion of any Note, then the Company will determine the Conversion Consideration due thereupon promptly following the last VWAP Trading Day of the applicable Observation Period and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the calculation thereof in reasonable detail. Neither the Trustee nor the Conversion Agent will have any duty to make or verify any such determination.

(C) *Delivery of the Conversion Consideration.* Except as set forth in **Sections 5.05(D)** and **5.09**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of any Note to the Holder as follows: (i) if Cash Settlement or Combination Settlement applies to such conversion, on the second (2nd) Business Day immediately after the last VWAP Trading Day of the Observation Period for such conversion; and (ii) if Physical Settlement applies to such conversion, on the second (2nd) Business Day immediately after the Conversion Date for such conversion; *provided, however*, that if Physical Settlement applies to the conversion of any Note with a Conversion Date that is after the Regular Record Date (if Special Interest were payable) immediately before the Maturity Date, then, solely for purposes of such conversion, (x) the Company will pay or deliver, as applicable, the Conversion Consideration due upon such conversion on the Maturity Date (or, if the Maturity Date is not a Business Day, the next Business Day); and (y) the Conversion Date will instead be deemed to be the second (2nd) Business Day immediately before the Maturity Date.

(D) *Deemed Payment of Principal and Interest; Settlement of Accrued Interest Notwithstanding Conversion.* If a Holder converts a Note, then the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on such Note, and, except as provided in **Section 5.02(D)**, the Company's delivery of the Conversion Consideration due in respect of such conversion will be deemed to fully satisfy and discharge the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on, such Note to, but excluding the Conversion Date. As a result, upon conversion, except as provided in **Section 5.02(D)**, a Holder will not receive any separate cash payment for accrued and unpaid interest and any accrued and unpaid interest on a converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In addition, subject to **Section 5.02(D)**, if the Conversion Consideration for a Note consists of both cash and shares of Common Stock, then accrued and unpaid interest that is deemed to be paid therewith will be deemed to be paid first out of such cash.

Section 5.04 RESERVE AND STATUS OF COMMON STOCK ISSUED UPON CONVERSION.

(A) *Stock Reserve.* At all times when any Notes are outstanding, the Company will reserve (out of its authorized but unissued and unreserved shares of Common Stock that are not reserved for other purposes) a number of shares of Common Stock sufficient to permit the conversion of all then-outstanding Notes, assuming (x) Physical Settlement will apply to such conversion; and (y) the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to **Section 5.07**.

(B) *Status of Conversion Shares; Listing.* Each Conversion Share, if any, delivered upon conversion of any Note will be a newly issued or treasury share (except that any Conversion Share delivered by a Designated Financial Institution pursuant to **Section 5.08** need not be a newly issued or treasury share) and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder of such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each Conversion Share, when delivered upon conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

Section 5.05 **ADJUSTMENTS TO THE CONVERSION RATE.**

(A) *Events Requiring an Adjustment to the Conversion Rate.* The Conversion Rate will be adjusted from time to time as follows:

(i) *Stock Dividends, Splits and Combinations.* If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CRI = CR0 \times \frac{OS1}{OS0}$$

where:

- CR0* = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock combination, as applicable;
- CRI* = the Conversion Rate in effect immediately after the Open of Business on such Ex Dividend Date or the open of business on such effective date, as applicable;
- OS0* = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination;
- OS1* = and the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

For the avoidance of doubt, each adjustment to the Conversion Rate made pursuant to this **Section 5.05(A)(i)** will become effective as of the time set forth in the preceding definition of *CRI*. If any dividend, distribution, stock split or stock combination of the type described in this **Section 5.05(A)(i)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants.* If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which **Sections 5.05(A)(iii)(1)** and **5.05(F)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CRI = CR0 \times \frac{OS + X}{OS + Y}$$

where:

- CR0* = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;
- CRI* = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
- OS* = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;
- X* = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y* = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

For the avoidance of doubt, each adjustment to the Conversion Rate made pursuant to this **Section 5.05(A)(ii)** will become effective as of the time set forth in the preceding definition of *CRI*. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants.

For purposes of this **Section 5.05(A)(ii)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors.

(iii) *Spin-Offs and Other Distributed Property.*

(1) *Distributions Other than Spin-Offs.* If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(a) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.10**) pursuant to **Section 5.05(A)(i)** or **5.05(A)(ii)**;

(b) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.10**) pursuant to **Section 5.05(A)(iv)**;

(c) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 5.05(E)**;

(d) Spin-Offs for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.10**) pursuant to **Section 5.05(A)(iii)(2)**;

(e) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply; and

(f) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

- CR0* = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;
- CR1* = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
- SP* = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and
- FMV* = the fair market value, as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants to acquire capital stock or other securities distributed per share of Common Stock pursuant to such distribution;

provided, however, that if *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each \$1,000 principal amount of Notes held by such Holder on the record date for such distribution, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants to acquire capital stock or other securities that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date. For the avoidance of doubt, each adjustment to the Conversion Rate made pursuant to this **Section 5.05(A)(iii)(1)** will become effective at the time set forth in the definition of *CR1* above.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which **Section 5.09** will apply; or (y) a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a “**Spin-Off**”), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

- CR0* = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;
- CR1* = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;
- FMV* = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the “**Spin-Off Valuation Period**”) beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and
- SP* = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

For the avoidance of doubt, each adjustment to the Conversion Rate made pursuant to this **Section 5.05(A)(iii)(2)** will become effective at the time set forth in the definition of *CR1* above. Notwithstanding anything to the contrary in this **Section 5.05(A)(iii)(2)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose conversion will be settled pursuant to Physical Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Consideration for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date.

To the extent any dividend or distribution of the type set forth in this **Section 5.05(A)(iii)(2)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions.* If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR1 = CR0 \times \frac{SP}{SP - D}$$

where:

CR0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, however, that if D is equal to or greater than SP , then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each \$1,000 principal amount of Notes held by such Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock and without having to convert its Notes, the amount of cash that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid. For the avoidance of doubt, each adjustment to the Conversion Rate made pursuant to this **Section 5.05(A)(iv)** will become effective at the time set forth in the definition of CR_1 above.

(v) *Tender Offers or Exchange Offers.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange for purposes of this **Section 5.05(A)(v)** offer for shares of Common Stock (other than an odd-lot tender offer that satisfies the requirements of Rule 13e-4(h)(5), or any successor rule), and the value (determined as of the Expiration Time by the Board of Directors in good faith) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the average of the Last Reported Sale Price per share of Common Stock over the Tender/Exchange Offer Valuation Period beginning on and including the Trading Day immediately after the last date (the “**Expiration Date**”) on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP - OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;

- AC* = the aggregate value (determined by the Board of Directors in good faith as of the time (the “**Expiration Time**”) such tender or exchange offer expires) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer;
- OSO* = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OSI* = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP* = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the “**Tender/Exchange Offer Valuation Period**”) beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, however, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 5.05(A)(v)**, except to the extent provided in the immediately following paragraph. For the avoidance of doubt, each adjustment to the Conversion Rate made pursuant to this **Section 5.05(A)(v)** will become effective at the time set forth in the definition of *CRI* above. Notwithstanding anything to the contrary in this **Section 5.05(A)(v)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose conversion will be settled pursuant to Physical Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Consideration for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date. For the avoidance of doubt, for purposes of this **Section 5.05(A)(v)**, the term “tender offer” is used as such term is used in the Exchange Act and the term “exchange offer” means an exchange offer that constitutes a tender offer.

