

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

**FORM 10-Q**

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

For the quarterly period ended September 30, 2023

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-12471

**THE ARENA GROUP HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**68-0232575**

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

**200 Vesey Street, 24<sup>th</sup> Floor  
New York, New York**

(Address of principal executive offices)

**10281**

(Zip Code)

**(212) 321-5002**

(Registrant's telephone number, including area code)

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

**Title of each class**

Common Stock, par value \$0.01

**Trading Symbol(s)**

AREN

**Name of each exchange on which registered**

NYSE American

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

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

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

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

As of November 10, 2023, the Registrant had 23,834,891 shares of common stock outstanding.

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## Forward-Looking Statements

This Quarterly Report on Form 10-Q (this “Quarterly Report”) of The Arena Group Holdings, Inc. (the “Company,” “Arena,” “we,” “our,” and “us”) contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements relate to future events or future performance and include, without limitation, statements concerning our business strategy, future revenues, market growth, capital requirements, product introductions, the timing, outcome or financial impacts of the planned Business Combination (as defined below) and related transactions and expansion plans and the adequacy of our funding. Other statements contained in this Quarterly Report that are not historical facts are also forward-looking statements. We have tried, wherever possible, to identify forward-looking statements by terminology such as “may,” “will,” “could,” “should,” “expects,” “anticipates,” “intends,” “plans,” “believes,” “seeks,” “estimates,” and other stylistic variants denoting forward-looking statements.

We caution investors that any forward-looking statements presented in this Quarterly Report, or that we may make orally or in writing from time to time, are based on information currently available, as well as our beliefs and assumptions. The actual outcome related to forward-looking statements will be affected by known and unknown risks, trends, uncertainties, and factors that are beyond our control or ability to predict. Although we believe that our assumptions are reasonable, they are not guarantees of future performance, and some will inevitably prove to be incorrect. As a result, our actual future results can be expected to differ from our expectations, and those differences may be material. Accordingly, investors should use caution in relying on forward-looking statements, which are based only on known results and trends at the time they are made, to anticipate future results or trends. We detail other risks in our public filings with the Securities and Exchange Commission (the “SEC”), including in Part I, Item 1A., Risk Factors, in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 31, 2023 and in Item 1A of Part II of the Quarterly Report on Form 10-Q. The discussion in this Quarterly Report should be read in conjunction with the condensed consolidated financial statements and notes thereto included in Part I, Item 1 of this Quarterly Report and our consolidated financial statements and notes thereto included in Part II, Item 8 of our Annual Report on Form 10-K for the year ended December 31, 2022.

This Quarterly Report and all subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to our forward-looking statements to reflect events or circumstances after the date of this Quarterly Report except as may be required by law.

**PART I – FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL INFORMATION**

**THE ARENA GROUP HOLDINGS, INC. AND SUBSIDIARIES**

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THE ARENA GROUP HOLDINGS, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

	September 30, 2023 (unaudited)	December 31, 2022
	(\$ in thousands, except share data)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 7,290	\$ 13,871
Restricted cash	-	502
Accounts receivable, net	37,977	33,950
Subscription acquisition costs, current portion	31,944	25,931
Prepayments and other current assets	6,906	4,441
Total current assets	84,117	78,695
Property and equipment, net	404	735
Operating lease right-of-use assets	229	372
Platform development, net	9,265	10,330
Subscription acquisition costs, net of current portion	9,751	14,133
Acquired and other intangible assets, net	44,211	58,970
Other long-term assets	1,041	1,140
Goodwill	42,575	39,344
Total assets	\$ 191,593	\$ 203,719
<b>Liabilities, mezzanine equity and stockholders' deficiency</b>		
Current liabilities:		
Accounts payable	\$ 11,333	\$ 12,863
Accrued expenses and other	25,765	23,102
Line of credit	17,303	14,092
Unearned revenue	63,757	58,703
Subscription refund liability	750	845
Operating lease liability	471	427
Contingent consideration	1,030	-
Liquidated damages payable	6,293	5,843
Bridge notes	5,767	34,805
Term debt	19,980	65,684
Total current liabilities	152,449	216,364
Unearned revenue, net of current portion	14,532	19,701
Operating lease liability, net of current portion	-	358
Liquidated damages payable, net of current portion	-	494
Other long-term liabilities	758	5,307
Deferred tax liabilities	574	465
Term debt	82,362	-
Total liabilities	250,675	242,689
Commitments and contingencies (Note 19)		
Mezzanine equity:		
Series G redeemable and convertible preferred stock, \$0.01 par value, \$1,000 per share liquidation value and 1,800 shares designated; aggregate liquidation value: \$168; Series G shares issued and outstanding: 168; common shares issuable upon conversion: 8,582 at September 30, 2023 and December 31, 2022	168	168
Series H convertible preferred stock, \$0.01 par value, \$1,000 per share liquidation value and 23,000 shares designated; aggregate liquidation value: \$0 and \$14,356; Series H shares issued and outstanding: none and 14,356; common shares issuable upon conversion: none and 1,981,128 at September 30, 2023 and December 31, 2022, respectively	-	13,008
Total mezzanine equity	168	13,176
Stockholders' deficiency:		
Common stock, \$0.01 par value, authorized 1,000,000,000 shares; issued and outstanding: 23,823,476 and 18,303,193 shares at September 30, 2023 and December 31, 2022, respectively	237	182
Common stock to be issued	-	-
Additional paid-in capital	313,611	270,743
Accumulated deficit	(373,098)	(323,071)
Total stockholders' deficiency	(59,250)	(52,146)
Total liabilities, mezzanine equity and stockholders' deficiency	\$ 191,593	\$ 203,719

See accompanying notes to condensed consolidated financial statements.

THE ARENA GROUP HOLDINGS, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
	(\$ in thousands, except share data)			
<b>Revenue</b>	\$ 63,418	\$ 57,277	\$ 173,604	\$ 159,272
Cost of revenue (includes amortization of platform development and developed technology for three months ended 2023 and 2022 of \$2,191 and \$2,413, respectively and for the nine months ended 2023 and 2022 of \$6,883 and \$7,099, respectively)	35,245	32,671	102,422	98,790
Gross profit	28,173	24,606	71,182	60,482
<b>Operating expenses</b>				
Selling and marketing	19,271	18,424	56,743	53,123
General and administrative	11,028	13,493	35,803	41,841
Depreciation and amortization	4,726	4,478	14,227	13,124
Loss on impairment of assets	-	-	119	257
Total operating expenses	35,025	36,395	106,892	108,345
Loss from operations	(6,852)	(11,789)	(35,710)	(47,863)
<b>Other (expense) income</b>				
Change in fair value of contingent consideration	(60)	-	(469)	-
Interest expense	(4,042)	(3,184)	(13,225)	(8,510)
Liquidated damages	(151)	(339)	(455)	(639)
Total other expenses	(4,253)	(3,523)	(14,149)	(9,149)
Loss before income taxes	(11,105)	(15,312)	(49,859)	(57,012)
Income tax (provision) benefit	(61)	(547)	(168)	1,180
Loss from continuing operations	(11,166)	(15,859)	(50,027)	(55,832)
Loss from discontinued operations, net of tax	-	(646)	-	(1,329)
<b>Net loss</b>	\$ (11,166)	\$ (16,505)	\$ (50,027)	\$ (57,161)
Basic and diluted net loss per common share:				
Continuing operations	\$ (0.48)	\$ (0.87)	\$ (2.32)	\$ (3.22)
Discontinued operations	-	(0.04)	-	(0.08)
Basic and diluted net loss per common share	\$ (0.48)	\$ (0.90)	\$ (2.33)	\$ (3.30)
Weighted average number of common shares outstanding – basic and diluted	23,445,675	18,284,670	21,567,166	17,339,882

See accompanying notes to condensed consolidated financial statements.

THE ARENA GROUP HOLDINGS, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIENCY  
(unaudited)

Three and Nine Months Ended September 30, 2023

	Common Stock		Common Stock to be Issued		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficiency
	Shares	Par Value	Shares	Par Value			
	(\$ in thousands, except per share data)						
<b>Balance at June 30, 2023</b>	22,014,927	\$ 219	41,283	\$ -	\$ 297,522	\$ (361,932)	\$ (64,191)
Issuance of common stock upon conversion of Series H convertible preferred stock	1,774,128	18	-	-	11,490	-	11,508
Issuance of common stock for restricted stock units	5,442	-	-	-	-	-	-
Issuance of common stock in connection with acquisition	28,979	-	(28,979)	-	-	-	-
Stock-based compensation	-	-	-	-	4,599	-	4,599
Net loss	-	-	-	-	-	(11,166)	(11,166)
<b>Balance at September 30, 2023</b>	<u>23,823,476</u>	<u>\$ 237</u>	<u>12,304</u>	<u>\$ -</u>	<u>\$ 313,611</u>	<u>\$ (373,098)</u>	<u>\$ (59,250)</u>

	Common Stock		Common Stock to be Issued		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficiency
	Shares	Par Value	Shares	Par Value			
	(\$ in thousands, except per share data)						
<b>Balance at January 1, 2023</b>	18,303,193	\$ 182	41,283	\$ -	\$ 270,743	\$ (323,071)	\$ (52,146)
Issuance of common stock in connection with settlement of Series H convertible preferred stock	1,981,128	20	-	-	12,988	-	13,008
Issuance of common stock in connection with the acquisition of Fexy Studios	274,692	3	-	-	1,997	-	2,000
Issuance of common stock in connection with settlement of liquidated damages	47,252	-	-	-	369	-	369
Gain upon issuance of common stock in connection with settlement of liquidated damages	-	-	-	-	130	-	130
Issuance of common stock for restricted stock units	425,901	4	-	-	(4)	-	-
Common stock withheld for taxes	(202,382)	(2)	-	-	(1,421)	-	(1,423)
Issuance of common stock upon exercise of stock options	795	-	-	-	-	-	-
Issuance of common stock in connection with acquisition	28,979	-	(28,979)	-	-	-	-
Issuance of common stock in connection with registered direct offering	2,963,918	30	-	-	11,114	-	11,144
Reclassification to liability upon modification of common stock option	-	-	-	-	(68)	-	(68)
Stock-based compensation	-	-	-	-	17,763	-	17,763
Net loss	-	-	-	-	-	(50,027)	(50,027)
<b>Balance at September 30, 2023</b>	<u>23,823,476</u>	<u>\$ 237</u>	<u>12,304</u>	<u>\$ -</u>	<u>\$ 313,611</u>	<u>\$ (373,098)</u>	<u>\$ (59,250)</u>

THE ARENA GROUP HOLDINGS, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIENCY  
(unaudited)

Three and Nine Months Ended September 30, 2022

	Common Stock		Common Stock to be Issued		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficiency
	Shares	Par Value	Shares	Par Value			
	(\$ in thousands, except share data)						
<b>Balance at June 30, 2022</b>	17,830,154	\$ 178	41,283	\$ -	\$ 258,727	\$ (292,869)	\$ (33,964)
Issuance of common stock for restricted stock units	541,719	5	-	-	(5)	-	-
Issuance of common stock for exercise	38,152	-	-	-	94	-	94
Common stock withheld for taxes upon issuance of underlying shares for restricted stock units	(257,775)	(1)	-	-	(2,963)	-	(2,964)
Stock-based compensation	-	-	-	-	8,715	-	8,715
Net loss	-	-	-	-	-	(16,505)	(16,505)
<b>Balance at September 30, 2022</b>	<u>18,152,250</u>	<u>\$ 182</u>	<u>41,283</u>	<u>\$ -</u>	<u>\$ 264,568</u>	<u>\$ (309,374)</u>	<u>\$ (44,624)</u>

	Common Stock		Common Stock to be Issued		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficiency
	Shares	Par Value	Shares	Par Value			
	(\$ in thousands, except share data)						
<b>Balance at January 1, 2022</b>	12,635,591	\$ 126	49,134	\$ -	\$ 200,410	\$ (252,213)	\$ (51,677)
Issuance of common stock upon conversion of series H preferred stock	70,380	1	-	-	510	-	511
Issuance of stock in connection with the acquisition of Athlon	314,103	3	-	-	3,138	-	3,141
Issuance of stock in connection with the merger of Say Media	7,851	-	(7,851)	-	-	-	-
Issuance of common stock for restricted stock units in connection with an acquisition	16,760	-	-	-	-	-	-
Issuance of common stock in connection with professional services	14,617	-	-	-	184	-	184
Issuance of common stock in connection with settlement of liquidated damages	505,655	5	-	-	6,680	-	6,685
Gain upon issuance of common stock in connection with settlement of liquidated damages	-	-	-	-	323	-	323
Issuance of common stock in connection with the exercise of stock options	38,152	-	-	-	94	-	94
Issuance of common stock for restricted stock units	718,530	7	-	-	(7)	-	-
Common stock withheld for taxes upon issuance of underlying shares for restricted stock units	(324,798)	(2)	-	-	(3,518)	-	(3,520)
Repurchase restricted stock classified as liabilities	(26,214)	-	-	-	-	-	-
Issuance of common stock in connection with public offering	4,181,603	42	-	-	30,448	-	30,490
Issuance of common stock for exercise	20	-	-	-	-	-	-
Stock-based compensation	-	-	-	-	26,306	-	26,306
Net loss	-	-	-	-	-	(57,161)	(57,161)
<b>Balance at September 30, 2022</b>	<u>18,152,250</u>	<u>\$ 182</u>	<u>41,283</u>	<u>\$ -</u>	<u>\$ 264,568</u>	<u>\$ (309,374)</u>	<u>\$ (44,624)</u>

See accompanying notes to condensed consolidated financial statements.

THE ARENA GROUP HOLDINGS, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(unaudited)

	Nine Months Ended September 30,	
	2023	2022
	(\$ in thousands)	
<b>Cash flows from operating activities</b>		
Net loss	\$ (50,027)	\$ (57,161)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of property and equipment	276	395
Amortization of platform development and intangible assets	20,834	19,828
Amortization of debt discounts	2,178	1,215
Noncash and accrued interest	754	86
Loss on impairment of assets	119	466
Change in fair value of contingent consideration	469	-
Liquidated damages	455	639
Stock-based compensation	16,978	24,777
Deferred income taxes	109	(1,235)
Bad debt expense	217	609
Other	-	184
Change in operating assets and liabilities net of effect of business combination:		
Accounts receivable, net	(4,213)	(1,710)
Subscription acquisition costs	(1,631)	8,100
Royalty fees	-	11,250
Prepayments and other current assets	(2,465)	2,107
Other long-term assets	(62)	75
Accounts payable	(1,719)	(7,652)
Accrued expenses and other	1,670	(3,390)
Unearned revenue	(146)	(7,382)
Subscription refund liability	(95)	(2,250)
Operating lease liabilities	(171)	(162)
Other long-term liabilities	(5,795)	(3,465)
Net cash used in operating activities	<u>(22,265)</u>	<u>(14,676)</u>
<b>Cash flows from investing activities</b>		
Purchases of property and equipment	-	(444)
Capitalized platform development	(2,967)	(3,990)
Proceeds from sale of equity investment	-	2,450
Payments for acquisition of business, net of cash acquired	(500)	(10,331)
Net cash used in investing activities	<u>(3,467)</u>	<u>(12,315)</u>
<b>Cash flows from financing activities</b>		
Proceeds (repayments) under line of credit, net borrowing	3,211	6,486
Proceeds from common stock registered direct offering	11,500	32,058
Payments of issuance costs from common stock registered direct offering	(167)	-
Proceeds from common stock public offering, net of offering costs	-	94
Payments of issuance costs from common stock public offering	-	(1,568)
Proceeds from bridge notes	5,703	-
Payments of debt issuance costs	(100)	-
Payment of deferred cash payments	(75)	(453)
Payment of taxes from common stock withheld	(1,423)	(3,520)
Payment of restricted stock liabilities	-	(2,152)
Net cash provided by financing activities	<u>18,649</u>	<u>30,945</u>
Net increase (decrease) in cash, cash equivalents, and restricted cash	(7,083)	3,954
Cash, cash equivalents, and restricted cash – beginning of period	14,373	9,851
Cash, cash equivalents, and restricted cash – end of period	<u>\$ 7,290</u>	<u>\$ 13,805</u>
<b>Cash, cash equivalents, and restricted cash</b>		
Cash and cash equivalents	\$ 7,290	\$ 13,303
Restricted cash	-	502
Total cash, cash equivalents, and restricted cash	<u>\$ 7,290</u>	<u>\$ 13,805</u>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid for interest	\$ 10,835	\$ 7,209
Cash paid for income taxes	85	-
<b>Noncash investing and financing activities</b>		
Reclassification of stock-based compensation to platform development	\$ 785	\$ 1,529
Issuance cost of offerings recorded in accrued expenses and other	189	-
Issuance of common stock in connection with settlement of liquidated damages	499	7,008
Issuance of common stock upon conversion of Series H convertible preferred stock	13,008	511
Issuance of common stock in connection with acquisitions	2,000	3,141
Deferred cash payments recorded in connection with acquisitions	246	949
Assumptions of liabilities in connection with acquisitions	1,246	11,602

*See accompanying notes to condensed consolidated financial statements.*



THE ARENA GROUP HOLDINGS, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(unaudited)

(\$ in thousands, unless otherwise stated)

**1. Summary of Significant Accounting Policies**

***Basis of Presentation***

The condensed consolidated financial statements include the accounts of The Arena Group Holdings, Inc. (formerly known as TheMaven, Inc.) and its wholly owned subsidiaries (“The Arena Group” or the “Company”), after eliminating all significant intercompany balances and transactions. The Company changed its legal name to The Arena Group Holdings, Inc. from TheMaven, Inc. on February 8, 2022.