To the extent such tender or exchange offer is announced but not consummated (including as a result of the Company being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(B) *No Adjustments in Certain Cases.*

(i) Where Holders Participate in the Transaction or Event Without Conversion. Notwithstanding anything to the contrary in Section 5.05(A), the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to Section 5.05(A) (other than a stock split or combination of the type set forth in Section 5.05(A)(i) or a tender or exchange offer of the type set forth in Section 5.05(A)(v)) if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder of Notes, in such transaction or event without having to convert such Holder’s Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such date.

(ii) Certain Events. The Company will not be required to adjust the Conversion Rate except as provided in Section 5.05 or Section 5.07. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(1) except as otherwise provided in **Section 5.05**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(2) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(3) the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(4) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Issue Date;

(5) for a third party tender offer by any party other than a tender offer by the Company or one or more of its subsidiaries as described in **Section 5.05(A)(v)**;

(6) on account of open market share repurchases, including structured or derivative transactions, or transactions pursuant to a share repurchase program approved by the Board of Directors, or otherwise, in each case, that are not tender offers of the type described in **Section 5.05(A)(v)**;

(7) solely a change in the par value of the Common Stock; or

(8) accrued and unpaid interest, if any, on the Notes.

(C) *Adjustments Not Yet Effective*. Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Note is to be converted pursuant to Physical Settlement or Combination Settlement;

(ii) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.05(A)** has occurred on or before the Conversion Date for such conversion (in the case of Physical Settlement) or on or before any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement), but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date or VWAP Trading Day, as applicable;

(iii) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement); and

(iv) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise), then, solely for purposes of such conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement). In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such conversion until the second (2nd) Business Day after such first date, and such delay will not be a default under this Indenture or the Notes.

(D) *Conversion Rate Adjustments where Converting Holders Participate in the Relevant Transaction or Event.* Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.05(A)**;

(ii) a Note is to be converted pursuant to Physical Settlement or Combination Settlement;

(iii) the Conversion Date for such conversion (in the case of Physical Settlement) or any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement), in each case based on a Conversion Rate that is adjusted for such dividend or distribution; and

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.02(C)**), then (x) in the case of Physical Settlement, such Conversion Rate adjustment will not be given effect for such conversion and the shares of Common Stock issuable upon such conversion based on such unadjusted Conversion Rate will not be entitled to participate in such dividend or distribution, but there will be added, to the Conversion Consideration otherwise due upon such conversion, the same kind and amount of consideration that would have been delivered in such dividend or distribution with respect to such shares of Common Stock had such shares been entitled to participate in such dividend or distribution; and (y) in the case of Combination Settlement, the Conversion Rate adjustment relating to such Ex-Dividend Date will be made for such conversion in respect of such VWAP Trading Day, but the shares of Common Stock issuable with respect to such VWAP Trading Day based on such adjusted Conversion Rate will not be entitled to participate in such dividend or distribution.

(E) *Stockholder Rights Plans.* If any shares of Common Stock are to be issued upon conversion of any Note and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Indenture upon such conversion, the rights set forth in such stockholder rights plan, unless, prior to the applicable Conversion Date, such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 5.05(A)(iii)(1)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to potential readjustment in accordance with the last paragraph of **Section 5.05(A)(iii)(1)**. For the avoidance of doubt, in all other cases, the issuance of rights pursuant to a stockholder rights plan will not result in an adjustment to the Conversion Rate pursuant to the last paragraph of **Section 5.05(A)(iii)(1)**.

(F) *Limitation on Effecting Transactions Resulting in Certain Adjustments.* The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 5.05(A)** or **Section 5.07** to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(G) *Equitable Adjustments to Prices.* Whenever any provision of this Indenture requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate the Stock Price or an adjustment to the Conversion Rate), or to calculate Daily VWAPs over an Observation Period, the Company will make proportionate adjustments, if any, to such calculations to account for any adjustment to the Conversion Rate pursuant to **Section 5.05(A)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period or Observation Period, as applicable.

(H) *Calculation of Number of Outstanding Shares of Common Stock.* For purposes of **Section 5.05(A)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(I) *Calculations.* All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(J) *Notice of Conversion Rate Adjustments.* Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.05(A)**, the Company will promptly send written notice to the Holders, and an Officer's Certificate to the Trustee and the Conversion Agent (if other than the Trustee) containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

Section 5.06 VOLUNTARY ADJUSTMENTS.

(A) *Generally.* To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(B) *Notice of Voluntary Increases.* If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 5.06(A)**, then, no later than the first Business Day of the related twenty (20) Business Day period referred to in **Section 5.06(A)**, the Company will send notice to each Holder, the Trustee and the Conversion Agent of such increase, the amount thereof and the period during which such increase will be in effect.

Section 5.07 ADJUSTMENTS TO THE CONVERSION RATE IN CONNECTION WITH A MAKE-WHOLE FUNDAMENTAL CHANGE.

(A) *Generally.* If a Make-Whole Fundamental Change occurs and the Conversion Date for the conversion of a Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this **Section 5.07**, the Conversion Rate applicable to such conversion will be increased by a number of shares (the "**Additional Shares**") set forth in the table below corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Fundamental Change Effective Date and the Stock Price of such Make-Whole Fundamental Change:¹⁴

¹⁴ Note to Draft: Customary make-whole adjustment table to be mutually agreed in good faith by the Issuer and the noteholders, including lower conversion rates for make-whole fundamental changes triggered by a redemption notice.

Make-Whole Fundamental Change Effective Date	Stock Price										
	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]
[July] [●], 2021	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[July] [●], 2022	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[July] [●], 2023	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[July] [●], 2024	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[July] [●], 2025	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[July] [●], 2026	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]

If such Make-Whole Fundamental Change Effective Date or Stock Price is not set forth in the table above, then:

(i) if such Stock Price is between two Stock Prices in the table above or the Make-Whole Fundamental Change Effective Date is between two dates in the table above, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the table above or the earlier and later dates in the table above, based on a 365- or 366-day year, as applicable; and

(ii) if the Stock Price is greater than \$[●] (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above are adjusted pursuant to **Section 5.07(B)**), or less than \$[●] (subject to adjustment in the same manner), per share, then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Indenture or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds [●] shares of Common Stock per \$1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.05(A)**.

For the avoidance of doubt, (x) the sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called (or deemed called) for Redemption pursuant to such Redemption Notice, and not with respect to any other Notes; and (y) the Conversion Rate applicable to the Notes not so called for Redemption will not be subject to increase pursuant to this **Section 5.07** on account of such Redemption Notice.

If the Conversion Date for the conversion of a Note occurs during a Make-Whole Fundamental Change Conversion Period relating to both a Make-Whole Fundamental Change resulting from the Company calling Notes for Redemption and another Make-Whole Fundamental Change, then, solely for purposes of that conversion, such Conversion Date will be deemed to occur only during the period relating to the Make-Whole Fundamental Change with the earlier Make-Whole Fundamental Change Effective Date. In that circumstance, the Make-Whole Fundamental Change with the later Make-Whole Fundamental Change Effective Date will be deemed not to occur for purposes of such conversion.

(B) Adjustment of Stock Prices and Number of Additional Shares. The Stock Prices in the first row (i.e., the column headers) of the table set forth in Section 5.07(A) will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of Section 5.05(A). The numbers of Additional Shares in the table set forth in Section 5.07(A) will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to Section 5.05(A).

(C) Notice of the Occurrence of a Make-Whole Fundamental Change. The Company will notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of each Make-Whole Fundamental Change (i) occurring pursuant to clause (A) of the definition thereof and (ii) occurring pursuant to clause (B) of the definition thereof in accordance with Section 4.03(G), as applicable.

Section 5.08 EXCHANGE IN LIEU OF CONVERSION.