The accompanying unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the U.S. Securities and Exchange Commission (the “SEC”). Accordingly, they do not include all of the information and notes required by accounting principles generally accepted in the United States of America (“GAAP”) for complete audited financial statements. These condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements, which are included in The Arena Group’s Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 31, 2023.

The condensed consolidated financial statements as of September 30, 2023, and for the three and nine months ended September 30, 2023 and 2022, are unaudited but, in management’s opinion, include all adjustments necessary for a fair presentation of the results of interim periods. All such adjustments are of a normal recurring nature. The year-end condensed consolidated balance sheet as of December 31, 2022, was derived from audited financial statements, but does not include all disclosures required by GAAP. The results of operations for interim periods are not necessarily indicative of the results to be expected for the entire fiscal year.

The Company is subject to continuing risks and uncertainties in connection with the current macroeconomic environment, including as a result of inflation, increasing interest rates, instability in the global banking system, geopolitical factors, including the ongoing conflicts in Ukraine and Israel, supply chain disruptions and the remaining effects of the COVID-19 pandemic. Given that certain of the Company’s sports businesses rely on sporting events to generate content and comprise a material portion of the Company’s revenues, the Company’s cash flows and results of operations could be negatively impacted by a significant downturn in economic activity, or general spending on sporting events or a general limitation of societal activity, due to market conditions, economic uncertainty or recession.

The Company operates in one reportable segment.

***Reverse Stock Split***

On February 8, 2022, the Company’s board of directors (the “Board”) approved a one-for-twenty-two (1-for-22) reverse stock split of its outstanding shares of common stock that was effective February 8, 2022. The Company’s common stock began trading on the NYSE American on February 9, 2022. At the effective time, every twenty-two shares of issued and outstanding common stock were automatically combined into one issued and outstanding share of common stock, without any change in the number of authorized shares. No fractional shares were issued as a result of the reverse stock split. Any fractional shares that would otherwise have resulted from the reverse stock split were rounded up to the next whole number.

### **Going Concern**

The Company's condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates the realization of assets and the liquidation of liabilities in the normal course of business. The Company's condensed consolidated financial statements do not include any adjustments that might be necessary if it is unable to continue as a going concern.

For the nine months ended September 30, 2023, the Company incurred a net loss of \$50,027. For the nine months ended September 30, 2023 and year ended December 31, 2022, the Company had cash on hand of \$7,290 and \$13,871 and a working capital deficit of \$68,332 and \$137,669, respectively. The Company's net loss and working capital deficit have been evaluated by management to determine if the significance of those conditions or events would limit its ability to meet its obligations when due. Furthermore, while the Company has executed an amendment to extend the maturity of its 2022 Bridge Notes of \$36,000, Senior Secured Notes of \$62,691, Delayed Draw Term Notes of \$4,000 and to extend additional borrowings on its 2023 Notes of \$6,000 (each as described in Note 11 and Note 12), totaling \$108,691, if the Business Combination (as further described under the heading *Business Combination* in Note 20) is not completed by December 31, 2023 it would represent an event of default under the related debt agreements in which case the Company may not be able to meet its obligations when due.

As a result, management determined there is substantial doubt about the Company's ability to continue as a going concern for a one-year period following the financial statement issuance date, unless they are able to close the Business Combination by December 31, 2023 or extend the date at which such a default would occur.

The Company plans to consummate the Business Combination to alleviate the conditions that raise substantial doubt about its ability to continue as a going concern, however, there can be no assurance that the Company will be able to consummate the Business Combination.

### **Use of Estimates**

Preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the financial statements and the accompanying notes. Actual results could differ materially from these estimates. On an ongoing basis, the Company evaluates its estimates, including those related to the allowance for credit losses, fair values of financial instruments, capitalization of platform development, intangible assets and goodwill, useful lives of intangible assets and property and equipment, income taxes, fair value of assets acquired and liabilities assumed in business acquisitions, determination of the fair value of stock-based compensation and valuation of derivatives liabilities and contingent liabilities, among others. The Company bases its estimates on assumptions, both historical and forward looking, that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

### **Reclassifications**

Certain prior year amounts have been reclassified to conform to current period presentation. These reclassifications were immaterial, both individually and in aggregate. These changes did not impact previously reported loss from operations or net loss.

### **Recently Adopted Accounting Standards**

In March 2022, the Financial Accounting Standards Board (the "FASB") issued ASU 2022-02, *Financial Instruments-Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures*, addressing areas identified by the FASB as part of its post-implementation review of its previously issued credit losses standard (ASU 2016-13) that introduced the current expected credit losses (CECL) model. ASU 2022-02 eliminates the accounting guidance for troubled debt restructurings by creditors that have adopted the CECL model and enhances disclosure requirements for certain loan refinancings and restructurings made with borrowers experiencing financial difficulty. This update requires an entity to disclose current-period gross write-offs for financing receivables and net investment in leases by year of origination in the vintage disclosures. As the Company has already adopted ASU 2016-13, the new guidance was adopted on January 1, 2023. The adoption of ASU 2022-02 did not have a material impact on the Company's condensed consolidated financial statements.

## Loss per Common Share

Basic loss per share is computed using the weighted average number of common shares outstanding during the period and excludes any dilutive effects of common stock equivalent shares, such as stock options, restricted stock, and warrants. All restricted stock awards are considered outstanding but are included in the computation of basic loss per common share only when the underlying restrictions expire, the shares are no longer forfeitable, and are thus vested. All restricted stock units are included in the computation of basic loss per common share only when the underlying restrictions expire, the shares are no longer forfeitable, and are thus vested. Contingently issuable shares are included in basic loss per common share only when there are no circumstances under which those shares would not be issued. Diluted loss per common share is computed using the weighted average number of common shares outstanding and common stock equivalent shares outstanding during the period using the treasury stock method.

The Company excluded the outstanding securities summarized below (capitalized terms are described herein), which entitle the holders thereof to acquire shares of the Company's common stock, from its calculation of net loss per common share, as their effect would have been anti-dilutive. Common stock equivalent shares are excluded from the diluted calculations when a net loss is incurred as they would be anti-dilutive.

	As of September 30,	
	2023	2022
Series G convertible preferred stock	8,582	8,582
Series H convertible preferred stock	-	2,008,728
Financing warrants	39,774	116,118
ABG Warrants	999,540	999,540
AllHipHop warrants	5,682	5,682
Publisher Partner Warrants	9,800	5,629
Restricted stock awards	-	97,402
Restricted stock units	845,903	1,488,345
Common stock options	5,744,890	6,228,853
Total	<u>7,654,171</u>	<u>10,958,879</u>

## 2. Discontinued Operations

The Company, upon Board approval on September 15, 2022, discontinued (i.e., the "discontinued operations") the Parade print business ("Parade Print") that was acquired on April 1, 2022 (as part of the Parade acquisition, as further described below in Note 3), on November 13, 2022 (the last date of any obligation to deliver issues of Parade Print).

The table below sets forth the loss from discontinued operations for the period from April 1, 2022 to September 30, 2022:

Revenue	\$	20,753
Cost of revenue		<u>16,940</u>
Gross profit		<u>3,813</u>
Operating expense:		
Selling and marketing		3,504
General and administrative		1,484
Loss on impairment of assets	\$	<u>209</u>
Total operating expenses		<u>5,197</u>
Loss from discontinued operations		<u>(1,384)</u>
Income tax benefit		55
Net loss from discontinued operations	\$	<u><u>(1,329)</u></u>

The discontinued operations of Parade Print also included Relish and Spry Living print products that were acquired as part of the Parade acquisition. Further information is provided under the heading *Supplemental Pro Forma Information* in Note 3 and Note 16.

During the three and nine months ended September 30, 2022, the Company recorded depreciation and amortization of \$0 and \$0, respectively; and operating and investing noncash items of \$209 and \$209, respectively, as part of the discontinued operations.

### 3. Acquisitions

The Company uses the acquisition method of accounting, which is based on ASC, *Business Combinations (Topic 805)*, and uses the fair value concepts which requires, among other things, that most assets acquired, and liabilities assumed be recognized at their fair values as of the acquisition date.

#### 2023 Acquisition

*Teneology, Inc.* – On January 11, 2023, the Company entered into an asset purchase agreement with Teneology, Inc., (“Teneology”) pursuant to which it acquired certain assets (consisting of the RoadFood media business, including digital and television assets; the Moveable Feast media business, including digital and television assets; the Fexy-branded content studio business; and the MonkeySee YouTube Channel media business, collectively “Fexy Studios”), for a purchase price of \$3,307. The purchase price consisted of the following: (1) \$500 cash paid at closing (including an advance payment of \$250 prior to closing); (2) \$75 deferred cash payments due in three equal installments of \$25 on March 1, 2023 (paid), April 1, 2023 (paid) and May 1, 2023 (paid); (3) \$200 deferred cash payment due on the first anniversary of the closing date, subject to certain indemnity provisions; and (4) the issuance of 274,692 shares of the Company’s common stock, subject to certain lock-up provisions, with a fair value of \$2,000 on the transaction closing date (fair value was determined based on a preliminary independent appraisal); and which is subject to a put option under certain conditions (the “contingent consideration”) (as further described below in Note 10). The number of shares of the Company’s common stock issued was determined based on a \$2,225 value using the common stock trading price on the day immediately preceding the January 11, 2023 closing date (on the closing date the common stock trading price was \$7.94 per share). The agreement also provided for a cash retention pool for certain employees of \$300, subject to vesting over three years upon continued employment and other conditions.

The composition of the preliminary purchase price is as follows:

Cash	\$	500
Common stock		2,000
Contingent consideration		561
Deferred cash payments, as discounted		246
Total purchase consideration	\$	<u>3,307</u>

The Company accounted for the asset acquisition as a business combination in accordance with ASC 805 since the acquisition met the definition of a business under the applicable guidance.

The Company incurred \$99 in transaction costs related to the acquisition, which primarily consisted of legal and accounting expenses. The acquisition-related expenses were recorded in general and administrative expenses on the condensed consolidated statements of operations.

The preliminary purchase price allocation resulted in the following amounts being allocated to the assets acquired and liabilities assumed at the closing date of the acquisition based upon their respective fair values as summarized below:

Advertiser relationships	\$	663
Brand names		659
Goodwill		1,985
Net assets acquired	\$	<u>3,307</u>

The Company utilized an independent appraisal firm to assist in the preliminary determination of the fair values of the assets acquired and liabilities assumed, which required certain significant management assumptions and estimates. The fair value of the advertiser relationships were valued using the excess earnings method of the income approach and the brand names were valued using the relief-from-royalty method of the income approach. The estimated useful life is fifteen years (15.0 years) for the advertiser relationships and twelve years (12.0 years) for the brand names.

The excess-of purchase price over the fair value amounts assigned to the assets acquired and liabilities assumed represents goodwill from the acquisition. Goodwill is recorded as a non-current asset that is not amortized but is subject to an annual review for impairment. A portion of the goodwill will be deductible for tax purposes.

## Supplemental Pro forma Information

The pro forma disclosures have been deemed impracticable for this acquisition since after making reasonable efforts the Company is unable to accept assumptions made by Teneology. The Company has determined, based on the information provided by Teneology and made available to the Company, that the earnings from the prior periods could not be verified since the acquisition only included certain activities of Teneology and financial statements were not available. In this regard, the Company: (1) made reasonable effort to obtain certain financial results of the certain activities but Teneology was unable to comply with this request; and (2) the presentation of the pro forma results and the assumptions made by Teneology management were unable to be independently substantiated.

### 2022 Acquisition

*Athlon Holdings, Inc.* - On April 1, 2022, the Company acquired 100% of the issued and outstanding capital stock of Athlon Holdings, Inc. ("Athlon" or Parade), a Tennessee corporation, for a purchase price of \$15,854, as adjusted for the working capital adjustment as of the closing date of the transaction. The working capital adjustment is pending acceptance by the sellers (further details are provided in Note 19). As a part of the closing consideration, the Company also acquired cash of \$1,840, that was further adjusted post-closing for the working capital adjustment. The purchase price of \$15,854, as discounted, is comprised of (i) a cash portion of \$12,827, with \$11,840 paid at closing and \$987 estimated to be paid post-closing (as further described below) and (ii) the issuance of 314,103 shares of the Company's common stock with a fair market value of \$3,141. The number of shares of the Company's common stock issued was determined based on a \$3,000 value using the common stock trading price for the 10 trading days preceding the April 1, 2022 closing date. Certain of Parade's key employees entered into either advisory agreements or employment agreements with the Company. Parade operates in the United States.

The amount estimated to be paid post-closing of \$987 will be or was paid as follows: (i) \$742 is expected to be paid upon receipts of certain tax refunds due to the sellers (consisting of \$3,000 for the deferred cash payments, as discounted, less a \$2,258 cash adjustment); and (ii) \$245 was paid within two business days from the date the Company received proceeds from the sale of the equity interest in Just Like Falling Off a Bike, LLC that was held by Parade as of the closing date (paid on April 7, 2022).

The Company received a final valuation report from a third-party valuation firm after the preliminary purchase price was adjusted during the quarterly period ended September 30, 2022. After considering the results of the final valuation report, the Company estimated that the purchase consideration decreased by \$321. The decrease in the purchase price was related to an increase in identifiable assets of \$54, an increase in deferred tax liabilities of \$27, with a decrease in the working capital adjustment of \$321, resulting in a decrease in goodwill of \$348.

The composition of the purchase price is as follows:

Cash	\$	12,085
Common stock		3,141
Deferred cash payments, as discounted		628
Total purchase consideration	\$	<u>15,854</u>

The Company incurred \$200 in transaction costs related to the acquisition, which primarily consisted of legal and accounting expenses. The acquisition-related expenses were recorded within general and administrative expense on the condensed consolidated statements of operations.