(A) When a Holder surrenders its Notes for conversion, the Company may, at its election (an “**Exchange Election**”), cause, on or prior to the Trading Day immediately following the Conversion Date, such Notes to be delivered to one or more financial institutions designated by the Company in writing (each, a “**Designated Financial Institution**”) for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the Designated Financial Institution(s) must agree to timely pay or deliver, as the case may be, the Conversion Consideration. If the Company makes an Exchange Election, the Company shall, by the Close of Business on the Trading Day following the relevant Conversion Date, notify in writing the Trustee, the Conversion Agent (if other than the Trustee) and the Holder surrendering Notes for conversion that the Company has made the Exchange Election, and the Company shall promptly notify the Designated Financial Institution(s) of the relevant deadline for delivery of the Conversion Consideration and the type of Conversion Consideration to be paid and/or delivered, as the case may be. The Company, the Holders surrendering Notes for conversion and the Conversion Agent shall cooperate with applicable procedures of the Depository to cause such Notes to be delivered to the Designated Financial Institution. The Conversion Agent will be entitled to conclusively rely upon the Company’s instruction in connection with effecting any Exchange Election outside of the Conversion Agent’s control and will have no liability in respect of such Exchange Election.

(B) Any Notes delivered to the Designated Financial Institution(s) shall remain outstanding, notwithstanding the applicable procedures of the Depository. If the Designated Financial Institution(s) agree(s) to accept any Notes for exchange but does not timely pay and/or deliver, as the case may be, the related Conversion Consideration, or if such Designated Financial Institution does not accept the Notes for exchange, the Company shall pay and/or deliver, as the case may be, the relevant Conversion Consideration, as, and at the time, required pursuant to this Indenture as if the Company had not made the Exchange Election.

(C) The Company’s designation of any Designated Financial Institution(s) to which the Notes may be submitted for exchange does not require such Designated Financial Institution(s) to accept any Notes. So long as the Notes are eligible for book-entry settlement with the Depository, the Company will comply with the applicable procedures of the Depository.

Section 5.09 **EFFECT OF COMMON STOCK CHANGE EVENT.**

(A) *Generally.* If there occurs any:

- (i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);
- (ii) consolidation, merger, combination or binding or statutory share exchange involving the Company;
- (iii) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or
- (iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a “**Common Stock Change Event**,” and such other securities, cash or property, the “**Reference Property**,” and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a “**Reference Property Unit**”), then, notwithstanding anything to the contrary in this Indenture or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration due upon conversion of any Note, and the conditions to any such conversion, will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Article 5** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 4.03**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definitions of “Fundamental Change” and “Make-Whole Fundamental Change,” references to “Common Stock” and the Company’s “Common Equity” will be deemed to refer to the Common Equity, if any, forming part of such Reference Property;

(2) if such Reference Property Unit consists entirely of cash, then the Company will be deemed to elect Physical Settlement in respect of all conversions whose Conversion Date occurs on or after the effective date of such Common Stock Change Event and will pay the cash due upon such conversions no later than the second (2nd) Business Day after the relevant Conversion Date; and

(3) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of Common Equity securities will be determined by reference to the definition of “Daily VWAP,” substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of Common Equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of such weighted average as soon as practicable after such determination is made.

At or before the effective time of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the “**Successor Person**”) will execute and deliver to the Trustee a supplemental indenture pursuant to **Section 8.01(F)**, which supplemental indenture will (x) provide for subsequent conversions of Notes in the manner set forth in this **Section 5.09**; (y) provide for subsequent adjustments to the Conversion Rate pursuant to **Section 5.05(A)** in a manner consistent with this **Section 5.09**; and (z) contain such other provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to the provisions of this **Section 5.09(A)**. If the Reference Property includes shares of stock or other securities or assets (other than cash) of a Person other than the Successor Person, then such other Person will also execute such supplemental indenture and such supplemental indenture will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders.

(B) *Notice of Common Stock Change Events.* No later than the effective date of the Common Stock Change Event, the Company will provide written notice to the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of each Common Stock Change Event.

(C) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 5.09**.

Section 5.10 ADJUSTMENT DEFERRAL.

If an adjustment to the Conversion Rate otherwise required by this **Article 5** would result in a change of less than 1% to the Conversion Rate, then, notwithstanding anything to the contrary in this **Article 5**, the Company may, at its election, defer such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (i) when all such deferred adjustments would result in an aggregate change of at least 1% to the Conversion Rate; (ii) the Conversion Date of any Note, or any VWAP Trading Day of an Observation Period for, any Note; (iii) the date a Fundamental Change or Make-Whole Fundamental Change occurs; (iv) the date the Company calls any Notes for Redemption; and (iv) [January [●], 2026].

Section 5.11 RESPONSIBILITY OF TRUSTEE.

The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, monitoring the Company's stock trading price or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 5. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 5.09 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 5.09 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 10.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Article 6

SUCCESSORS

Section 6.01 WHEN THE COMPANY MAY MERGE, ETC.

(A) *Business Combination Events Involving the Company.* The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person (a "**Business Combination Event**"), unless:

(i) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation, limited liability company, partnership or other equivalent entity (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, the United Kingdom, any member state of the European Union, Israel, the Cayman Islands or Bermuda SI that expressly assumes (by executing and delivering to the Trustee, at or before the effective time of such Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)**) all of the Company's obligations under this Indenture and the Notes; and

(ii) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

In connection with a Business Combination Event involving a Successor Corporation, the Officer's Certificate and Opinion of Counsel required in connection with the execution of such supplemental indenture under **Section 8.06** shall include a statement that such Business Combination Event complies with this **Section 6.01(A)**.

Section 6.02 SUCCESSOR CORPORATION SUBSTITUTED.

At the effective time of any Business Combination Event that complies with **Section 6.01(A)**, the Successor Corporation (if not the Company), under this Indenture and the Notes with the same effect as if such Successor Corporation had been named as the Company in this Indenture and the Notes, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Indenture and the Notes.

Article 7

DEFAULTS AND REMEDIES

Section 7.01 EVENTS OF DEFAULT.

(A) *Definition of Events of Default.* "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due (whether at maturity, upon Redemption or Repurchase Upon Fundamental Change or otherwise) of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, any Note;

(ii) a default for thirty (30) days in the payment when due of interest on any Note;

(iii) the Company's failure to deliver, when required by this Indenture, a Fundamental Change Notice, a notice of a Make-Whole Fundamental Change or a notice of a Common Stock Change Event, in each case when due and such failure continues for three (3) Business Days after its occurrence;

(iv) a default in the Company's obligation to convert a Note in accordance with **Article 5** upon the exercise of the conversion right with respect thereto, if such default is not cured within five (5) Business Days after its occurrence;

(v) a default in the Company's obligations under **Article 6**;

(vi) a default in any of the Company's obligations or agreements under this Indenture or the Notes (other than a default set forth in **clause (i), (ii), (iii), (iv) or (v)** of this **Section 7.01(A)**) where such default is not cured or waived within sixty (60) days after written notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default, demand that it be remedied and state that such notice is a "Notice of Default";

(vii) a default by the Company with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least fifty million dollars (\$50,000,000) (or its foreign currency equivalent) in the aggregate of the Company, whether such indebtedness exists as of the Issue Date or is thereafter created, where such default:

(1) constitutes a failure to pay the principal, or premium or interest on, any of such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case after the expiration of any applicable grace period; or

(2) results in such indebtedness becoming or being declared due and payable before its stated maturity, in each case where such default is not cured or waived within thirty (30) days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding;

(viii) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(ix) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief under any foreign Bankruptcy Law,

(5) and, in each case under this **Section 7.01(A)(x)**, such order or decree remains unstayed and in effect for at least sixty (60) days.

(x) one or more final judgments being rendered against the Company or any of the Company's or respective subsidiaries for the payment of at least fifty million dollars (\$50,000,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance or bond), where such judgment is not discharged, stayed, vacated or otherwise satisfied within sixty (60) days after (i) the date on which the right to appeal the same has expired, if no such appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished.

(B) *Cause Irrelevant.* Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

Section 7.02 ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances.* If an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company, other than the Company), then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration.* Subject to Section 7.03, if an Event of Default (other than an Event of Default set forth in Section 7.01(A)(viii) or 7.01(A)(ix) with respect to the Company and not solely with respect to a Significant Subsidiary of the Company, other than the Company) occurs and is continuing, then the Trustee, by notice to the Company, or Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, by written notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately.

(C) *Rescission of Acceleration.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (except the non-payment of principal of, or interest on, the Notes that has become due solely because of such acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 7.03 SOLE REMEDY FOR A FAILURE TO REPORT.

(A) *Generally.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a "**Reporting Event of Default**") pursuant to **Section 7.01(A)(vi)** arising from the Company's failure to comply with **Section 3.02** will, for each of the first three hundred and sixty five (365) calendar days on which a Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section 7.02** on account of the relevant Reporting Event of Default from, and including, the three hundred and sixty sixth (366th) calendar day on which a Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such three hundred and sixty sixth (366th) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.05(B)**).

(B) *Amount and Payment of Special Interest.* Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will be on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days on which Special Interest accrues, and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof, in each case as long as such Reporting Event of Default is continuing; *provided, however*, that in no event will Additional Interest pursuant to **Section 3.04(A)**, together with any Special Interest that is payable at the Company's election pursuant to this **Section 7.03** as the sole remedy for any Reporting Event of Default, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Special Interest that accrues pursuant to **Section 7.03(A)** will be in addition to the Stated Interest that accrues on such Note, subject to the proviso in the previous sentence, and in addition to any Additional Interest that accrues on such Note.

(C) *Notice of Election.* To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent, before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes the report(s) that the Company failed to file with or furnish to the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest pursuant to Section 7.03(A); and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee's Disclaimer.* If any Special Interest accrues on any Note pursuant to **Section 7.03(A)**, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest pursuant to **Section 7.03(A)** on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default.* No election pursuant to this **Section 7.03** with respect to a Reporting Event of Default will affect the rights of any Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default.

Section 7.04 OTHER REMEDIES.

(A) *Trustee May Pursue All Remedies.* If an Event of Default occurs and is continuing, then the Trustee may pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of this Indenture or the Notes.

(B) *Procedural Matters.* The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

Section 7.05 WAIVER OF PAST DEFAULTS.

An Event of Default pursuant to **clause (i), (ii), (iv) or (vi)** of **Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Holders of a majority in aggregate principal amount of the Notes then outstanding. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

Section 7.06 CONTROL BY MAJORITY.

Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law, this Indenture or the Notes, or that, subject to Section 10.01, the Trustee determines may be unduly prejudicial to the rights of other Holders (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such directions are unduly prejudicial to the rights of any other Holder) or may involve the Trustee in liability, unless the Trustee is offered, and, if requested, provided, security and indemnity satisfactory to the Trustee against any loss, claim, liability, damage, cost or expense to the Trustee that may result from the Trustee's following such direction.

Section 7.07 LIMITATION ON SUITS.

No Holder may pursue any remedy with respect to this Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or interest on, any Notes; or (y) the Company's obligations to convert any Notes pursuant to **Article 5**), unless:

(A) such Holder has previously delivered to the Trustee notice that an Event of Default is continuing;

(B) Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding deliver a written request to the Trustee to pursue such remedy;

(C) such Holder or Holders offer and, if requested, provide to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability, claim, damage, cost or expense to the Trustee that may result from the Trustee's following such request;

(D) the Trustee does not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and

(E) during such sixty (60) calendar day period, Holders of a majority in aggregate principal amount of the Notes then outstanding do not deliver to the Trustee a direction that is inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. The Trustee will have no duty to determine whether any Holder's use of this Indenture complies with the preceding sentence.

Section 7.08 ABSOLUTE RIGHT OF HOLDERS TO INSTITUTE SUIT FOR THE ENFORCEMENT OF THE RIGHT TO RECEIVE PAYMENT AND CONVERSION CONSIDERATION.

Notwithstanding anything to the contrary in this Indenture or the Notes (but without limiting **Section 8.01**), the right of each Holder of a Note to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or any interest on, or the Conversion Consideration due pursuant to **Article 5** upon conversion of, such Note on or after the respective due dates therefor provided in this Indenture and the Notes, will not be impaired or affected without the consent of such Holder.

Section 7.09 COLLECTION SUIT BY TRUSTEE.

The Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i), (ii) or (iv) of Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or Redemption Price or Fundamental Change Repurchase Price for, or interest on, or Conversion Consideration due pursuant to **Article 5** upon conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in **Section 10.06**.

Section 7.10 TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if such payments directly to the Holders, to pay to the Trustee any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, and its agents and counsel, and any other amounts payable to the Trustee pursuant to **Section 10.06**. To the extent that the payment of any such compensation, expenses, disbursements, advances and other amounts out of the estate in such proceeding, is denied for any reason, payment of the same will be secured by a claim (senior to the rights of Holders) on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in this Indenture will be deemed to authorize the Trustee to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 7.11 PRIORITIES.

The Trustee will pay or deliver in the following order any money or other property that it collects pursuant to this **Article 7**:

First: to the Trustee, the other Note Agents and each of their agents and attorneys for amounts due under **Section 10.06**, including payment of all fees, compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the Note Agents and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes, including the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or any interest on, or any Conversion Consideration due upon conversion of, the Notes, *ratably*, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such *other* Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.11**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder and the Trustee a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

Section 7.12 UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or the Notes or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit, and (B) assess reasonable costs and expenses (including reasonable attorneys' fees and expenses) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided, however*, that this **Section 7.12** does not apply to any suit by the Trustee, any suit by a Holder pursuant to **Section 7.08** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

Article 8

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01 WITHOUT THE CONSENT OF HOLDERS.

Notwithstanding anything to the contrary in **Section 8.02**, the Company and the Trustee may amend or supplement this Indenture or the Notes without the consent of any Holder to:

(A) cure any ambiguity or correct any omission, defect or inconsistency in this Indenture or the Notes;

- (B) add guarantees with respect to the Company's obligations under this Indenture or the Notes;
- (C) secure the Notes;
- (D) add to the Company's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company;
- (E) provide for the assumption of the Company's obligations under this Indenture and the Notes pursuant to, and in compliance with, **Article 6**;
- (F) enter into supplemental indentures pursuant to, and in accordance with, **Section 5.09** in connection with a Common Stock Change Event, including, a Fundamental Change described in the third sentence of the definition thereof;
- (G) irrevocably elect or eliminate any Settlement Method or Specified Dollar Amount or range of Specified Dollar Amounts; *provided, however,* that no such election or elimination will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to **Section 5.03(A)**;
- (H) evidence or provide for the acceptance of the appointment, under this Indenture, of a successor Trustee, Registrar, Paying Agent, Bid Solicitation Agent or Conversion Agent or facilitate the administration of the trusts under this Indenture by more than one Trustee;
- (I) provide for or confirm the issuance of additional Notes pursuant to **Section 2.03(B)**;
- (J) increase the Conversion Rate as provided in this Indenture;
- (K) comply with any requirement of the SEC in connection with any qualification of this Indenture or any supplemental indenture under the Trust Indenture Act, as then in effect;
- (L) comply with the rules of the securities depository for the Notes in a manner that does not adversely affect the rights of any Holder;
- (M) to provide for any transfer restrictions that apply to any Notes issued under this Indenture that, at the time of their original issuance, constitute "restricted securities" within the meaning of Rule 144 under the Securities Act or that are issued in reliance upon Regulation S under the Securities Act; or
- (N) make any other change to this Indenture or the Notes that does not adversely affect the rights of the Holders, as such, in any material respect (other than Holders that have consented to such change), as determined by the Company in good faith and a commercially reasonable manner.