The purchase price allocation resulted in the following amounts being allocated to the assets acquired and liabilities assumed at the closing date of the acquisition based upon their respective fair values as summarized below:

Cash	\$	2,604
Accounts receivable		10,855
Other current assets		1,337
Equity investment		2,450
Fixed assets		108
Digital content		355
Advertiser relationships		6,202
Trade names		2,261
Goodwill		2,587
Accounts payable		(7,416)
Accrued expenses and other		(2,440)
Unearned revenue		(1,203)
Other long-term liabilities		(543)
Deferred tax liabilities		(1,303)
Net assets acquired	<u>\$</u>	<u>15,854</u>

The Company utilized an independent appraisal firm to assist in the determination of the fair values of the assets acquired and liabilities assumed, which required certain significant management assumptions and estimates. The fair value of the digital content was determined using a cost approach. The fair values of the advertiser relationships were determined by projecting the acquired entity's cash flows, deducting notional contributory asset charges on supporting assets (working capital, tangible assets, trade names, and the assembled workforce) to compute the excess cash flows associated with the advertiser relationships. The fair values of the trade names were determined by projecting revenue associated with each trade name and applying a royalty rate to compute the amount of the royalty payments the company is relieved from paying due to its ownership of the trade names. The estimated weighted average useful life is two years (2.00 years) for digital content, eight point seventy-five years (8.75 years) for advertiser relationships, and fourteen point five years (14.50 years) for trade names.

The excess purchase price over the fair value amounts assigned to the assets acquired and liabilities assumed represents goodwill from the acquisition. Goodwill is recorded as a non-current asset that is not amortized but is subject to an annual review for impairment. No portion of the goodwill related to the acquisition will be deductible for tax purposes.

Supplemental Pro forma Information

The following table summarizes the results of operations of the Parade acquisition from the acquisition date included in the condensed consolidated results of operations and the unaudited pro forma results of operations of the combined entity had the date of the acquisition been as of the beginning of the reporting period during the year of the acquisition, or January 1, 2021:

	<b>Three Months Ended September 30, 2022</b>	<b>Nine Months Ended September 30, 2022</b>
Parade from acquisition date of April 1, 2022 (unaudited):		
Revenue	\$ 13,373	\$ 30,801
Net income	81	2,521
Combined entity supplemental pro forma information had the acquisition date been January 1, 2021 (unaudited):		
Revenue:		
Parade	\$ 13,373	\$ 46,710
Arena	53,333	149,224
Total supplemental pro forma revenue	<u>\$ 66,706</u>	<u>\$ 195,934</u>
Net income (loss):		
Parade	\$ 81	\$ 1,945
Arena	(16,586)	(59,106)
Adjustment	317	(1,724)
Total supplemental pro forma net loss	<u>\$ (16,188)</u>	<u>\$ (58,885)</u>

The information presented above is for illustrative purposes only and is not necessarily indicative of results that would have been achieved if the acquisition had occurred at the beginning of the Company's reporting period and does not reflect the discontinued operations of Parade Print that was acquired on April 1, 2022 (as part of the Parade acquisition).

The adjustments for the three months ended September 2022 of \$317, represents adjustments: (1) to record depreciation and amortization expense related to the fixed and intangible assets acquired from the acquisition of (\$216); and (2) to reverse the deferred tax provision related to the acquisition \$533. The adjustments for the nine months ended September 2022 of (\$1,724), represents adjustments: (1) to record depreciation and amortization expense related to the fixed and intangible assets acquired from the acquisition of (\$648); (2) to reverse the nonrecurring transaction cost related to the acquisition of \$200; and (3) to reverse the deferred tax benefit related to the acquisition of (\$1,276).

*Buffalo Groupe, LLC* – On September 27, 2022, the Company entered into an asset purchase agreement with Buffalo Groupe, LLC, doing business as Morning Read, a Virginia limited liability company, where it purchased certain intellectual properties (including all media properties, trademarks, service marks, domain names, trade names corporate names and other identifiers of goodwill), certain assumed contracts, and other certain rights related to the intellectual properties (collectively, the "Morning Read Purchased Assets") and assumed certain liabilities related to the Morning Read Purchased Assets. The purchase consideration consisted of a cash payment of \$850,000 at closing.

The Company accounted for the asset acquisition in accordance with ASC 805-50, as substantially all of the fair value of the gross assets acquired by the Company is concentrated in a group of similar identifiable assets.

The purchase consideration totaled \$850,000, which was assigned to the brand name acquired on the closing date of the acquisition. The useful life for the brand name is ten years (10.0 years).

#### 4. Balance Sheet Components

The components of certain balance sheet amounts are as follows:

*Accounts Receivable* – The Company receives payments from advertising customers based upon contractual payment terms; accounts receivable is recorded when the right to consideration becomes unconditional and are generally collected within 90 days. The Company generally receives payments from digital and print subscription customers at the time of sign up for each subscription; accounts receivable from merchant credit card processors are recorded when the right to consideration becomes unconditional and are generally collected weekly. Accounts receivable have been reduced by an allowance for doubtful accounts. The Company maintains the allowance for estimated losses resulting from the inability of the Company’s customers to make required payments. The allowance represents the current estimate of lifetime expected credit losses over the remaining duration of existing accounts receivable considering current market conditions and supportable forecasts when appropriate. The estimate is a result of the Company’s ongoing evaluation of collectability, customer creditworthiness, historical levels of credit losses, and future expectations. Accounts receivable are written off when deemed uncollectible and collection of the receivable is no longer being actively pursued. Accounts receivable as of September 30, 2023 and December 31, 2022 of \$37,977 and \$33,950, respectively, are presented net of allowance for doubtful accounts. The following table summarizes the allowance for doubtful accounts activity:

	<b>Nine Months Ended September 30, 2023 (unaudited)</b>	<b>Year Ended December 31, 2022</b>
Allowance for doubtful accounts beginning of year	\$ 2,236	\$ 1,578
Additions	217	980
Deductions – write-offs	(1,514)	(322)
Allowance for doubtful accounts end of period	<u>\$ 939</u>	<u>\$ 2,236</u>

*Subscription Acquisition Costs* – Subscription acquisition costs include the incremental costs of obtaining a contract with a customer, paid to external parties, if the Company expects to recover those costs. The Company has determined that sales commissions paid on all third-party agent sales of subscriptions are direct and incremental and, therefore, meet the capitalization criteria. The Company has elected to apply the practical expedient to account for these costs at the portfolio level. The sales commissions paid to third-party agents are amortized as magazines are sent to the subscriber on an issue-by-issue basis. Subscription acquisition costs are included within selling and marketing expenses on the condensed consolidated statements of operations.

The current portion of the subscription acquisition costs as of September 30, 2023 and December 31, 2022 was \$31,944 and \$25,931, respectively. The noncurrent portion of the subscription acquisition costs as of September 30, 2023 and December 31, 2022 was \$9,751 and \$14,133, respectively. Subscription acquisition costs as of September 30, 2023 presented as current assets of \$31,944 are expected to be amortized over a one-year period, or through September 30, 2024, and presented as long-term assets of \$9,751 are expected to be amortized after the one-year period ending September 30, 2024.

Amortization of subscription acquisition costs of \$9,819 and \$9,778 for the three months ended September 30, 2023 and 2022, respectively, are included in selling and marketing expenses on the condensed consolidated statements of operations. Amortization of subscription acquisition costs of \$29,166 and \$28,236 for the nine months ended September 30, 2023 and 2022, respectively, are included in selling and marketing expenses on the condensed consolidated statements of operations. No impairment losses have been recognized for subscription acquisition costs for the three and nine months ended September 30, 2023 and 2022.



Prepayments and other current assets – Prepayments and other current assets are summarized as follows:

	As of	
	September 30, 2023 (unaudited)	December 31, 2022
Prepaid expenses	\$ 2,891	\$ 2,321
Prepaid supplies	1,101	927
Refundable income and franchise taxes	157	957
Unamortized debt costs	216	216
Employee retention credits	2,468	-
Other receivables	73	20
<b>Total prepayments and other current assets</b>	<b>\$ 6,906</b>	<b>\$ 4,441</b>

Under the provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) and the subsequent extensions of the Cares Act, the Company is eligible for a refundable employee retention credit subject to certain criteria. The Company determined that it qualifies for the tax credit under the CARES Act. In connection with the CARES Act, the Company adopted a policy to recognize the employee retention credit when earned and to offset the credit against the related expenditure. For the three and nine months ended September 30, 2023, the Company recorded the employee retention credits as a reduction to payroll and related expenses of \$0 and \$6,868, respectively, in operating expenses on the condensed consolidated statements of operations with a corresponding receivable included in prepaid expenses and other current assets on the condensed balance sheets for the respective periods. During the three months ended September 30, 2023 the Company received \$4,400 in employee retention credits and has a receivable balance remaining of \$2,468 as of September 30, 2023.

Property and Equipment – Property and equipment are summarized as follows:

	As of	
	September 30, 2023 (unaudited)	December 31, 2022
Office equipment and computers	\$ 1,777	\$ 1,744
Furniture and fixtures	133	240
	1,910	1,984
Less accumulated depreciation and amortization	(1,506)	(1,249)
<b>Net property and equipment</b>	<b>\$ 404</b>	<b>\$ 735</b>

Depreciation and amortization expense for the three months ended September 30, 2023 and 2022 was \$79 and \$150, respectively. Depreciation and amortization expense for the nine months ended September 30, 2023 and 2022 was \$276 and \$395, respectively. Impairment charges for the three and nine months ended September 30, 2023 of \$0 and \$55, respectively, were recorded for property and equipment on the condensed consolidated statements of operations. No impairment charges for the three and nine months ended September 30, 2022 were recorded for property and equipment.

Platform Development – Platform development costs are summarized as follows:

	As of	
	September 30, 2023 (unaudited)	December 31, 2022
Platform development	\$ 25,017	\$ 21,493
Less accumulated amortization	(15,752)	(11,163)
Net platform development	<u>\$ 9,265</u>	<u>\$ 10,330</u>

A summary of platform development activity for the nine months ended September 30, 2023 is as follows:

Platform development beginning of period	\$ 21,493
Payroll-based costs capitalized	2,967
Less dispositions	(164)
Total capitalized costs	24,296
Stock-based compensation	785
Impairments	(64)
Platform development end of period	<u>\$ 25,017</u>

Amortization expense for the three months ended September 30, 2023 and 2022, was \$1,595 and \$1,511, respectively. Amortization expense for the nine months ended September 30, 2023 and 2022, was \$4,753 and \$4,268, respectively. Amortization expense for platform development is included in cost of revenues on the condensed consolidated statements of operations. Impairment charges for the three and nine months ended September 30, 2023 of \$0 and \$64, respectively, were recorded for platform development on the condensed consolidated statements of operations. Impairment charges for the three and nine months ended September 30, 2022 of \$0 and \$210, respectively, were recorded for platform development on the condensed consolidated statements of operations.

Intangible Assets – Intangible assets subject to amortization consisted of the following:

	As of September 30, 2023 (unaudited)			As of December 31, 2022		
	Carrying Amount	Accumulated Amortization	Net Carrying Amount	Carrying Amount	Accumulated Amortization	Net Carrying Amount
Developed technology	\$ 17,333	\$ (17,012)	\$ 321	\$ 17,333	\$ (14,883)	\$ 2,450
Trade name	5,380	(1,490)	3,890	5,380	(1,180)	4,200
Brand name	12,774	(2,007)	10,767	12,115	(908)	11,207
Subscriber relationships	73,459	(58,028)	15,431	73,459	(47,146)	26,313
Advertiser relationships	15,965	(2,583)	13,382	15,302	(1,368)	13,934
Database	2,397	(2,066)	331	2,397	(1,753)	644
Digital content	355	(266)	89	355	(133)	222
Total intangible assets	<u>\$ 127,663</u>	<u>\$ (83,452)</u>	<u>\$ 44,211</u>	<u>\$ 126,341</u>	<u>\$ (67,371)</u>	<u>\$ 58,970</u>

Intangible assets subject to amortization were recorded as part of the Company's business acquisitions. Amortization expense for the three months ended September 30, 2023 and 2022 was \$5,243 and \$5,230, respectively, of which amortization expense for developed technology of \$596 and \$902, respectively, is included in cost of revenues on the condensed consolidated statements of operations. Amortization expense for the nine months ended September 30, 2023 and 2022 was \$16,081 and \$15,560, respectively, of which amortization expense for developed technology of \$2,130 and \$2,831, respectively, is included in cost of revenues on the condensed consolidated statements of operations. No impairment charges for the three and nine months ended September 30, 2023 were recorded for the intangible assets. Impairment charges for the three and nine months ended September 30, 2022 of \$0 and \$47, respectively, were recorded for the intangible assets on the condensed consolidated statements of operations.

## 5. Leases

The Company's real estate lease for the use of office space is subleased (as further described below). The Company's current lease is a long-term operating lease with a remaining fixed payment term of 1.01 years.

The table below presents supplemental information related to operating leases:

	<b>Nine Months Ended September 30,</b>	
	<b>2023</b>	<b>2022</b>
Operating lease costs during the period (1)	\$ 758	\$ 727
Cash payments included in the measurement of operating lease liabilities during the period	\$ 362	\$ 351
Weighted-average remaining lease term (in years) as of period-end	1.01	2.01
Weighted-average discount rate during the period	9.9%	9.9%

(1) Operating lease costs is presented net of sublease income that is not material.

The Company generally utilizes its incremental borrowing rate based on information available at the commencement of the lease in determining the present value of future payments since the implicit rate for the Company's leases is not readily determinable.

Variable lease expense includes rental increases that are not fixed, such as those based on amounts paid to the lessor based on cost or consumption, such as maintenance and utilities.

The components of operating lease costs were as follows:

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>
Operating lease costs:				
Cost of revenue	\$ -	\$ -	\$ -	\$ -
Selling and marketing	-	-	-	-
General and administrative	259	328	922	891
Total operating lease costs (1)	259	328	922	891
Sublease income	(55)	(55)	(164)	(164)
	<u>\$ 204</u>	<u>\$ 273</u>	<u>\$ 758</u>	<u>\$ 727</u>

(1) Includes certain costs associated with a business membership agreement (see below) that permits access to certain office space for the three and nine months ended September 30, 2023 of \$155 and \$465, respectively, and month-to-month lease arrangements for the three and nine months ended September 30, 2023 of \$95 and \$266, respectively.

Maturities of the operating lease liability as of September 30, 2023 are summarized as follows:

<b>Years Ending December 31,</b>	
2023 (remaining three months of the year)	\$ 124
2024	373
Minimum lease payments	497
Less imputed interest	(26)
Present value of operating lease liability	<u>\$ 471</u>
Current portion of operating lease liability	<u>\$ 471</u>
Long-term portion of operating lease liability	-
Total operating lease liability	<u>\$ 471</u>

*Sublease Agreement* – In November 2021, the Company entered into an agreement to sublease its leased office space for the duration of its operating lease through September 2024. As of September 30, 2023, the Company is entitled to receive sublease income of \$288.

**Business Membership** – Effective October 1, 2021, the Company entered into a business membership agreement with York Factory LLC, doing business as SaksWorks, that permits access to certain office space with furnishings (the “membership”), referred to as SaksWorks Memberships. This membership provides a certain number of accounts that equate to the use of the space granted. Effective June 1, 2022, the SaksWorks membership agreement was amended and assigned to Convene SW MSA Holdings, LLC (“Convene”). The term of the agreement with Convene is for twenty-seven months from the initial effective date of October 1, 2021 with SaksWorks. The annual membership fee with Convene is \$620 (\$500 for dedicated area and \$120 for minimum membership accounts) payable in equal monthly installments. The agreement also provides for: (1) additional accounts at predetermined pricing; and (2) renewal of the agreement at the end of the term for a twelve-month period at the then-current market price and pricing structure on such renewal date. As of September 30, 2023, the Company had \$259 of remaining payments under the agreement with Convene.