At the written request of any Holder of a Note or owner of a beneficial interest in a Global Note, the Company will provide a copy of the "Description of the Notes" section and pricing term sheet referred to in **Section 8.01(I)**.

Section 8.02 WITH THE CONSENT OF HOLDERS.

(A) *Generally.* Subject to **Sections 8.01, 7.05 and 7.08** and the immediately following sentence, the Company and the Trustee may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, amend or supplement this Indenture or the Notes or waive compliance with any provision of this Indenture or the Notes. Notwithstanding anything to the contrary in the foregoing sentence, but subject to **Section 8.01**, without the consent of each affected Holder, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may:

- (i) reduce the principal, or extend the stated maturity, of any Note;
- (ii) reduce the Redemption Price or Fundamental Change Repurchase Price for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company;
- (iii) reduce the rate, or extend the time for the payment, of any interest on any Note (other than Additional Interest or Special Interest);
- (iv) make any change that adversely affects the conversion rights of any Note;
- (v) impair the absolute rights of any Holder set forth in **Section 7.08** (as such section is in effect on the Issue Date);
- (vi) change the ranking of the Notes;
- (vii) make any Note payable in money, or at a place of payment, other than that stated in this Indenture or the Note;
- (viii) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or
- (ix) make any change in this Article 8 that requires the consent of each affected Holder or in the waiver provisions in Section 7.02 or Section 7.05.

For the avoidance of doubt, pursuant to **clauses (i), (ii), (iii) and (iv)** of this **Section 8.02(A)**, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may change the amount or type of consideration due on any Note (whether on an Interest Payment Date, Redemption Date, Fundamental Change Repurchase Date or the Maturity Date or upon conversion, or otherwise), or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder.

(B) *Holders Need Not Approve the Particular Form of any Amendment.* A consent of any Holder pursuant to this **Section 8.02** need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

Section 8.03 NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.

As soon as reasonably practicable after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof; *provided, however*, that the Company will not be required to provide such notice to the Holders if such amendment, supplement or waiver is included in a periodic report filed by the Company with the SEC within four (4) Business Days of its effectiveness. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.04 REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC.

(A) *Revocation and Effect of Consents.* The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates.* The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided, however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents.* For the avoidance of doubt, each reference in this Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect.* Each amendment, supplement or waiver pursuant to this **Article 8** will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

Section 8.05 NOTATIONS AND EXCHANGES.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee, at the written direction of the Company, or the Company may require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.06 TRUSTEE TO EXECUTE SUPPLEMENTAL INDENTURES.

The Trustee will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided, however*, that the Trustee need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that the Trustee concludes adversely affects the Trustee's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee will be entitled to receive, and (subject to **Sections 10.01** and **10.02**) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by this Indenture; (B) that all covenants and conditions precedent to the execution such amendment or supplemental indenture have been complied with; and (C) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company in accordance with its terms.

Article 9

SATISFACTION AND DISCHARGE

Section 9.01 TERMINATION OF COMPANY'S OBLIGATIONS.

This Indenture will be discharged, and will cease to be of further effect as to all Notes issued under this Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to **Section 2.13**) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, a Fundamental Change Repurchase Date, the Maturity Date, upon conversion or otherwise) for an amount of cash or Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent (or, with respect to Conversion Consideration, the Conversion Agent), in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be converted, Conversion Consideration) sufficient to satisfy all amounts or other property due and payable under this Indenture by the Company on all Notes then outstanding (other than Notes replaced pursuant to **Section 2.13**);

(C) the Company has paid all other amounts payable by it under this Indenture; and

(D) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of this Indenture have been satisfied; *provided, however*, that **Article 10** and **Section 11.01** will survive such discharge and, until no Notes remain outstanding, **Section 2.15** and the obligations of the Trustee, the Paying Agent and the Conversion Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request contained in an Officer's Certificate and at the expense of the Company, the Trustee will acknowledge the satisfaction and discharge of this Indenture.

Section 9.02 REPAYMENT TO COMPANY.

Subject to applicable unclaimed property law, the Trustee, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's written request, promptly deliver to the Company) any cash, Conversion Consideration or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other property must look to the Company for payment as a general creditor of the Company.

Section 9.03 REINSTATEMENT.

If the Trustee, the Paying Agent or the Conversion Agent is unable to apply any cash or other property deposited with it pursuant to **Section 9.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of this Indenture pursuant to **Section 9.01** will be rescinded; *provided, however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee, the Paying Agent or the Conversion Agent, as applicable.

Article 10

TRUSTEE

Section 10.01 DUTIES OF THE TRUSTEE.

(A) If an Event of Default has occurred and is continuing of which a Responsible Officer of the Trustee has written notice or actual knowledge, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; provided that the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered, and if requested, provided, to the Trustee indemnity or security satisfactory to Trustee against any loss, claim, liability, cost, damage or expense that might be incurred by it in compliance with such request or direction.

(B) Except during the continuance of an Event of Default:

(i) the duties of the Trustee will be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officer's Certificates or Opinions of Counsel that are provided to the Trustee and conform to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(C) The Trustee may not be relieved from liabilities for its gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction, except that:

(i) this paragraph will not limit the effect of **Section 10.01(B)**;

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to **Section 7.06**; and

(iv) no provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers, if it has reasonable grounds to believe that repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

(D) Each provision of this Indenture that in any way relates to the Trustee is subject to this **Section 10.01 and Section 10.02**, regardless of whether such provision so expressly provides.

(E) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability.

(F) The Trustee will not be liable for interest on any money received by it, except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds, except to the extent required by law.

(G) Whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee will be subject to the provisions of this Section 10.01 and Section 10.02.

(H) The Trustee will not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent (except in its capacity as Paying Agent pursuant to the terms of this Indenture) or any records maintained by any co-Note Registrar with respect to the Notes.

(I) If any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event.

(J) Under no circumstances will the Trustee be liable in its individual capacity for the obligations evidenced by the Notes.

Section 10.02 RIGHTS OF THE TRUSTEE.

(A) The Trustee may conclusively rely on any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgment, bond, debenture, note, other evidence of indebtedness or other paper or document that it believes to be genuine and signed or presented by the proper Person, and the Trustee need not investigate any fact or matter stated in such document.

(B) Before the Trustee acts or refrains from acting, it may require, and may conclusively rely on, an Officer's Certificate, an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its reasonable selection; and the advice of such counsel, or any Opinion of Counsel, will constitute full and complete authorization of the Trustee to take or omit to take any action in good faith in reliance thereon without liability.

(C) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any such agent appointed with due care.

(D) The Trustee will not be liable for any action it takes or omits to take in good faith and that it believes to be authorized or within the rights or powers vested in it by this Indenture.

(E) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(F) The Trustee need not exercise any rights or powers vested in it by this Indenture at the request or direction of any Holder unless such Holder has offered, and if requested, provided, the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense that it may incur in complying with such request or direction.