## 6. Goodwill

The changes in carrying value of goodwill are as follows:

	As of	
	September 30, 2023 (unaudited)	December 31, 2022
Carrying value at beginning of year	\$ 39,344	\$ 19,619
Goodwill acquired in acquisition of Parade	-	2,587
Goodwill acquired in acquisition of Men’s Journal	1,246	17,138
Goodwill acquired in acquisition of Fexy Studios	1,985	-
Carrying value at end of period	<u>\$ 42,575</u>	<u>\$ 39,344</u>

In connection with the acquisition of Men’s Journal, the Company received a final valuation report during the quarterly period ended September 30, 2023 from a third-party valuation firm after the preliminary purchase price was determined. After considering the results of the final valuation report, the Company estimated that the purchase consideration increased by \$1,246 as a result of an increase in the fair value of the assumed lease obligation with an offset recorded to goodwill.

## 7. Line of Credit

**SLR Line of Credit** – On December 15, 2022, the Company entered into an amendment to its financing and security agreement for its line of credit with SLR Digital Finance LLC (formerly FPP Finance LLC) (“SLR” or the “amended line of credit”), as further amended on August 31, 2023 in connection with the Business Combination (see Note 20) (the “SLR Amendment”) pursuant to which the SLR Amendment provided for an extension of the maturity date, additional event of default provisions in connection with the Business Combination, payment of certain fees in connection with the Business Combination, additional borrowings under the 2023 Notes pursuant to the First Amendment (see Note 11 and Note 18), and issuance of Series L preferred stock in connection with the Business Combination, all of which are more fully described herein and collectively the amended line of credit and SLR Amendment are referred to as the “line of credit”. The line of credit provides for (i) \$40,000 maximum amount of advances available (subject to certain limits and eighty-five (85%) of eligible accounts receivable), (ii) an interest rate at the prime rate plus 4.0% per annum of the amount advanced (subject to minimum utilization of at least 10% of the maximum amount of advances available) (as of September 30, 2023 the stated interest rate was 12.5%), (iii) payment of a fee equal to 2.25% of the maximum line amount with respect to any termination of the agreement prior to December 31, 2025 at the option of the Company at any time with 60 day notice, (iv) a payment of a performance fee in the amount equal to 2.25% of the maximum line amount, under certain circumstances pursuant to the Business Combination in connection with a deal deadline or in the event of a deal failure, as defined in the SLR Amendment, further the performance fee will survive the termination of the agreement, (v) a payment of a success fee if the Business Combination is consummated, of 0.3% or 0.6% of the maximum line amount if the Business Combination closes on or before December 31, 2023 or after December 31, 2023, respectively, or \$0 if the transaction closes after the deal deadline, and (vi) a maturity date of December 31, 2025. The SLR Amendment also provided that an event of default will occur thereunder if the Business Combination is not consummated by March 31, 2024 (or June 30, 2024 if the lenders under the Note Purchase Agreement (see Note 18) agree to extend the deadline for consummation of the Business Combination to March 31, 2024 or thereafter). The SLR Amendment also permitted the Company to enter into the 2023 Notes in an aggregate of \$8,000 and permits the issuance of the Series L preferred stock for \$25,000 in connection with the Business Combination. The line of credit is for working capital purposes and is secured by a first lien on all the Company’s cash and accounts receivable and a second lien on all other assets.

In connection with the SLR Amendment and amended line of credit, the Company incurred debt costs of \$200 of \$441, respectively, with the SLR Amendment debt cost plus the unamortized debt cost at the time of the SLR Amendment being amortized over the life of the extended maturity date of line of credit. The unamortized balance, as of September 30, 2023, reflected in prepayment and other current assets of \$216 and other long-term assets of \$254. As of December 31, 2022, the unamortized balance was reflected in prepayments and other current assets of \$216 and other long-term assets of \$216. As of September 30, 2023, the effective interest rate on the line of credit was 13.7%. As of September 30, 2023 and December 31, 2022, the balance outstanding under the line of credit was \$17,303 and \$14,092, respectively, as reflected on the condensed consolidated balance sheets.

Information for the three and nine months ended September 30, 2023 and 2022 with respect to interest expense related to the line of credit is provided under the heading *Interest Expense* in Note 12.

## 8. Restricted Stock Liabilities

On December 15, 2020, the Company entered into an amendment for certain restricted stock awards and units that were previously issued to certain employees in connection with a previous merger with HubPages. Pursuant to the amendment, the Company agreed to purchase the vested restricted stock awards, at a price of \$88.00 per share in 24 equal monthly installments on the second business day of each calendar month beginning on January 4, 2021, subject to certain conditions.

The Company recorded the repurchase of 26,214 shares of the Company's restricted common stock during the nine months ended September 30, 2022 on the condensed consolidated statements of stockholders' deficiency. Effective April 4, 2022, there are no longer any shares of the Company's common stock subject to repurchase. During the nine months ended September 30, 2022, the Company paid \$2,307 in cash for the repurchase (\$2,152 in principal and \$155 in interest).

Further details are provided under the heading *Repurchases of Restricted Stock* in Note 18.

## 9. Liquidated Damages Payable

Liquidated damages were recorded as a result of the following: (i) certain registration rights agreements provide for damages if the Company does not register certain shares of the Company's common stock within the requisite time frame (the "Registration Rights Damages"); and (ii) certain securities purchase agreements provide for damages if the Company does not maintain its periodic filings with the SEC within the requisite time frame (the "Public Information Failure Damages").

Obligations with respect to the liquidated damages payable are summarized as follows:

	As of September 30, 2023 (unaudited)			
	Registration Rights Damages	Public Information Failure Damages	Accrued Interest	Balance
MDB common stock to be issued (1)	\$ 15	\$ -	\$ -	\$ 15
Series H convertible preferred stock	618	626	681	1,925
Convertible debentures	-	704	343	1,047
Series J convertible preferred stock	932	932	692	2,556
Series K convertible preferred stock	263	226	261	750
Total	<u>\$ 1,828</u>	<u>\$ 2,488</u>	<u>\$ 1,977</u>	<u>\$ 6,293</u>

	As of December 31, 2022			
	Registration Rights Damages	Public Information Failure Damages	Accrued Interest	Balance
MDB common stock to be issued (1)	\$ 15	\$ -	\$ -	\$ 15
Series H convertible preferred stock	618	626	570	1,814
Convertible debentures	-	704	280	984
Series J convertible preferred stock	932	932	525	2,389
Series K convertible preferred stock	437	478	220	1,135
Total	<u>\$ 2,002</u>	<u>\$ 2,740</u>	<u>\$ 1,595</u>	<u>\$ 6,337</u>

(1) Consists of shares of common stock issuable to MDB Capital Group, LLC ("MDB").

As of September 30, 2023 and December 31, 2022, the short-term liquidated damages payable were \$6,293 and \$5,843, respectively, and the long-term liquidated damages payable were, \$0 and \$494, respectively. The long-term portion was converted into shares of the Company's common stock, as further described below. The Company will continue to accrue interest on the liquidated damages balance at 1.0% per month based on the balance outstanding as of September 30, 2023, or \$6,293, until paid. There is no scheduled date when the unpaid liquidated damages become due. The Series K convertible preferred stock remains subject to Registration Rights Damages and Public Information Failure Damages, which will accrue in certain circumstances, limited to 6% of the aggregate amount invested.

On February 8, 2023, the Company entered into a stock purchase agreement with an investor, where the Company was liable for liquidated damages, pursuant to which the Company agreed to the issue 47,252 shares of its common stock at a price equal to \$10.56 per share (determined based on the volume-weighted average price of the Company's common stock at the close of trading on the sixty (60) previous trading days), to the investor in lieu of an aggregate of \$499 owed in liquidated damages as of the conversion date. On February 10, 2023 and April 10, 2023, the Company issued 35,486 and 11,766 shares of its common stock, respectively, in satisfaction of the liquidated damages. The Company prepared and filed a registration statement covering the resale of these shares of the Company's common stock issued in lieu of payment of these liquidated damages in cash. During the nine months ended September 30, 2023, the Company recorded \$369 (\$45 on April 10, 2023 and \$324 on February 10, 2023) in connection with the issuance of shares of the Company's common stock and a gain of \$130 (\$84 on April 10, 2023 and \$46 on February 10, 2023) on the settlement of the liquidated damages, totaling \$499, which was recorded in additional paid-in capital on the condensed consolidated statement of stockholders' deficiency.

## 10. Fair Value

The Company estimates the fair value of financial instruments using available market information and valuation methodologies the Company believes to be appropriate for these purposes. Considerable judgment and a high degree of subjectivity are involved in developing these estimates and, accordingly, they are not necessarily indicative of amounts the Company would realize upon disposition.

The fair value hierarchy consists of three broad levels of inputs that may be used to measure fair value, which are described below:

*Level 1.* Quoted prices (unadjusted) in active markets for identical assets or liabilities;

*Level 2.* Inputs other than quoted prices included within Level 1 that are either directly or indirectly observable; and

*Level 3.* Assets or liabilities for which fair value is based on valuation models with significant unobservable pricing inputs and which result in the use of management estimates.

The Company accounted for certain common stock issued in connection with the Fexy Studios acquisition that is subject to a put option (which provides for a cash payment to the sellers on the first anniversary date of the closing (or January 11, 2024) in the event the common stock trading price on such date is less than the common stock trading price on the day immediately preceding the acquisition date, or \$8.10 per share), as a derivative liability, which requires the Company to carry such amounts on its condensed consolidated balance sheets as a liability at fair value, as adjusted at each reporting period-end.

Liabilities measured at fair value on a recurring basis consisted of the following as of September 30, 2023:

	<b>Fair Value</b>	<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
Contingent consideration	\$ 1,030	\$ -	\$ 1,030	\$ -

*Contingent Consideration* – The fair value of the contingent consideration is primarily dependent on the common stock trading price on the first anniversary of the closing of Fexy Studios, or January 11, 2024. The estimated fair value was calculated using the Black-Scholes option pricing model using the following inputs: (i) \$8.10 exercise price equal to the closing price of the Company's common stock at the acquisition date; (ii) \$4.28 common stock price equal to the trading price of the Company's common stock as of the reporting date; (iii) 0.25 years for the expected term; (iv) 5.34% annualized risk free rate; (v) 76.00% selected volatility and (vi) 0.00% dividend yield. For the three and nine months ended September 30, 2023, the change in valuation of the contingent consideration of \$60 and \$469 in expense, respectively, was recognized in other expense on the condensed consolidated statement of operations.

## 11. Bridge Notes

### 2023 Notes

In connection with the Note Purchase Agreement and First Amendment (both as further described under the heading *Principal Stockholder* in Note 18), entered into in contemplation of the Business Combination (see Note 20), on August 31, 2023, the Company issued \$5,000 aggregate principal amount of senior secured notes (the “2023 Notes”). The First Amendment also permits certain incremental borrowings in the amount up to \$3,000 at the sole discretion of the purchaser (the “Incremental 2023 Notes”), subject to a minimum amount of \$1,000 and other conditions. On September 29, 2023, the Company issued \$1,000 aggregate principal amount of senior secured notes pursuant to the incremental borrowings. In connection with the issuance of the 2023 Notes, the Company received net proceeds of \$5,703 from the issuance of the notes and incurred debt costs of \$297 that is being amortized over the expected life of the debt.

Pursuant to the Note Purchase Agreement and First Amendment, the 2023 Notes provide for:

- an interest rate fixed at 10.0% per annum;
- a maturity date of December 31, 2023, subject to consummation of the Business Combination on or prior to December 31, 2023, which may result in an event of default if not consummated, and a prepayment requirement to apply a portion of the net proceeds from the Business Combination to repay \$6,000 (and any additional amounts borrowed pursuant to the incremental borrowing arrangement described above) under the notes;
- a provision for the failure to repay the \$6,000 prepayment requirement in full with the proceeds of the Business Combination or failure to consummate the Business Combination by December 31, 2023 will result in an event of default under the notes; and
- an election to prepay the notes, at any time, at 100% of the principal amount due with no premium or penalty.

As of September 30, 2023, the effective interest rate on the 2023 Notes was 24.8%. As of September 30, 2023, the balance outstanding under the 2023 Notes was \$5,767 (\$6,000 principal balance less unamortized debt costs of \$233), with the principal balance due upon the earlier of December 31, 2023 or the closing of the Business Combination.

### 2022 Bridge Notes

On December 15, 2022, the Company issued \$36,000 aggregate principal amount of senior secured notes (the “2022 Bridge Notes”) pursuant to the Note Purchase Agreement. In connection with the issuance of the notes, the Company received net proceeds of \$34,728 from the issuance of the 2022 Bridge Notes and incurred debt costs of \$1,272 that were being amortized over the expected life of the debt. As of December 31, 2022, the balance outstanding under the 2022 Bridge Notes was \$34,805 (\$36,000 principal balance less unamortized debt costs of \$1,195), which was due on December 31, 2023. Pursuant to the First Amendment and in connection with the Business Combination, the Company incurred debt issuance costs of \$100 that are being amortized over the life of the notes and a portion of the note maturity was extended (further details are provided under the heading *2022 Bridge Notes* in Note 12).

Information for the three and nine months ended September 30, 2023 with respect to interest expense related to the 2022 Bridge Notes is provided under the heading *Interest Expense* in Note 12.

## 12. Term Debt

### Senior Secured Notes

Pursuant to the Note Purchase Agreement and the First Amendment, as of September 30, 2023 and December 31, 2022, the Company has certain notes outstanding referred to as the senior secured notes (the “Senior Secured Notes”).

Pursuant to the Note Purchase Agreement and First Amendment (see Note 18), the Senior Secured Notes provide for:

- a provision for the Company to enter into Delayed Draw Term Notes (as described below), in an aggregate principal amount of \$9,928 as of December 31, 2021 (the Company repaid \$5,928 on December 31, 2022);
- a provision where the Company added \$13,852 to the principal balance of the notes for interest payable on the notes on last day of a fiscal quarter from September 30, 2020 to December 31, 2021 as payable in-kind;
- a provision where the paid in-kind interest can be paid in shares of the Company's common stock based upon the conversion rate specified in the Certificate of Designation for the Series K convertible preferred stock, subject to certain adjustments;
- an interest rate of 10.0% per annum, subject to adjustment in the event of default, with a provision that within one (1) business day after receipt of cash proceeds from any issuance of equity interests, unless waived, the Company will prepay certain obligations in an amount equal to such cash proceeds, net of underwriting discounts and commissions;
- interest on the notes payable after February 15, 2022, at the agent's sole discretion, either (a) in cash quarterly in arrears on the last day of each fiscal quarter or (b) by continuing to add such interest due on such payment dates to the principal amount of the notes;
- a maturity date of December 31, 2026 (as amended from December 31, 2023 pursuant to the First Amendment), subject to consummation of the Business Combination on or prior to December 31, 2023, which may result in an event of default if not consummated, and subject to certain acceleration conditions; and
- the Company to enter into the 2022 Bridge Notes for \$36,000 and to increase the line of credit with SLR in an aggregate principal amount not to exceed \$40,000.

#### ***Delayed Draw Term Notes***

Pursuant to the Note Purchase Agreement, as of September 30, 2023 and December 31, 2022, the Company has outstanding obligations of \$4,000 for delayed draw term notes (the "Delayed Draw Term Notes") that was further amended pursuant to the First Amendment, which include terms prior to and including the second amended and restated note purchase agreement.

Pursuant to the Note Purchase Agreement and First Amendment (see Note 18), the Delayed Draw Term Notes provide for:

- an interest rate of 10.0% per annum, subject to adjustment in the event of default;
- interest on the notes payable after February 15, 2022, at the agent's sole discretion, either (a) in cash quarterly in arrears on the last day of each fiscal quarter or (b) by continuing to add such interest due on such payment dates to the principal amount of the notes; and
- a maturity date on December 31, 2026 (as amended from December 31, 2023 pursuant to the First Amendment), subject to consummation of the Business Combination on or prior to December 31, 2023, which may result in an event of default if not consummated, and subject to certain acceleration terms.



## 2022 Bridge Notes

Pursuant to the First Amendment, the 2022 Bridge Notes outstanding as of December 31, 2022 were amended and reclassified from a current liability to a noncurrent liability.

Pursuant to the Note Purchase Agreement and First Amendment (see Note 18), the 2022 Bridge Notes provide for:

- an interest rate fixed at 10.0% per annum (as amended from interest that was payable in cash at a rate of 12% per annum quarterly in arrears on March 31, 2023, June 30, 2023, September 30, 2023, and December 31, 2023; provided that, on March 1, 2023, May 1, 2023, and July 1, 2023, the interest rate on the notes increased by 1.5% per annum pursuant to the First Amendment);
- a maturity date of December 31, 2026 (as amended from December 31, 2023 pursuant to the First Amendment), subject to consummation of the Business Combination on or prior to December 31, 2023, which may result in an event of default if not consummated, and subject to certain mandatory prepayment requirements, including, but not limited to, a requirement that the Company apply the net proceeds from certain debt incurrences or equity offerings to repay the notes;
- a prepayment requirement to apply a portion of the net proceeds from the Business Combination to repay \$20,000 of the principal balance under the notes upon the earlier of December 31, 2023 or the closing of the Business Combination;
- a provision for the failure to repay the \$20,000 prepayment requirement in full with the proceeds of the Business Combination or failure to consummate the Business Combination by December 31, 2023 will result in an event of default under the notes; and
- an election to prepay the notes, at any time, in whole or in part with no premium or penalty.

The following table summarizes the term debt:

	As of September 30, 2023 (unaudited)			As of December 31, 2022		
	Principal Balance	Unamortized Discount and Debt Issuance Costs	Carrying Value	Principal Balance	Unamortized Discount and Debt Issuance Costs	Carrying Value
Senior Secured Notes, effective interest rate of 11.4% as of September 30, 2023, as amended, matures December 31, 2026, subject to acceleration	\$ 62,691	\$ (228)	\$ 62,463	\$ 62,691	\$ (904)	\$ 61,787
Delayed Draw Term Notes, effective interest rate of 12.5% as of September 30, 2023, as amended, matures December 31, 2026, subject to acceleration	4,000	(26)	3,974	4,000	(103)	3,897
2022 Bridge Notes, effective interest rate of 10.2% as of September 30, 2023, as amended, matures December 31, 2026, subject to acceleration	36,000	(95)	35,905	-	-	-
Total	<u>\$ 102,691</u>	<u>\$ (349)</u>	<u>\$ 102,342</u>	<u>\$ 66,691</u>	<u>\$ (1,007)</u>	<u>\$ 65,684</u>

As of September 30, 2023, the current maturities and noncurrent maturities under the term debt were \$19,980 and \$82,362, respectively, totaling \$102,342, and as of December 31, 2022, the current maturities and noncurrent maturities were \$65,684 and \$0, respectively, totaling \$65,684.

The Company's principal maturities of the term debt of \$102,691 are due as follows: (i) \$20,000 due upon the earlier of December 31, 2023 or the closing of the Business Combination; and (ii) \$82,691 due on December 31, 2026, subject acceleration if the Business Combination is not consummated on or prior to December 31, 2023.

Information for the three and nine months ended September 30, 2023 and 2022 with respect to interest expense related to the term debt is provided below.

## Interest Expense

The following table represents interest expense:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Amortization of debt costs:				
Line of credit	\$ 54	\$ -	\$ 161	\$ -
2022 Bridge Notes	161	-	1,200	-
Senior Secured Notes	228	228	676	803
Delayed Draw Term Notes	26	52	77	412
2023 Notes	64	-	64	-
Total amortization of debt costs	<u>533</u>	<u>280</u>	<u>2,178</u>	<u>1,215</u>
Noncash and accrued interest:				
Parade	-	-	-	86
Other accrued interest	152	-	754	-
Total noncash and accrued interest	<u>152</u>	<u>-</u>	<u>754</u>	<u>86</u>
Cash paid interest:				
Line of credit	598	372	1,345	814
2022 Bridge Notes	1,317	-	3,763	-
Senior Secured Notes	1,602	1,602	4,754	4,754
Delayed Draw Term Notes	102	254	303	753
2023 Notes	44	-	44	-
Other	32	676	422	888
Total cash paid interest	<u>3,695</u>	<u>2,904</u>	<u>10,631</u>	<u>7,209</u>
Less interest income <sup>(1)</sup>	<u>(338)</u>	<u>-</u>	<u>(338)</u>	<u>-</u>
Total interest expense	<u>\$ 4,042</u>	<u>\$ 3,184</u>	<u>\$ 13,225</u>	<u>\$ 8,510</u>

<sup>(1)</sup>During the three and nine months ended September 30, 2023, the Company recorded interest income of \$338 related to the refunds received from the employee retention credits.

Noncash and accrued interest of \$204 as of December 31, 2022, related to the 2022 Bridge Notes, was paid in cash during the nine months ended September 30, 2023.

### 13. Preferred Stock

The Company has the authority to issue 1,000,000 shares of preferred stock, \$0.01 par value per share, consisting of authorized and/or outstanding shares as of September 30, 2023 as follows:

- 1,800 authorized shares designated as “Series G Convertible Preferred Stock”, of which 168 shares are outstanding.
- 23,000 authorized shares designated as “Series H Convertible Preferred Stock” (as further described below), of which none and 14,356 shares are outstanding as of September 30, 2023 and December 31, 2022, respectively.

*Series H Convertible Preferred Stock* – All the outstanding shares of Series H convertible preferred stock automatically converted into shares of the Company’s common stock on August 10, 2023, at the conversion price of \$7.26. Further details are provided under the heading *Common Stock* in Note 14.

## 14. Stockholders' Equity

### *Common Stock*

The Company has the authority to issue 1,000,000,000 shares of common stock, \$0.01 par value per share.

On March 31, 2023, the Company entered into common stock purchase agreements with certain purchasers, pursuant to which the Company issued and sold in a registered direct offering an aggregate of 2,963,918 shares of the Company's common stock, \$0.01 par value per share at a purchase price of \$3.88 per share. The gross proceeds received were \$11,500 and after deducting offering expenses of \$356, the Company received net proceeds of \$11,144, as reflected on the condensed consolidated statements of stockholder's deficiency. No underwriter or placement agent participated in the registered direct offering. The net proceeds were intended for working capital and other general corporate purposes. Further information is provided in Note 18.

During the three months ended September 30, 2023, the Company recorded the issuance of 14,904 (issued July 21, 2023 upon conversion of 108 shares of Series H convertible preferred stock) and 1,759,224 (issued August 10, 2023 upon conversion of 12,748 shares of Series H convertible preferred stock) shares of the Company's common stock totaling 1,774,128 as result of the conversion of shares of the Company's Series H convertible preferred stock (12,856 shares of Series H convertible preferred stock) with a corresponding amount of \$11,508 (totaling \$12,856, representing 12,856 shares of Series H convertible preferred stock at \$1,000 stated par value per share, less issuance cost of \$1,348) as reflected on the condensed consolidated statement of stockholders' deficiency. The August 10, 2023 issuance was in accordance with the automatic mandatory conversion on the fifth anniversary date of the initial first closing of the Company's Series H convertible preferred. During the nine months ended September 30, 2023, the Company recorded the issuance of 1,981,128 (includes issuance of 207,000 shares of common stock on April 17, 2023 upon conversion of 1,500 shares of the Company's Series H convertible preferred stock) shares of the Company's common stock with a corresponding amount of \$13,008 (includes \$1,500 representing 1,500 shares of Series H convertible preferred stock at \$1,000 stated par value) as reflected on the condensed consolidated statement of stockholders' deficiency.

On January 24, 2022, the Company entered into several stock purchase agreements with several investors, where the Company was liable for liquidated damages, pursuant to which the Company issued an aggregate of 505,655 shares of its common stock at a price equal to \$13.86 per share (determined based on the volume-weighted average price of the Company's common stock at the close of trading on the sixty (60) previous trading days), to the investors in lieu of an aggregate of \$7,008 owed in liquidated damages. The Company recorded \$6,685 in connection with the issuance of shares of the Company's common stock and recognized a gain of \$323 on the settlement of the liquidated damages, which was recorded as additional paid-in capital on the condensed consolidated statement of stockholders' deficiency.

On February 15, 2022 and March 11, 2022, the Company raised gross proceeds of \$34,498 pursuant to a firm commitment underwritten public offering of 4,181,603 shares of the Company's common stock (on February 15, 2022 the Company issued 3,636,364 shares and on March 11, 2022 the Company issued 545,239 shares pursuant to the underwriter's overallotment that was exercised on March 10, 2022), at a public offering price of \$8.25 per share. The Company received net proceeds of \$32,058, after deducting underwriting discounts and commissions and other offering costs payable by the Company of \$2,440 to B. Riley (see Note 18). In addition, the Company directly incurred offering costs of \$1,568 and recorded \$30,490 upon the issuance of its common stock, as reflected on the condensed consolidated statements of stockholders' deficiency.

Between March 22, 2022 and March 25, 2022, the Company recorded the issuance of 70,380 shares of the Company's common stock upon conversion of 510 shares of the Company's Series H convertible preferred stock, with a corresponding amount of \$511 as reflected on the condensed consolidated statements of stockholders' deficiency.

## 15. Compensation Plans

The Company provides stock-based and equity-based compensation in the form of (a) restricted stock awards and restricted stock units to certain employees (the "Restricted Stock"), (b) stock option awards, unrestricted stock awards and stock appreciation rights to employees, directors and consultants under various plans (the "Common Stock Options"), and (c) common stock warrants, referred to as the ABG Warrants and Publisher Partner Warrants (collectively the "Warrants") as referenced in the below table.

Stock-based compensation and equity-based expense charged to operations or capitalized are summarized as follows:

	<b>Three Months Ended September 30, 2023</b>			
	<b>Restricted Stock</b>	<b>Common Stock</b>		<b>Totals</b>
		<b>Options</b>	<b>Warrants</b>	
Cost of revenue	\$ 197	\$ 1,007	\$ 1	\$ 1,205
Selling and marketing	65	342	-	407
General and administrative	1,611	882	257	2,750
Total costs charged to operations	1,873	2,231	258	4,362
Capitalized platform development	-	237	-	237
Total stock-based compensation	<u>\$ 1,873</u>	<u>\$ 2,468</u>	<u>\$ 258</u>	<u>\$ 4,599</u>

	<b>Three Months Ended September 30, 2022</b>			
	<b>Restricted Stock</b>	<b>Common Stock</b>		<b>Totals</b>
		<b>Options</b>	<b>Warrants</b>	
Cost of revenue	\$ 901	\$ 1,871	\$ -	\$ 2,772
Selling and marketing	61	749	-	810
General and administrative	2,439	2,039	251	4,729
Total costs charged to operations	3,401	4,659	251	8,311
Capitalized platform development	-	404	-	404
Total stock-based compensation	<u>\$ 3,401</u>	<u>\$ 5,063</u>	<u>\$ 251</u>	<u>\$ 8,715</u>

	<b>Nine Months Ended September 30, 2023</b>			
	<b>Restricted Stock</b>	<b>Common Stock</b>		<b>Totals</b>
		<b>Options</b>	<b>Warrants</b>	
Cost of revenue	\$ 1,655	\$ 3,388	\$ 7	\$ 5,050
Selling and marketing	193	1,082	-	1,275
General and administrative	6,298	3,602	753	10,653
Total costs charged to operations	8,146	8,072	760	16,978
Capitalized platform development	-	785	-	785
Total stock-based compensation	<u>\$ 8,146</u>	<u>\$ 8,857</u>	<u>\$ 760</u>	<u>\$ 17,763</u>

	<b>Nine Months Ended September 30, 2022</b>			
	<b>Restricted Stock</b>	<b>Common Stock</b>		<b>Totals</b>
		<b>Options</b>	<b>Warrants</b>	
Cost of revenue	\$ 2,800	\$ 4,802	\$ -	\$ 7,602
Selling and marketing	207	1,942	-	2,149
General and administrative	7,083	6,697	1,246	15,026
Total costs charged to operations	10,090	13,441	1,246	24,777
Capitalized platform development	-	1,529	-	1,529
Total stock-based compensation	<u>\$ 10,090</u>	<u>\$ 14,970</u>	<u>\$ 1,246</u>	<u>\$ 26,306</u>

Unrecognized compensation expense and expected weighted-average period to be recognized related to the stock-based compensation awards and equity-based awards as of September 30, 2023 were as follows:

	<b>As of September 30, 2023</b>			
	<b>Restricted Stock</b>	<b>Common Stock</b>		<b>Totals</b>
		<b>Options</b>	<b>Warrants</b>	
Unrecognized compensation expense	\$ 5,123	\$ 7,592	\$ 257	\$ 12,972
Weighted average period expected to be recognized (in years)	1.19	1.19	0.46	2.84

*Modification of Awards* – On February 28, 2023, the Company modified certain equity awards as a result of the resignation of a senior executive employee where 38,026 restricted stock units with time-based vesting that were unvested were vested and 21,117 options for shares of the Company’s common stock with time-based vesting that were unvested were vested, each subject to compliance with applicable securities laws and certain other provisions. In connection with the modification of these equity awards, the Company agreed to purchase a total of 45,632 options of shares of the Company’s common stock (including previously vested options of shares of the Company’s common stock of 24,515) as of the resignation date of the employee at a price of \$10.29 per share, reduced by the exercise price and required tax withholdings, subject to certain conditions. The modification of the equity awards resulted in the unamortized costs being recognized at the modification date. The cash price of \$10.29 per option less the strike price of \$8.82 per option resulted in incremental cost of \$68 being recognized at the modification date. The modification resulted in liability classification of the equity awards, with \$68 paid during the nine months ended September 30, 2023.

On June 30, 2023, the Company modified certain equity awards upon the resignation of a senior executive employee pursuant to which unvested restricted stock units for 42,635 shares of the Company’s common stock vested, and unvested options for 29,701 shares of the Company’s common stock vested with the exercise period extended for the 10-year contractual term of the options from the grant date of the award. In connection with the termination, the unamortized costs of the awards of \$773 was recognized at the termination date and \$284 of incremental cost was recognized as a result of the option award modification upon termination of the senior executive.

*Publisher Partner Warrants* – On March 13, 2023, the Company issued 9,800 warrants for shares of the Company’s common stock (3,000 warrants were issued with an effective date of November 3, 2022 and an exercise price of \$10.56 and 6,800 warrants were issued with an effective date of March 13, 2023 and an exercise price of \$5.30) under the warrant incentive plan approved on November 2, 2022, referred to as the New Publisher Partner Warrants (or the “Publisher Partner Warrants”), with the following terms: (i) one-third of the warrants will become exercisable and vest on the one-year anniversary of the issuance; (ii) the remaining warrants will become exercisable and vest in a series of twenty-four (24) successive equal monthly installments following the first anniversary of the issuance; and (iii) a five-year term. The issuance of the New Publisher Partner Warrants is administered by management and approved by the Board.

*Amendment to Stock Compensation Plan* – On April 16, 2023 the Board approved an increase to the number of shares of the Company’s common stock reserved for issuance under the 2022 Stock and Incentive Compensation Plan from 1,800,000 shares to 3,600,000 shares, which was subsequently approved by the Company’s stockholders on June 1, 2023.