(G) The Trustee will not be responsible or liable for any punitive, special, indirect, incidental or consequential loss or damage (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(H) The Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgment, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and the Trustee will incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(I) The Trustee will not be deemed to have notice of any Default or Event of Default unless written notice of any event that is a Default or Event of Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office, and such notice references the Notes and this Indenture and states that it is a "Notice of Default";

(J) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities under this Indenture, including as Note Agent.

(K) The Trustee may request that the Company deliver a certificate setting forth the names of individuals or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(L) The permissive right of the Trustee to take actions permitted by this Indenture will not be construed as an obligation or duty to do so.

(M) The Trustee will not be required to give any bond or surety in respect of the execution of the trusts and powers under this Indenture.

(N) Neither the Trustee nor any agent will have any responsibility or liability for any actions taken or not taken by the Depository.

(O) Notwithstanding anything to the contrary in this Indenture, other than this Indenture and the Notes, the Trustee will have no duty to know or inquire as to the performance or nonperformance of any provision of any other agreement, instrument, or contract, nor will the Trustee be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or contract, whether or not a copy of such agreement has been provided to the Trustee.

(P) Neither the Trustee nor any agent, shall have any obligation to (a) monitor the stock price, make any calculation or determine whether the Notes may be surrendered for conversion or (b) notify the Company, the Depository or the Holders, whether the Notes have become convertible.

(Q) The rights, protections, immunities and indemnities afforded to the Trustee under this Indenture shall also be afforded to each Note Agent hereunder; provided (i) a Note Agent shall only be liable to extent of its gross negligence or willful misconduct; and (ii) in and during an Event of Default, only the Trustee, and not any Note Agent, shall be subject to the prudent person standard.

Section 10.03 INDIVIDUAL RIGHTS OF THE TRUSTEE.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of any Note and may otherwise deal with the Company or any of its Affiliates with the same rights that it would have if it were not Trustee; *provided, however*, that if the Trustee acquires a “conflicting interest” (within the meaning of Section 310(b) of the Trust Indenture Act), then it must eliminate such conflict within ninety (90) days or resign as Trustee. Each Note Agent will have the same rights and duties as the Trustee under this **Section 10.03**.

Section 10.04 TRUSTEE’S DISCLAIMER.

The Trustee will not be (A) responsible for, and makes no representation as to, the validity or adequacy of this Indenture or the Notes; (B) accountable for the Company’s use of the proceeds from the Notes or any money paid to the Company or upon the Company’s direction under any provision of this Indenture; (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee; and (D) responsible for any statement or recital in this Indenture, the Notes or any other document relating to the sale of the Notes or this Indenture, other than the Trustee’s certificate of authentication.

Section 10.05 NOTICE OF DEFAULTS.

If a Default or Event of Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, then the Trustee shall send Holders a notice of such Default or Event of Default within ninety (90) days after the earlier of receipt of such notice or obtaining actual knowledge thereof; *provided, however*, that, except in the case of a Default or Event of Default in the payment of the principal of, or interest, if any, on, any Note, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders.

Section 10.06 COMPENSATION AND INDEMNITY.

(A) The Company will, from time to time, pay the Trustee and the Note Agents reasonable compensation for its acceptance of this Indenture and services under this Indenture and the Notes as the Company and the Trustee shall from time to time agree in writing. The Trustee’s compensation will not be limited by any law on compensation of a trustee of an express trust. In addition to the compensation for the Trustee’s services, the Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee’s agents and counsel.

(B) The Company will indemnify the Trustee (in each of its capacities) and its directors, officers, employees and agents, in their capacities as such, and hold them harmless against any and all losses, claims, liabilities, costs, damages and expenses (including attorneys' fees) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this **Section 10.06**) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties under this Indenture, except to the extent any such loss, liability or expense may be attributable to its gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction. The Trustee will promptly notify the Company of any claim for which it may seek indemnity, but the Trustee's failure to so notify the Company will not relieve the Company of its obligations under this **Section 10.06(B)**, except to the extent the Company is materially prejudiced by such failure. The Company will defend such claim, and the Trustee will cooperate in such defense. The Trustee may retain separate counsel, and the Company will pay the reasonable fees, expenses and court costs of such counsel. The Company need not pay for any settlement of any such claim made without its consent, which consent will not be unreasonably withheld.

(C) The obligations of the Company under this **Section 10.06** will survive the resignation or removal of the Trustee and the discharge of this Indenture.

(D) To secure the Company's payment obligations in this **Section 10.06**, the Trustee will have a claim prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal of, or interest on, particular Notes, which claim will survive the discharge of this Indenture.

(E) If the Trustee incurs expenses or renders services after an Event of Default pursuant to **clause (ix) or (x) of Section 7.01(A)** occurs, then such expenses and the compensation for such services (including the fees, expenses and court costs of its agents and counsel) are intended to constitute administrative expenses for purposes of priority under any Bankruptcy Law.

Section 10.07 REPLACEMENT OF THE TRUSTEE.

(A) Notwithstanding anything to the contrary in this **Section 10.07**, a resignation or removal of the Trustee, and the appointment of a successor Trustee, will become effective only upon such successor Trustee's acceptance of appointment as provided in this **Section 10.07**.

(B) The Trustee may resign at any time and be discharged from the trust created by this Indenture by so notifying the Company. The Holders of a majority in aggregate principal amount of the Notes then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing at least 30 days prior to the requested date of removal. The Company may remove the Trustee if:

- (i) the Trustee fails to comply with **Section 10.09**;
- (ii) the Trustee is adjudged to be bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (iii) a custodian or public officer takes charge of the Trustee or its property; or
- (iv) the Trustee becomes incapable of acting.

(C) If the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee for any reason, then (i) the Company will promptly appoint a successor Trustee; and (ii) at any time within one (1) year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the Notes then outstanding may appoint a successor Trustee to replace such successor Trustee appointed by the Company.

(D) If a successor Trustee does not take office within thirty (30) days after the retiring Trustee resigns or is removed, then the retiring Trustee, the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the Notes then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee, at the sole cost and expense of the Company.

(E) If the Trustee, after written request by a Holder of at least six (6) months, fails to comply with **Section 10.09**, then such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(F) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company, upon which notice the resignation or removal of the retiring Trustee will become effective and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will send notice of its succession to Holders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, which property will, for the avoidance of doubt, be subject to the claim provided for in **Section 10.06(D)**.

Section 10.08 SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or banking association, then such corporation or banking association will become the successor Trustee without any further act and will have all of the rights, powers and duties of the Trustee under this Indenture.

Section 10.09 ELIGIBILITY; DISQUALIFICATION.

There will at all times be a Trustee under this Indenture that is a corporation organized and doing business under the laws of the United States of America or of any state thereof, that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$50.00 million as set forth in its most recent published annual report of condition.

Section 10.10 TAX WITHHOLDING.

In connection with any payment hereunder, recipients may be required to provide the Trustee or applicable withholding agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Trustee or such withholding agent may request. If such tax reporting documentation is not provided and certified to the Trustee or applicable withholding agent, the Trustee or such withholding agent may be required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on any investment, and shall have no liability in respect thereof.

Article 11

MISCELLANEOUS

Section 11.01 NOTICES.