## 16. Revenue Recognition

### Disaggregation of Revenue

The following table provides information about disaggregated revenue by category, geographical market and timing of revenue recognition:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue by category:				
<b>Digital revenue</b>				
Digital advertising	\$ 36,659	\$ 28,512	\$ 89,458	\$ 74,849
Digital subscriptions	3,181	4,629	10,430	16,580
Licensing and syndication revenue	4,468	4,391	13,523	11,820
Other digital revenue	1,516	458	3,486	1,374
Total digital revenue	<u>45,824</u>	<u>37,990</u>	<u>116,897</u>	<u>104,623</u>
<b>Print revenue</b>				
Print advertising	2,259	3,443	7,677	7,786
Print subscriptions	15,335	15,844	49,030	46,863
Total print revenue	<u>17,594</u>	<u>19,287</u>	<u>56,707</u>	<u>54,649</u>
Total	<u>\$ 63,418</u>	<u>\$ 57,277</u>	<u>\$ 173,604</u>	<u>\$ 159,272</u>
Revenue by geographical market:				
United States	\$ 61,126	\$ 55,374	\$ 169,326	\$ 156,447
Other	2,292	1,903	4,278	2,825
Total	<u>\$ 63,418</u>	<u>\$ 57,277</u>	<u>\$ 173,604</u>	<u>\$ 159,272</u>
Revenue by timing of recognition:				
At point in time	\$ 60,237	\$ 52,648	\$ 163,174	\$ 142,692
Over time	3,181	4,629	10,430	16,580
Total	<u>\$ 63,418</u>	<u>\$ 57,277</u>	<u>\$ 173,604</u>	<u>\$ 159,272</u>

For the three and nine months ended September 30, 2022, disaggregated revenue represents revenue from continuing operations.

### Contract Balances

The timing of the Company's performance under its various contracts often differs from the timing of the customer's payment, which results in the recognition of a contract asset or a contract liability. A contract asset is recognized when a good or service is transferred to a customer and the Company does not have the contractual right to bill for the related performance obligations. A contract liability is recognized when consideration is received from the customer prior to the transfer of goods or services.

The following table provides information about contract balances:

	As of	
	September 30, 2023 (unaudited)	December 31, 2022
Unearned revenue (short-term contract liabilities):		
Digital revenue	\$ 18,452	\$ 18,571
Print revenue	45,305	40,132
	<u>\$ 63,757</u>	<u>\$ 58,703</u>
Unearned revenue (long-term contract liabilities):		
Digital revenue	\$ 738	\$ 1,118
Print revenue	13,794	18,583
	<u>\$ 14,532</u>	<u>\$ 19,701</u>

*Unearned Revenue* – Unearned revenue, also referred to as contract liabilities, include payments received in advance of performance under certain contracts and are recognized as revenue over time. The Company records contract liabilities as unearned revenue on the condensed consolidated balance sheets.

## 17. Income Taxes

The provision for income taxes in interim periods is determined using an estimate of the Company's annual effective tax rate, adjusted for discrete items, if any, that arise during the period. Each quarter, the Company updates its estimate of its annual effective tax rate, and if the estimated annual effective tax rate changes, the Company makes a cumulative adjustment in such period. The quarterly provision for income taxes, and estimate of the Company's annual effective tax rate, are subject to variation due to several factors, including variability in pre-tax income (or loss), the mix of jurisdictions to which such income relates, changes in how the Company conducts business, and tax law developments.

The income tax provision (benefit) effective tax rate for the nine months ended September 30, 2023 and 2022 was 0.33% and (2.06%), respectively. The deferred income taxes for the nine months ended September 30, 2023 and 2022 was primarily due to deferred tax liabilities on indefinite lived intangible assets.

The realization of deferred tax assets is dependent upon a variety of factors, including the generation of future taxable income, the reversal of deferred tax liabilities, and tax planning strategies. Based upon the Company's historical operating losses and the uncertainty of future taxable income, the Company has provided a valuation allowance against most of the deferred tax assets as of September 30, 2023 and 2022.

As of September 30, 2023 and 2022, the Company has no uncertain tax positions or interest and penalties accrued.

## **18. Related Party Transactions**

### ***Principal Stockholder***

The Company has an outstanding obligation with BRF Finance Co., LLC, ("BRF") an affiliated entity of B. Riley Financial, Inc. ("B. Riley"), in its capacity as agent for the purchasers and as purchaser, pursuant to the third amended and restated note purchase agreement entered into on December 15, 2022 (the "Note Purchase Agreement"), as amended by the first amendment to the Note Purchase Agreement on August 14, 2023 (the "First Amendment") with an effective date of August 31, 2023. The Note Purchase Agreement contains provisions related to the 2022 Bridge Notes, 2023 Notes, Senior Secured Notes, and Delayed Draw Term Notes, all as further described above and referred to as the "Notes". Under the terms of the Note Purchase Agreement and First Amendment, in the event there is a mandatory prepayment requirement, the principal payment of the Notes will be applied to: (1) the 2023 Notes until paid in full; (2) then to the 2022 Bridge Notes until paid in full; (3) then to the Delayed Draw Terms Notes until paid in full; and (4) then to the Senior Secured Notes. All borrowings under the Notes are collateralized by substantially all assets of the Company secured by liens and guaranteed by the Company's subsidiaries. The Notes provide for a default interest rate equal to the rate of interest in effect at the time of default plus 4.0%, along with other provision for acceleration of the Notes under certain conditions. The Notes provide for certain affirmative covenants, including certain financial reporting obligations.

For the three and nine months ended September 30, 2023, the Company paid in cash interest of \$3,065 and \$9,068 (including cash interest paid of \$204 from December 31, 2022), respectively, on the 2022 Bridge Notes, Senior Secured Notes, Delayed Draw Term Notes and 2023 Notes due to BRF, which is an affiliate of B. Riley, a principal stockholder. For the three and nine months ended September 30, 2022, the Company paid in cash interest of \$1,856 and \$5,507, respectively, on the Senior Secured Notes and Delayed Draw Term Notes due to BRF, which is an affiliate of B. Riley, a principal stockholder.

On March 31, 2023, in connection with the registered direct offering, the Company entered into common stock purchase agreements for 1,009,021 shares of the Company's common stocks for a total of \$3,915 in gross proceeds with B. Riley, a principal stockholder, at a price per share of \$3.88 per share.

For the nine months ended September 30, 2022, the Company had certain transactions with B. Riley, a principal stockholder, where it paid fees associated with the common stock public offering totaling \$2,440.

On August 10, 2023, the Company's Series H convertible preferred stock automatically converted into shares of the Company's common stock at the conversion price of \$7.26, of which 134,550 shares were issued to B Riley, a principal stockholder.

On August 31, 2023, in connection with the 2023 Notes, BRF, which is an affiliate of B Riley, a principal stockholder, issued \$6,000 in aggregate principal amount under the note, where the Company incurred fees of \$297.

### ***Registered Direct Offering***

On March 31, 2023, in connection with the registered direct offering, the Company entered into common stock purchase agreements for 317,518 shares of the Company's common stocks for a total of \$1,232 in gross proceeds with certain directors and affiliates, at a price of \$3.88 per share, as follows: (i) 64,000 shares for \$248 to H. Hunt Allred, a director, through certain trusts (32,000 shares are directly beneficially owned by the Allred 2002 Trust - HHA and 32,000 shares are directly beneficially owned by the by Allred 2002 Trust - NLA); (ii) 195,529 shares for \$759 to 180 Degree Capital Corp, a beneficial holder of more than 5% of the Company's common stock; (iii) 25,773 shares for \$100 to Daniel Shribman, a director; (iv) 25,773 shares for \$100 to Ross Levinsohn, a director and the Company's Chief Executive Officer; and (v) 6,443 shares for \$25 to Paul Edmonson, an executive officer.

### ***Repurchases of Restricted Stock***

On December 15, 2020, the Company entered into an amendment for certain restricted stock awards and units that were previously issued to certain employees in connection with the HubPages merger, pursuant to which the Company agreed to repurchase from certain key personnel of HubPages, Inc., including Paul Edmondson, one of the Company's officers, and his spouse, an aggregate of 764 shares of the Company's common stock at a price of \$88.00 per share each month for a period of 24 months, for aggregate proceeds to Mr. Edmondson and his spouse of \$67 per month. For the nine months ended September 30, 2022, the Company paid Mr. Edmonson and his spouse \$269 for 3,056 shares of the Company's common stock.

## **19. Commitments and Contingencies**

***Claims and Litigation*** – From time to time, the Company may be subject to claims and litigation arising in the ordinary course of business. The Company is not currently a party to any pending or threatened legal proceedings that it believes would reasonably be expected to have a material adverse effect on the Company's business, financial condition, results of operations or cash flows.

In connection with the Athlon working capital adjustment (as previously disclosed in Note 3), the Company prepared the working capital adjustment. The sellers are challenging the Company's adjustments and both parties have agreed to a standstill and tolling agreement while the adjustments are being reviewed and discussed. The amount due from this challenge, if any, is not estimatable as of the issuance date of these condensed consolidated financial statements.

***Royalty Fees*** – The Company guaranteed minimum annual royalties of \$15,000 to ABG-SI, LLC. The initial term of the minimum guarantee will expire December 31, 2029.

## **20. Subsequent Events**

The Company performed an evaluation of subsequent events through the date of filing of these condensed consolidated financial statements with the SEC. Other than the below described subsequent events, there were no material subsequent events which affected, or could affect, the amounts or disclosures on the condensed consolidated financial statements.

### ***Business Combination***

On November 5, 2023, the Company signed a definitive business combination agreement (the "BCA") to combine its operations with those of Bridge Media Networks, LLC ("Bridge Media Networks" or "Bridge Media") a wholly owned subsidiary of Simplify Inventions, LLC ("Simplify"). The transactions contemplated by the BCA are subject to customary conditions, including the approval by the Company's shareholders and certain regulatory approvals. Key components of the BCA and related transactions include: (i) a restructure of the Company's balance sheet and pay down of approximately \$20,000 of the 2022 Bridge Notes and \$6,000 of the 2023 Notes and the extension of the maturity date of its remaining Notes for a period of three years at an interest rate of 10.0%; (ii) a cash investment of approximately \$50,000, comprised of a \$25,000 purchase of common stock and a \$25,000 investment in newly created Series L preferred stock with a 10.0% non-cash paid-in-kind (PIK) dividend; (iii) an advertising commitment of approximately \$60,000 to be spent \$12,000 annually for five (5) years from a group of consumer brands also owned by Simplify; and (iv) a business combination resulting in the Company owning and operating Bridge Media Networks' two 24-hour networks, NEWSnet and Sports News Highlights, as well as the automotive and travel properties *Driven and TravelHost* (these components collectively defined as the "Business Combination"). The Business Combination will result in Simplify and related entities holding approximately 65.0% upon consummation of the transaction of the fully diluted common stock of a newly formed company ("New Arena") to effectuate the Business Combination.

In addition, at the closing of the Business Combination, New Arena will enter into a stock purchase agreement with Simplify or one of its affiliates (the "Simplify SPA Party"), pursuant to which the Simplify SPA Party will agree to purchase such number of shares of New Arena common stock having an aggregate value of \$20,000 in one or more private placements at New Arena's option for one-year from the closing date of the Business Combination. Pursuant to the stock purchase agreement, at closing of the Business Combination, 60,000 shares of New Arena's common stock will be issued as payment of a 1.5% commitment fee.

### ***Compensation Plans***

From October 1, 2023 through the date these condensed consolidated financial statements were issued, the Company granted options for shares of the Company's common stock totaling 8,295, all of which remain outstanding.



## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations for the three and nine months ended September 30, 2023 and 2022 should be read together with our unaudited condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report and in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2022 included in the Annual Report on Form 10-K filed with the SEC on March 31, 2023. The following discussion contains "forward-looking statements" that reflect our future plans, estimates, beliefs and expected performance. Our actual results may differ materially from those currently anticipated and expressed in such forward-looking statements as a result of a number of factors. We caution that assumptions, expectations, projections, intentions or beliefs about future events may, and often do, vary from actual results and the differences can be material. Please see "Forward-Looking Statements."

### Overview

We are a tech-powered media company that focuses on building deep content verticals powered by a best-in-class digital media platform (the "Platform") empowering premium publishers who impact, inform, educate, and entertain. Our strategy is to focus on key verticals where audiences are passionate about a topic category (e.g., sports and finance), and where we can leverage the strength of our core brands to grow our audience and increase monetization both within our core brands as well as our media publisher partners (each, a "Publisher Partner"). Our focus is on leveraging our Platform and iconic brands in targeted verticals to maximize audience reach, improve engagement, and optimize monetization of digital publishing assets for the benefit of our users, our advertiser clients, and our greater than 40 owned and operated properties as well as properties we run on behalf of independent Publisher Partners. We operate the media businesses for Sports Illustrated, own and operate TheStreet, Inc. College Spun Media Incorporated, Parade Media, and Men's Journal and power more than 320 independent Publisher Partners, including the many sports team sites that comprise FanNation. Each Publisher Partner joins the Platform by invitation only and is drawn from premium media brands and independent publishing businesses with the objective of augmenting our position in key verticals and optimizing the performance of the Publisher Partner. Publisher Partners incur the costs in content creation on their respective channels and receive a share of the revenue associated with their content. Because of the state-of-the-art technology and large scale of the Platform and our expertise in search engine optimization, social media, ad monetization and subscription marketing, Publisher Partners continually benefit from our ongoing technological advances and bespoke audience development expertise. Additionally, we believe the lead brand within each vertical creates a halo benefit for all Publisher Partners in the vertical while each of them adds to the breadth and quality of content. While the Publisher Partners benefit from these critical performance improvements they also may save substantially in costs of technology, infrastructure, advertising sales, and member marketing and management.

Of the more than 320 Publisher Partners, a large majority of them publish content within one of our four verticals of sports, finance, lifestyle or men's lifestyle, and oversee an online community for their respective sites, leveraging our Platform, monetization operation, distribution channels and data and analytics offerings and benefiting from our ability to engage the collective audiences within a single network. Generally, Publisher Partners are independently owned, strategic partners who receive a share of revenue from the interaction with their content. Audiences expand and advertising revenue may improve due to the scale we have achieved by combining all Publisher Partners onto a single platform and a large and experienced sales organization. They may also benefit from our membership marketing and management systems, which we believe will enhance their revenue.

Our growth strategy is to continue to expand by adding new premium publishers with high quality brands and content either as independent Publisher Partners, by acquiring publishers as owned and operated entities or strategic expansion as described under *Recent Developments*.

### Recent Developments

On November 5, 2023, we signed a definitive business combination agreement (the "BCA") to combine its operations with those of Bridge Media Networks, LLC ("Bridge Media Networks" or "Bridge Media") a wholly owned subsidiary of Simplify Inventions, LLC ("Simplify"). The transactions contemplated by the BCA (the "Transaction(s)" or the "Transaction Agreement") are subject to customary conditions, including the approval by the Company's shareholders and certain regulatory approvals. Key components of the BCA and related transactions include: (i) a restructure of the Company's balance sheet and pay down of approximately \$20,000 of the 2022 Bridge Notes and \$6,000 of the 2023 Notes and the extension of the maturity date of its remaining Notes for a period of three years at an interest rate of 10.0%; (ii) a cash investment of approximately \$50,000, comprised of a \$25,000 purchase of common stock and a \$25,000 investment in newly created Series L preferred stock with a 10.0% non-cash paid-in-kind (PIK) dividend; (iii) an advertising commitment of approximately \$60,000 to be spent \$12,000 annually for five (5) years from a group of consumer brands also owned by Simplify; and (iv) a business combination resulting in the Company owning and operating Bridge Media Networks' two 24-hour networks, NEWSnet and Sports News Highlights, as well as the automotive and travel properties *Driven and TravelHost* (these components collectively defined as the "Business Combination"). The Business Combination will result in Simplify and related entities holding approximately 65.0% upon consummation of the transaction of the fully diluted common stock of a newly formed company ("New Arena") to effectuate the Business Combination.

In addition, at the closing of the Business Combination, New Arena will enter into a stock purchase agreement with Simplify or one of its affiliates (the "Simplify SPA Party"), pursuant to which the Simplify SPA Party will agree to purchase such number of shares of New Arena common stock having an aggregate value of \$20,000 in one or more private placements at New Arena's option for one-year from the closing date of the Business Combination (the "additional equity issuances"). Pursuant to the stock purchase agreement, at closing of the Business Combination, 60,000 shares of New Arena's common stock will be issued as payment of a 1.5% commitment fee.

For additional information related to the BCA, refer to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 7, 2023, which includes the full text of the BCA as Exhibit 2.1.

## Impact of Macroeconomic Conditions

Uncertainty in the global economy presents significant risks to our business. We are subject to continuing risks and uncertainties in connection with the current macroeconomic environment, including as a result of increases in inflation, rising interest rates and instability in the global banking system and geopolitical factors, including the ongoing conflicts in Ukraine and Israel and the responses thereto, and the remaining effects of the COVID-19 pandemic. While we are closely monitoring the impact of the current macroeconomic conditions on all aspects of our business, the ultimate extent of the impact on our business remains highly uncertain and will depend on future developments and factors that continue to evolve. Most of these developments and factors are outside of our control and could exist for an extended period of time. As a result, we are subject to continuing risks and uncertainties and continue to closely monitor the impact of the current conditions on our business. For additional information, see the sections titled “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 31, 2023 and in this Quarterly Report.

## Key Operating Metrics

We monitor and review the key operating metrics described below as we believe that these metrics are relevant for our industry and specifically to us and to understanding our business. Moreover, they form the basis for trends informing certain predictions related to our financial condition. Our key operating metrics focus primarily on our digital advertising revenue, which has experienced significant growth in recent periods, for the three and nine months ended September 30, 2023, an increase of 19% and 14%, respectively, as compared to the same period in fiscal 2022. Management monitors and reviews these metrics because such metrics are readily measurable in real time and can provide valuable insight into the performance of and trends related to our digital advertising revenue and our overall business. We consider only those key operating metrics described here to be material to our financial condition, results of operations and future prospects.

Our key operating metrics are identified below:

- Revenue per page view (“RPM”) – represents the advertising revenue earned per 1,000 pageviews. It is calculated as our advertising revenue during a period divided by our total page views during that period and multiplied by \$1,000; and
- Monthly average pageviews – represents the total number of pageviews in a given month or the average of each month’s pageviews in a fiscal quarter or year, which is calculated as the total number of page views recorded in a quarter or year divided by three months or 12 months, respectively.

For pricing indicators, we focus on RPM as it is the pricing metric most closely aligned with monthly average pageviews. RPM is an indicator of yield and pricing driven by both advertising density and demand from our advertisers.

Monthly average pageviews are measured across all properties hosted on the Arena Platform and provide us with insight into volume, engagement and effective page management and are therefore our primary measure of traffic. We utilize a third-party source, Google Analytics, to confirm this traffic data.

As described above, these key operating metrics are critical for management as they provide insights into our digital advertising revenue generation and overall business performance. This information also provides feedback on the content on our website and its ability to attract and engage users, which allows us to make strategic business decisions designed to drive more users to read or view more of our content and generate higher advertising revenue across all properties hosted on the Arena Platform.

For the three and nine months ended September 30, 2023 our RPM was \$22.98 and \$19.73, representing a 35% and 23% increase from RPM of \$17.00 and \$16.01 for the three and nine months ended September 30, 2022, respectively. For the three and nine months ended September 30, 2023 our monthly average pageviews were 424,892,705 and 446,094,684, representing a decline of 12% and 8% as compared to monthly average pageviews were 484,299,721 and 482,326,093 for the three and nine months ended September 30, 2022, respectively.

All dollar figures presented below are in thousands unless otherwise stated.

## **Liquidity and Capital Resources**

### ***Going Concern***

Our condensed consolidated financial statements have been prepared assuming that we will continue as a going concern, which contemplates the realization of assets and the liquidation of liabilities in the normal course of business. Our condensed consolidated financial statements do not include any adjustments that might be necessary if it is unable to continue as a going concern.

For the nine months ended September 30, 2023, we incurred a net loss of \$50,027. For the nine months ended September 30, 2023 and year ended December 31, 2022, we had cash on hand of \$7,290 and \$13,871 and a working capital deficit of \$68,332 and \$137,669, respectively. Our net loss and working capital deficit have been evaluated by management to determine if the significance of those conditions or events would limit our ability to meet our obligations when due. Furthermore, while we have executed an amendment to extend the maturity of our 2022 Bridge Notes of \$36,000, Senior Secured Notes of \$62,691, Delayed Draw Term Notes of \$4,000 and to extend additional borrowings on our 2023 Notes of \$6,000 (each as described in the condensed consolidated financial statements), totaling \$108,691, if the Business Combination is not completed by December 31, 2023 it would represent an event of default under the related debt agreements in which case we may not be able to meet our obligations when due.

As a result, management determined there is substantial doubt about our ability to continue as a going concern for a one-year period following the financial statement issuance date, unless we are able to close the Business Combination by December 31, 2023 or extend the date at which such a default would occur.

### ***Cash and Working Capital Facility***

As of September 30, 2023, our principal sources of liquidity consisted of cash of \$7,290. In addition, as of September 30, 2023, we had \$22,697 available for additional use, subject to eligible accounts receivable, under our working capital line of credit with SLR Digital Finance LLC (formerly FastPay) ("SLR"). As of September 30, 2023, the outstanding balance of the SLR working capital line of credit was \$17,303. We also had accounts receivable, net of our advances from SLR of \$20,674 as of September 30, 2023. Our cash balance as of the issuance date of our accompanying condensed consolidated financial statements is \$4,586.

### ***Off-Balance Sheet Arrangements***

As of September 30, 2023, pursuant to our SLR line of credit, as disclosed above, in the event that our line of credit is accelerated, we will be obligated to pay SLR either a termination fee or performance fee equal to \$900.

As of September 30, 2023, in connection with the Sports Illustrated media business, we guaranteed a minimum annual royalty of \$15,000 through December 31, 2029, for a total of \$78,750.

### **Material Contractual Obligations**

We have material contractual obligations that arise in the normal course of business primarily consisting of employment contracts, consulting agreements, leases, liquidated damages, debt and related interest payments. Purchase obligations consist of contracts primarily related to merchandise, equipment, and third-party services, the majority of which are due in the next 12 months. See Notes 5, 9, 11 and 12 in our accompanying condensed consolidated financial statements for amounts outstanding as of September 30, 2023, related to leases, liquidated damages, bridge notes and term debt. During 2022, we assumed the lease from Men's Journal for office space in Carlsbad, California, that expires in March 2025, and we remain responsible for \$2,142 over the lease term that may be offset after considering certain space that we sublet where we are entitled to receive \$435. The lease provides for fixed payments ranging from \$89 to \$94 over the remainder of the lease term, with an estimate of common expenses per month of \$25 through the end of the lease term. There have been no material changes from the disclosures in our Annual Report on Form 10-K.

### **Working Capital Deficit**

We have financed our working capital requirements since inception through issuances of equity securities and various debt financings. Our working capital deficit as of September 30, 2023 and December 31, 2022 was as follows:

	<b>As of</b>	
	<b>September 30, 2023</b>	<b>December 31, 2022</b>
Current assets	\$ 84,117	\$ 78,695
Current liabilities	(152,449)	(216,364)
Working capital deficit	(68,332)	(137,669)

As of September 30, 2023, we had a working capital deficit of \$68,332, as compared to \$137,669 as of December 31, 2022, consisting of \$84,117 in total current assets and \$152,449 in total current liabilities. As of December 31, 2022, our working capital deficit consisted of \$78,695 in total current assets and \$216,364 in total current liabilities.

Our cash flows for the nine months ended September 30, 2023 and 2022 consisted of the following:

	<b>Nine Months Ended September 30,</b>	
	<b>2023</b>	<b>2022</b>
Net cash used in operating activities	\$ (22,265)	\$ (14,676)
Net cash used in investing activities	(3,467)	(12,315)
Net cash provided by (used in) financing activities	18,649	30,945
Net increase (decrease) in cash, cash equivalents, and restricted cash	\$ (7,083)	\$ 3,954
Cash, cash equivalents, and restricted cash, end of period	\$ 7,290	\$ 13,805

For the nine months ended September 30, 2023, net cash used in operating activities was \$22,265, consisting primarily of \$178,732 of cash paid to employees, Publisher Partners, expert contributors, suppliers, and vendors, and for revenue share arrangements, professional services, and \$10,835 of cash paid for interest, offset by \$167,302 of cash received from customers. For the nine months ended September 30, 2022, net cash used in operating activities was \$14,676, consisting primarily of \$164,106 of cash paid to employees, Publisher Partners, expert contributors, suppliers, and vendors, and for revenue share arrangements, advance of royalty fees and professional services, and \$7,209 of cash paid for interest, offset by \$156,639 of cash received from customers.

For the nine months ended September 30, 2023, net cash used in investing activities was \$3,467, consisting primarily of \$2,967 for capitalized costs for our Platform and \$500 for the acquisition of a business. For the nine months ended September 30, 2022, net cash used in investing activities was \$12,315, consisting primarily of \$10,331 for the acquisition of a business; \$3,990 for capitalized costs for our Platform, and \$444 for property and equipment, offset by \$2,450 from the sale of an equity investment.

For the nine months ended September 30, 2023, net cash provided by financing activities was \$18,649, consisting primarily of \$11,333 (excluding accrued offering costs of \$167) in net proceeds from the public offering of common stock and \$3,211 from borrowings under our SLR line of credit, \$5,603 (excluding debt issuance costs of \$100) in net proceeds from issuance of notes; offset by \$1,423 tax payments relating to the withholding of shares of common stock for certain employees, and \$75 payment of deferred cash payments. For the nine months ended September 30, 2022, net cash provided by financing activities was \$30,945, consisting primarily of \$30,490 (excluding accrued offering costs of \$1,568) in net proceeds from the public offering of common stock, \$6,486 from borrowings under our SLR line of credit and \$94 in proceeds from exercise of common stock options; offset by \$3,520 tax payments relating to the withholding of shares of common stock for certain employees, \$2,152 payments of restricted stock liabilities, and \$453 payment for The Spun deferred cash payment.

## Results of Operations

### Three Months Ended September 30, 2023 and 2022

	Three Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
<b>Revenue</b>	\$ 63,418	\$ 57,277	\$ 6,141	10.7%
Cost of revenue	35,245	32,671	2,574	7.9%
<b>Gross profit</b>	<b>28,173</b>	<b>24,606</b>	<b>3,567</b>	<b>14.5%</b>
<b>Operating expenses</b>				
Selling and marketing	19,271	18,424	847	4.6%
General and administrative	11,028	13,493	(2,465)	-18.3%
Depreciation and amortization	4,726	4,478	248	5.5%
<b>Total operating expenses</b>	<b>35,025</b>	<b>36,395</b>	<b>(1,370)</b>	<b>-3.8%</b>
Loss from operations	(6,852)	(11,789)	4,937	-41.9%
Total other expenses	(4,253)	(3,523)	(730)	20.7%
Loss before income taxes	(11,105)	(15,312)	4,207	-27.5%
Income tax provision	(61)	(547)	486	-88.8%
Net loss from continuing operations	(11,166)	(15,859)	4,693	-29.6%
Net loss from discontinued operations, net of tax	-	(646)	646	-100.0%
<b>Net loss</b>	<b>\$ (11,166)</b>	<b>\$ (16,505)</b>	<b>\$ 5,339</b>	<b>-32.3%</b>

For the three months ended September 30, 2023, the loss from operations narrowed by \$4,937 due to a \$6,141 increase in revenue and a decrease in operating expenses of \$1,370. This was offset by an increase in interest expense of \$858 included in other expenses leading to an improvement of \$5,339 in net loss to \$11,166 for the three months ended September 30, 2023, as compared to \$16,505 for the three months ended September 30, 2022.

### Revenue

The following table sets forth revenue, cost of revenue, and gross profit:

	Three Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
<b>Revenue</b>	\$ 63,418	\$ 57,277	\$ 6,141	10.7%
Cost of revenue	35,245	32,671	2,574	7.9%
<b>Gross profit</b>	<b>28,173</b>	<b>24,606</b>	<b>3,567</b>	<b>14.5%</b>

For the three months ended September 30, 2023 we had gross profit of \$28,173, as compared to \$24,606 for the three months ended September 30, 2022, an increase of \$3,567, or 14.5%. Gross profit percentage for the three months ended September 30, 2023 was 44.4%, as compared to 43.0% for the three months ended September 30, 2022, an improvement of 1.5 percentage points.

The improvement in gross profit percentage was driven by a higher mix of premium digital advertising, as reflected in the 35% increase in RPM, as well as more than tripling of other digital revenue, largely e-commerce. In addition, stock based compensation included in cost of revenue declined by \$1,567 from \$2,772 in the three months ended September 30, 2022 to \$1,205 in the three months ended September 30, 2023.

The following table sets forth revenue by category:

	Three Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
<b>Digital revenue:</b>				
Digital advertising	\$ 36,659	\$ 28,512	\$ 8,147	28.6%
Digital subscriptions	3,181	4,629	(1,448)	-31.3%
Licensing and syndication revenue	4,468	4,391	77	1.8%
Other digital revenue	1,516	458	1,058	231.0%
Total digital revenue	45,824	37,990	7,834	20.6%
<b>Print revenue:</b>				
Print advertising	2,259	3,443	(1,184)	-34.4%
Print subscriptions	15,335	15,844	(509)	-3.2%
Total print revenue	17,594	19,287	(1,693)	-8.8%
Total revenue	\$ 63,418	\$ 57,277	\$ 6,141	10.7%

For the three months ended September 30, 2023, total revenue increased \$6,141, or 10.7%, to \$63,418 from \$57,277 for the three months ended September 30, 2022. The primary sources of revenue for the three months ended September 30, 2023 were as follows: (i) digital advertising of \$36,659, (ii) digital subscriptions of \$3,181, (iii) licensing and syndication revenue and other digital revenue of \$5,984, (iv) print advertising of \$2,259 and (v) print subscriptions of \$15,335.

The primary driver of the increase in our digital revenue of \$7,834 is derived from our digital advertising revenue and other digital revenue which increased by \$8,147 and \$1,058, respectively, which was primarily offset by a decrease in our digital subscriptions of \$1,448. Digital revenue represented 72.3% of total revenue in the three months ended September 30, 2023 as compared to 66.3% in the prior year period, an increase of 6.0 percentage points. Offsetting the increase in our digital revenue, our print revenue decreased by \$1,693 with a 34.4% decrease in print advertising and a 3.2% decrease in print subscription revenue. Revenue for the three months ended September 30, 2022 has been adjusted for the discontinued operations of the Parade print business that was acquired in April 2022 totaling \$20,753 since the operations were discontinued during the year ended December 31, 2022.