Any notice or communication by the Company or the Trustee to the other will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested or by overnight air courier guaranteeing next day delivery), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

Outbrain Inc.
222 Broadway, 19th Floor
New York, NY 10038
Attention: Veronica Gonzales
Email: vgonzales@outbrain.com

with a copy (which will not constitute notice) to:

Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
Attn: Anna Pinedo and Ryan Castillo
E-mail: apinedo@mayerbrown.com and rcastillo@mayerbrown.com

If to the Trustee:

The Bank of New York Mellon
240 Greenwich Street
New York, NY 10286
Attention: Corporate Trust Administration

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

Any communication sent to Trustee under this Indenture that requires a signature must be in the form of a document that is signed manually, by facsimile or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Trustee by an authorized representative of the Company). The Company agrees to assume all risks arising out of its use of digital signatures and electronic methods to submit communications to Trustee, including the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt acknowledged, if transmitted by facsimile, electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; provided that any notice to the Trustee or any Note Agent shall be deemed given upon actual receipt by a Responsible Officer of the Trustee or such Note Agent.

All notices or communications required to be made to a Holder pursuant to this Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Register; *provided, however*, that a notice or communication to a Holder of a Global Note may, but need not, instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable written request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means; provided, however, that the Company shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Company whenever a person is to be added or deleted from the listing. If the Company elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Company understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Company shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Company and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Company. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Company agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Company; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary in this Indenture or the Notes, (A) whenever any provision of this Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities; and (B) whenever any provision of this Indenture requires a party to send notice to more than one receiving party, and each receiving party is the same Person acting in different capacities, then only one such notice need be sent to such Person.

Section 11.02 DELIVERY OF OFFICER'S CERTIFICATE AND OPINION OF COUNSEL AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture (other than, with respect to (A) and (B), the removal of the Restrictive Note Legend and/or causing the Notes to be identified by an "unrestricted" CUSIP number, in accordance with Section 2.12, and with respect to (B), the initial authentication of Notes under this Indenture), the Company will furnish to the Trustee:

(A) an Officer's Certificate in form reasonably satisfactory to the Trustee that complies with **Section 11.03** and states that, in the opinion of the signatory thereto, all conditions precedent and covenants, if any, provided for in this Indenture relating to such action have been complied with; and

(B) an Opinion of Counsel in form reasonably satisfactory to the Trustee that complies with **Section 11.03** and states that, in the opinion of such counsel, all such conditions precedent and covenants, if any, have been complied with *provided* that no Opinion of Counsel shall be required to be delivered in connection with (1) the original issuance of Notes on the date hereof under this Indenture, (2) the mandatory exchange of the restricted CUSIP of the Restricted Notes to an unrestricted CUSIP pursuant to the Applicable Procedures of the Depository upon the Notes becoming freely tradable by non-Affiliates of the Company under Rule 144 unless a new Note is to be authenticated in connection therewith, (3) the removal of the Restrictive Note Legend, in accordance with Section 2.12 or (4) a request by the Company that the Trustee deliver a notice to Holders under the Indenture where the Trustee receives an Officer's Certificate with respect to such notice.

Section 11.03 STATEMENTS REQUIRED IN OFFICER'S CERTIFICATE AND OPINION OF COUNSEL

Each Officer's Certificate (other than an Officer's Certificate pursuant to **Section 3.05**) or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture will include:

(A) a statement that the signatory thereto has read the covenants and conditions in the Indenture related to the requested action, and the definitions related thereto;

(B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained therein are based;

(C) a statement that, in the opinion of such signatory, he, she or it has made such examination or investigation as is necessary to enable him, her or it to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(D) a statement as to whether, in the opinion of such signatory, all covenants or conditions precedent, if any, to such requested action have been complied with.

Section 11.04 RULES BY THE TRUSTEE, THE REGISTRAR AND THE PAYING AGENT.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar, Paying Agent or Conversion Agent may make reasonable rules and set reasonable requirements for its functions.

Section 11.05 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

No past, present or future director, officer, employee, incorporator or stockholder of the Company will have any liability for any obligations of the Company under this Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

Section 11.06 GOVERNING LAW; WAIVER OF JURY TRIAL.

THIS INDENTURE, THE GUARANTEES AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE, THE GUARANTEES OR THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY, THE GUARANTORS AND THE TRUSTEE AND THE HOLDERS (BY ACCEPTING THE NOTES) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE GUARANTEES, THE NOTES OR THE TRANSACTIONS CONTEMPLATED BY THIS INDENTURE, THE GUARANTEES OR THE NOTES.

Section 11.07 SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or based upon this Indenture, the Notes or the transactions contemplated by this Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party’s address set forth in **Section 11.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, the Trustee and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

Section 11.08 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

None of this Indenture, nor the Notes may be used to interpret any other indenture, note, guarantee, loan or debt agreement of the Company or any the Company’s or of any other Person, and no such indenture, note, guarantee, loan or debt agreement may be used to interpret this Indenture or the Notes.

Section 11.09 SUCCESSORS.

All agreements of the Company in this Indenture and the Notes will bind their successors. All agreements of the Trustee in this Indenture will bind its successors.

Section 11.10 FORCE MAJEURE.

The Trustee and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under this Indenture or the Notes by reason of any occurrence beyond its control (including any act or provision of any present or future law or regulation or governmental authority, act of God or war, civil unrest, local or national disturbance or disaster, pandemics, epidemics, recognized public or national emergencies, act of terrorism or unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 11.11 U.S.A. PATRIOT ACT.

The Company acknowledges that, in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions, in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Company agrees to provide the Trustee with such information as it may request to enable the Trustee to comply with the U.S.A. PATRIOT Act.

Section 11.12 CALCULATIONS.

Except as otherwise provided in this Indenture, the Company will be responsible for making all calculations called for under this Indenture or the Notes, including determinations of the Last Reported Sale Price, the Daily Conversion Value, the Daily Cash Amount, the Daily Share Amount, accrued interest on the Notes and the Conversion Rate.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders, the Trustee and the Conversion Agent. The Company will provide a schedule of its calculations to the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. The Company will promptly forward a copy of each such schedule to a Holder upon its written request therefor, at the cost and expense of the Company.

Section 11.13 SEVERABILITY.

If any provision of this Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Indenture or the Notes will not in any way be affected or impaired thereby.

Section 11.14 COUNTERPARTS.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually or electronically executed counterpart. In furtherance of the foregoing, the words "execution", "signed", "signature", "delivery" and words of like import in or relating to any document to be signed in connection with this Indenture and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries 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, physical delivery thereof 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; provided that, notwithstanding anything herein to the contrary, neither the Trustee is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee, pursuant to procedures approved by the Trustee. As used herein, "Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or other record.

Section 11.15 **TABLE OF CONTENTS, HEADINGS, ETC.**

The table of contents and the headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions of this Indenture.

Section 11.16 **WITHHOLDING TAXES.**

Each Holder of a Note agrees, and each beneficial owner of an interest in a Global Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of such Holder or beneficial owner as a result of an adjustment or the non-occurrence of an adjustment to the Conversion Rate, then the Company or such withholding agent, as applicable, may, at its option, set off such payments against payments of cash or the delivery of other Conversion Consideration on such Note, any payments on the Common Stock or sales proceeds received by, or other funds or assets of, such Holder or the beneficial owner of such Note.

Section 11.17 **OFAC.**

The Company covenants and represents that neither it nor any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the U.S. Government, (including, the Office of Foreign Assets Control of the US Department of the Treasury (“OFAC”)), the United Nations Security Council, the European Union, HM Treasury, or other relevant sanctions authority (collectively “Sanctions”).

The Company covenants and represents that neither it nor any of its affiliates, subsidiaries, directors or officers will use any payments made pursuant to this Indenture, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties to this Indenture have caused this Indenture to be duly executed as of the date first written above.

OUTBRAIN INC.

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON,
as Trustee

By: _____
Name:
Title:

[Signature page to Indenture]

FORM OF FACE OF NOTE

[Insert Global Note Legend, if applicable]

[Insert Restricted Note Legend, if applicable]

[Insert Non-Affiliate Legend]

[Insert Tax Legend]

OUTBRAIN INC.**[2.95]% Convertible Senior Note due 20[26]**

CUSIP No.: [____][Insert for a "restricted" CUSIP number: *]

Certificate No. [____]

ISIN No.: [____][Insert for a "restricted" ISIN number: *]

Outbrain Inc., a Delaware corporation, for value received, promises to pay to [Cede & Co.], or its registered assigns, the principal sum of [__] dollars (\$[____]) [(as revised by the attached Schedule of Exchanges of Interests in the Global Note)]† on [July [●], 2026] and to pay interest thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates: [January [●] and July [●]] of each year, commencing on [_____].

Regular Record Dates: [January [●] and July [●]] (whether or not a Business Day).

Additional provisions of this Note are set forth on the other side of this Note.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

* This Note will be deemed to be identified by "unrestricted" CUSIP No. [] and ISIN No. [] from and after such time when the Company delivers, pursuant to Section 2.12 of the within-mentioned Indenture, written notice to the Trustee of the deemed removal of the Restricted Note Legend affixed to this Note.

+ Insert bracketed language for Global Notes only.

IN WITNESS WHEREOF, Outbrain Inc. has caused this instrument to be duly executed as of the date set forth below.

OUTBRAIN INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

The Bank of New York Mellon, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____

By: _____
Authorized Signatory

OUTBRAIN INC.

[2.95]% Convertible Senior Note due 20[26]

This Note is one of a duly authorized issue of notes of Outbrain Inc., a Delaware corporation (the “**Company**”), designated as its [2.95]% Convertible Senior Notes due 20[26] (the “**Notes**”), all issued or to be issued pursuant to an indenture, dated as of [July [●], 2021] (as the same may be amended from time to time, the “**Indenture**”), between the Company and The Bank of New York Mellon, as trustee. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Guarantors, the Trustee and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest.** This Note will accrue interest at a rate and in the manner set forth in Section 2.05 of the Indenture. Stated Interest on this Note will begin to accrue from, and including, [July [●], 2021].
2. **Maturity.** This Note will mature on [July [●], 2026], unless earlier repurchased, redeemed or converted.
3. **Method of Payment.** Cash amounts due on this Note will be paid in the manner set forth in Section 2.04 of the Indenture.
4. **Persons Deemed Owners.** The Holder of this Note will be treated as the owner of this Note for all purposes.
5. **Denominations; Transfers and Exchanges.** All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.
6. **Right of Holders to Require the Company to Repurchase Notes upon a Fundamental Change.** If a Fundamental Change occurs, then each Holder will have the right to require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Indenture.
7. **Right of the Company to Redeem the Notes.** The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.03 of the Indenture.
8. **Conversion.** The Holder of this Note may convert this Note into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Indenture.
9. **When the Company May Merge, Etc.** Article 6 of the Indenture places limited restrictions on the Company’s and each Guarantor’s ability to be a party to a Business Combination Event.

10. Defaults and Remedies. If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Indenture.

11. Amendments, Supplements and Waivers. The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Section 7.05 and Article 8 of the Indenture.

12. No Personal Liability of Directors, Officers, Employees and Stockholders. No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

13. Authentication. No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually electronically (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com), or by facsimile signs the certificate of authentication of such Note.

14. Abbreviations. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

15. Governing Law. THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Outbrain Inc.
222 Broadway, 19th Floor
New York, NY 10038
Attention: General Counsel

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: \$[___]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee
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* Insert for Global Notes only.

CONVERSION NOTICE

OUTBRAIN INC.

[2.95]% Convertible Senior Notes due 2026

The Bank of New York Mellon
240 Greenwich Street
New York, NY 10286
Attention: Corporate Trust Administration

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to convert (check one):

- the entire principal amount of
- \$ * aggregate principal amount of the Note identified by CUSIP No. and Certificate No. .

The undersigned acknowledges that if the Conversion Date of a Note to be converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

Date: _____ (Legal Name of Holder)

By: Name: _____
Title: _____

Signature Guaranteed: _____
Participant in a Recognized Signature
Guarantee Medallion Program

Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

OUTBRAIN INC.

2.95% Convertible Senior Notes due 2026

The Bank of New York Mellon
240 Greenwich Street
New York, NY 10286
Attention: Corporate Trust Administration

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

- the entire principal amount of
- \$ * aggregate principal amount of

the Note identified by CUSIP No. and Certificate No. .

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent or tender agent before the Fundamental Change Repurchase Price will be paid.

Date: _____

(Legal Name of Holder)

By: Name: _____
Title: _____

Signature Guaranteed: _____
Participant in a Recognized Signature
Guarantee Medallion Program

Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

OUTBRAIN INC.

[2.95]% Convertible Senior Notes due 20[26]

The Bank of New York Mellon
240 Greenwich Street
New York, NY 10286
Attention: Corporate Trust Administration

Subject to the terms of the Indenture, the undersigned Holder of the within Note assigns to:

Name:

Address:

Social security or
tax identification
number:

the within Note and all rights thereunder irrevocably appoints:
as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ (Legal Name of Holder)

By:
Name: _____
Title: _____

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

Authorized Signatory

TRANSFEROR ACKNOWLEDGMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

- 1. Such Transfer is being made to the Company or a Subsidiary of the Company
- 2. Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer
- 3. Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page.**
- 4. Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated: _____
(Legal Name of Holder)

By: _____
Name: _____
Title: _____

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

Authorized Signatory

TRANSFeree ACKNOWLEDGMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that and the undersigned and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated: _____
(Name of Transferee)

By: _____
Name: _____
Title: _____

NON-AFFILIATE HOLDER'S REPRESENTATIONS LETTER

Removal of Restrictive Legend After Six Month Holding Period under Rule 144

(To Follow)

FORM OF RESTRICTED NOTE LEGEND

THE OFFER AND SALE OF THIS NOTE AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND
- (2) AGREES FOR THE BENEFIT OF OUTBRAIN INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT ONLY:
 - (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;
 - (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT;
 - (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;
 - (D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR
 - (E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(C), (D) OR (E) ABOVE, THE COMPANY, THE TRUSTEE AND THE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.***

*** This paragraph and the immediately preceding paragraph will be deemed to be removed from the face of this Note at such time when the Company delivers written notice to the Trustee of such deemed removal pursuant to Section 2.12 of the within-mentioned Indenture and when the Applicable Procedures of the Depositary have been complied with, if applicable.

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE INDENTURE HEREINAFTER REFERRED TO.

FORM OF NON-AFFILIATE LEGEND

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR OWN THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

FORM OF TAX LEGEND

THE FOLLOWING INFORMATION IS PROVIDED PURSUANT TO TREAS. REG. SECTION 1.1275-3: THIS DEBT INSTRUMENT IS ISSUED WITH ORIGINAL ISSUE DISCOUNT. THE TREASURER (OR ANOTHER OFFICER) OF THE ISSUER, AS A REPRESENTATIVE OF THE ISSUER, WILL MAKE AVAILABLE ON REQUEST TO THE HOLDER OF THIS NOTE THE FOLLOWING INFORMATION; ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, YIELD, COMPARABLE YIELD AND PROJECTED PAYMENT SCHEDULE. THE ADDRESS OF THE ISSUER IS PROVIDED IN SECTION 11.01 OF THE INDENTURE.

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Outbrain Inc.:

We consent to the use of our report dated March 25, 2021, with respect to the consolidated financial statements of Outbrain Inc., included herein and to the reference to our firm under the heading “Experts” in the prospectus.

/s/ KPMG LLP

New York, New York
July 6, 2021