#### Cost of Revenue

The following table sets forth cost of revenue by category:

	Three Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Publisher Partner revenue share payments	\$ 7,586	\$ 4,471	\$ 3,115	69.7%
Technology, Platform and software licensing fees	5,721	4,721	1,000	21.2%
Royalty fees	3,750	3,750	-	0.0%
Content and editorial expenses	11,381	10,642	739	6.9%
Printing, distribution and fulfillment costs	3,411	3,770	(359)	-9.5%
Amortization of developed technology and platform development	2,191	2,413	(222)	-9.2%
Stock-based compensation	1,205	2,772	(1,567)	-56.5%
Other cost of revenue	-	132	(132)	-100.0%
Total cost of revenue	\$ 35,245	\$ 32,671	\$ 2,574	7.9%

For the three months ended September 30, 2023, we recognized cost of revenue of \$35,245, as compared to \$32,671 for the three months ended September 30, 2022, which represents an increase of \$2,574, or 7.9% as compared to the 10.7% increase in revenue. Cost of revenue for the third quarter of 2023 was impacted by increases in (i) Publisher Partner revenue share payments of \$3,115 due to very high growth among our FanNation publisher partners, (ii) technology, Platform and software licensing fees of \$1,000 and (iii) content and editorial expenses of \$739; partially offset by decreases in (iv) stock-based compensation costs of \$1,567; (v) printing, distributions and fulfillment costs of \$359; and (vi) amortization of our Platform of \$222.

## Operating Expenses

### Selling and Marketing

The following table sets forth selling and marketing expenses from continuing operations by category:

	Three Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Payroll and employee benefits of selling and marketing account management support teams	\$ 4,957	\$ 4,026	\$ 931	23.1%
Stock-based compensation	407	810	(403)	-49.8%
Professional marketing services	1,221	500	721	144.2%
Circulation costs	1,461	1,466	(5)	-0.3%
Subscription acquisition costs	9,819	9,778	41	0.4%
Advertising costs	880	1,280	(400)	-31.3%
Other selling and marketing expenses	526	564	(38)	-6.7%
Total selling and marketing	<u>\$ 19,271</u>	<u>\$ 18,424</u>	<u>\$ 847</u>	<u>4.6%</u>

For the three months ended September 30, 2023, we incurred selling and marketing costs of \$19,271, as compared to \$18,424 for the three months ended September 30, 2022. The increase in selling and marketing costs of \$847 or 4.6% is primarily related to increases in (i) payroll and employee benefits costs of \$931 related to the higher mix of premium and direct advertising, (ii) professional fees of \$721; partially offset by decreases in (iii) stock based compensation of \$403 and (iv) advertising costs of \$400.

### General and Administrative

The following table sets forth general and administrative expenses by category:

	Three Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Payroll and related expenses for executive and administrative personnel	\$ 3,370	\$ 4,424	\$ (1,054)	-23.8%
Stock-based compensation	2,750	4,729	(1,979)	-41.8%
Professional services, including accounting, legal and insurance	3,216	3,062	154	5.0%
Other general and administrative expenses	1,692	1,278	414	32.4%
Total general and administrative	<u>\$ 11,028</u>	<u>\$ 13,493</u>	<u>\$ (2,465)</u>	<u>-18.3%</u>

For the three months ended September 30, 2023, we incurred general and administrative costs of \$11,028 as compared to \$13,493 for the three months ended September 30, 2022. The \$2,465 or 18.3% decrease in general and administrative expenses is primarily due to decreases in stock-based compensation of \$1,979 or 41.8% and payroll and related expenses of \$1,054 or 23.8%.

## Other Expenses

The following table sets forth other expenses:

	Three Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Change in fair value of contingent consideration	\$ (60)	\$ -	\$ (60)	100.0%
Interest expense, net	(4,042)	(3,184)	(858)	26.9%
Liquidated damages	(151)	(339)	188	-55.5%
Total other expenses	<u>\$ (4,253)</u>	<u>\$ (3,523)</u>	<u>\$ (730)</u>	<u>20.7%</u>

**Change in Fair Value of Contingent Consideration.** The change in fair value of contingent consideration of \$60 for the three months ended September 30, 2023 represents the change in the put option on our common stock in connection with the Fexy Studios acquisition.

**Interest Expense.** We incurred interest expense of \$4,042 and \$3,184 for the three months ended September 30, 2023 and 2022, respectively, as a result of our debt increase.

**Liquidated Damages.** We recorded \$151 of accrued interest on our liquidated damages payable for the three months ended September 30, 2023 primarily from the issuance in past years of our convertible debentures, Series H convertible preferred stock, Series I convertible preferred stock, Series J convertible preferred stock and Series K convertible preferred stock in prior years. We recorded \$339 of accrued interest on our liquidated damages payable for the three months ended September 30, 2022 primarily from issuance of the same securities as outlined above.

## Nine Months Ended September 30, 2023 and 2022

	Nine Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
<b>Revenue</b>	\$ 173,604	\$ 159,272	\$ 14,332	9.0%
Cost of revenue	102,422	98,790	3,632	3.7%
Gross profit	<u>71,182</u>	<u>60,482</u>	<u>10,700</u>	<u>17.7%</u>
<b>Operating expenses</b>				
Selling and marketing	56,743	53,123	3,620	6.8%
General and administrative	35,803	41,841	(6,038)	-14.4%
Depreciation and amortization	14,227	13,124	1,103	8.4%
Loss on disposition of assets	119	257	(138)	-53.7%
Total operating expenses	<u>106,892</u>	<u>108,345</u>	<u>(1,453)</u>	<u>-1.3%</u>
Loss from operations	(35,710)	(47,863)	12,153	-25.4%
Total other expenses	<u>(14,149)</u>	<u>(9,149)</u>	<u>(5,000)</u>	<u>54.7%</u>
Loss before income taxes	(49,859)	(57,012)	7,153	-12.5%
Income tax provision	(168)	1,180	(1,348)	-114.2%
Net loss from continuing operations	(50,027)	(55,832)	5,805	-10.4%
Net loss from discontinued operations, net of tax	-	(1,329)	1,329	-100.0%
<b>Net loss</b>	<u>\$ (50,027)</u>	<u>\$ (57,161)</u>	<u>\$ 7,134</u>	<u>-12.5%</u>

For the nine months ended September 30, 2023, the loss from operations improved \$12,153 to \$35,710 as compared to \$47,863 during the nine months ended September 30, 2022 due to a \$14,332 increase in revenue, with an \$1,453 decrease in operating expenses. For the nine months ended September 30, 2023, the net loss was \$50,027, a decrease of \$7,134 as compared to \$57,161 for the nine months ended September 30, 2022 as the improvement in the loss from operations was partially offset by an increase in interest expense of \$4,715 included in other expenses.



## Revenue

The following table sets forth revenue, cost of revenue, and gross profit:

	Nine Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Revenue	\$ 173,604	\$ 159,272	\$ 14,332	9.0%
Cost of revenue	102,422	98,790	3,632	3.7%
Gross profit	\$ 71,182	\$ 60,482	\$ 10,700	17.7%

For the nine months ended September 30, 2023 we had gross profit of \$71,182, as compared to \$60,482 for the nine months ended September 30, 2022, an increase of \$10,700. Gross profit percentage for the nine months ended September 30, 2023 was 41.0%, as compared to 38.0% for the nine months ended September 30, 2022.

The improvement in gross profit percentage was driven by a higher mix of premium digital advertising, as reflected in the 23% increase in RPM, as well as an more than doubling of other digital revenue, largely e-commerce. In addition, stock based compensation included in cost of revenue declined by \$2,552.

The following table sets forth revenue by category:

	Nine Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
<b>Digital revenue:</b>				
Digital advertising	\$ 89,458	\$ 74,849	\$ 14,609	19.5%
Digital subscriptions	10,430	16,580	(6,150)	-37.1%
Licensing and syndication revenue	13,523	11,820	1,703	14.4%
Other digital revenue	3,486	1,374	2,112	153.7%
Total digital revenue	116,897	104,623	12,274	11.7%
<b>Print revenue:</b>				
Print advertising	7,677	7,786	(109)	-1.4%
Print subscriptions	49,030	46,863	2,167	4.6%
Total print revenue	56,707	54,649	2,058	3.8%
Total revenue	\$ 173,604	\$ 159,272	\$ 14,332	9.0%

For the nine months ended September 30, 2023, total revenue increased \$14,332 to \$173,604 from \$159,272 for the nine months ended September 30, 2022. The primary sources of revenue for the nine months ended September 30, 2023 were as follows: (i) digital advertising of \$89,458, (ii) digital subscriptions of \$10,430, (iii) licensing and syndication revenue and other digital revenue of \$17,009, (iv) print advertising of \$7,677 and (v) print subscriptions of \$49,030.

The primary driver of the increase in our total revenue is derived from digital advertising revenue, licensing and syndication, and other digital revenue which increased by \$14,609, \$1,703, and \$2,112, respectively, for the nine months ended September 30, 2023 as compared to the prior year period. This was offset by a \$6,150 decrease in digital subscriptions, resulting in a \$12,274 increase in total digital revenue for the nine months ended September 30, 2023 as compared to the prior year period. In addition, total print revenue increased by \$2,058 as print advertising decreased by \$109 and print subscriptions grew by \$2,167.

## Cost of Revenue

The following table sets forth cost of revenue by category:

	Nine Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Publisher Partner revenue share payments	\$ 17,360	\$ 14,242	\$ 3,118	21.9%
Technology, Platform and software licensing fees	15,510	12,293	3,217	26.2%
Royalty fees	11,250	11,250	-	0.0%
Content and editorial expenses	34,626	35,034	(408)	-1.2%
Printing, distribution and fulfillment costs	11,652	11,000	652	5.9%
Amortization of developed technology and platform development	6,883	7,099	(216)	-3.0%
Stock-based compensation	5,050	7,602	(2,552)	-33.6%
Other cost of revenue	91	270	(179)	-66.3%
<b>Total cost of revenue</b>	<b>\$ 102,422</b>	<b>\$ 98,790</b>	<b>\$ 3,632</b>	<b>3.7%</b>

For the nine months ended September 30, 2023, we recognized cost of revenue of \$102,422, as compared to \$98,790 for the nine months ended September 30, 2022, representing an increase of \$3,632 or 3.7% as compared to the 9.0% increase in total revenue. Cost of revenue for the first nine months of 2023 was impacted by increases in (i) technology, Platform and software licensing fees of \$3,217, (ii) Publisher Partner revenue share payments of \$3,118 and (iii) printing, distribution and fulfillment costs of \$652; partially offset by decreases in (iv) stock-based compensation of \$2,552, and (v) content and editorial expenses of \$408.

## Operating Expenses

### Selling and Marketing

The following table sets forth selling and marketing expenses from continuing operations by category:

	Nine Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Payroll and employee benefits of selling and marketing account management support teams	\$ 14,118	\$ 11,175	\$ 2,943	26.3%
Stock-based compensation	1,275	2,149	(874)	-40.7%
Professional marketing services	3,518	2,275	1,243	54.6%
Circulation costs	4,070	3,158	912	28.9%
Subscription acquisition costs	29,166	28,236	930	3.3%
Advertising costs	2,935	4,205	(1,270)	-30.2%
Other selling and marketing expenses	1,661	1,925	(264)	-13.7%
<b>Total selling and marketing</b>	<b>\$ 56,743</b>	<b>\$ 53,123</b>	<b>\$ 3,620</b>	<b>6.8%</b>

For the nine months ended September 30, 2023, we incurred selling and marketing costs of \$56,743, as compared to \$53,123 for the nine months ended September 30, 2022. The increase in selling and marketing costs of \$3,620 is primarily related to increases in (i) payroll and employee benefits of \$2,943, (ii) professional marketing services costs of \$1,243, (iii) circulation costs of \$912, and (iv) subscription acquisition costs of \$930; partially offset by decreases in (v) advertising costs of \$1,270 and (vi) stock-based compensation costs of \$874. The increase in circulation costs reflects the addition of the Athlon Outdoor properties.

## General and Administrative

The following table sets forth general and administrative expenses by category:

	Nine Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Payroll and related expenses for executive and administrative personnel	\$ 11,037	\$ 12,704	\$ (1,667)	-13.1%
Stock-based compensation	10,653	15,026	(4,373)	-29.1%
Professional services, including accounting, legal and insurance	9,003	9,732	(729)	-7.5%
Other general and administrative expenses	5,110	4,379	731	16.7%
<b>Total general and administrative</b>	<b>\$ 35,803</b>	<b>\$ 41,841</b>	<b>\$ (6,038)</b>	<b>-14.4%</b>

For the nine months ended September 30, 2023, we incurred general and administrative costs of \$35,803 as compared to \$41,841 for the nine months ended September 30, 2022. The \$6,038 or 14.4% decrease in general and administrative expenses is primarily due to decreases in stock-based compensation of \$4,373, payroll and related expenses of \$1,667 and professional services of \$729.

## Other Expenses

The following table sets forth other expenses:

	Nine Months Ended September 30,		2023 versus 2022	
	2023	2022	\$ Change	% Change
Change in fair value of contingent consideration	\$ (469)	\$ -	\$ (469)	100.0%
Interest expense, net	(13,225)	(8,510)	(4,715)	55.4%
Liquidated damages	(455)	(639)	184	-28.8%
<b>Total other expenses</b>	<b>\$ (14,149)</b>	<b>\$ (9,149)</b>	<b>\$ (5,000)</b>	<b>54.7%</b>

**Change in Fair Value of Contingent Consideration.** The change in fair value of contingent consideration of \$469 for the nine months ended September 30, 2023 represents the change in the put option on our common stock in connection with the Fexy Studios acquisition.

**Interest Expense.** We incurred interest expense of \$13,225 and \$8,510 for the nine months ended September 30, 2023 and 2022, respectively, as a result of our debt increase.

**Liquidated Damages.** We recorded \$455 of accrued interest on our liquidated damages payable for the nine months ended September 30, 2023 primarily from the issuance in past years of our convertible debentures, Series H convertible preferred stock, Series I convertible preferred stock, Series J convertible preferred stock and Series K convertible preferred stock in prior years. We recorded \$639 of accrued interest on our liquidated damages payable for the nine months ended September 30, 2022 primarily from issuance of the same securities as described above.

### ***Use of Non-GAAP Financial Measures***

We report our financial results in accordance with generally accepted accounting principles in the United States of America (“GAAP”); however, management believes that certain non-GAAP financial measures provide users of our financial information with useful supplemental information that enables a better comparison of our performance across periods. We believe Adjusted EBITDA provides visibility to the underlying continuing operating performance by excluding the impact of certain items that are noncash in nature or not related to our core business operations. We calculate Adjusted EBITDA as net loss as adjusted for loss from discontinued operations, with additional adjustments for (i) interest expense (net), (ii) provision for or benefit from income taxes, (iii) depreciation and amortization, (iv) stock-based compensation, (v) change in fair value of contingent consideration; (vi) liquidated damages, (vii) loss on impairment of assets, (viii) employee retention credit, (ix) employee restructuring payments, and (x) professional and vendor fees.

Our non-GAAP Adjusted EBITDA may not be comparable to a similarly titled measure used by other companies, has limitations as an analytical tool, and should not be considered in isolation, or as a substitute for analysis of our operating results as reported under GAAP. Additionally, we do not consider our non-GAAP Adjusted EBITDA as superior to, or a substitute for, the equivalent measures calculated and presented in accordance with GAAP. Some of the limitations are that Adjusted EBITDA:

- does not reflect interest expense, or the cash required to service our debt, which reduces cash available to us;
- does not reflect deferred income taxes, which is a noncash expense;
- does not reflect depreciation and amortization expense and, although this is a noncash expense, the assets being depreciated may have to be replaced in the future, increasing our cash requirements;
- does not reflect stock-based compensation and, therefore, does not include all of our compensation costs;
- does not reflect the change in fair value of contingent consideration, which is a noncash expense;
- does not reflect liquidated damages and, therefore, does not include future cash requirements if we repay the liquidated damages in cash instead of shares of our common stock (which the investor would need to agree to);
- does not reflect any losses from the impairment of assets, which is a noncash operating expense;
- does not reflect the employee retention credits recorded by us for payroll related tax credits under the Cares Act;
- does not reflect payments related to employee restructuring changes for our former Chief Executive Officer; and
- does not reflect the professional and vendor fees incurred by us for services provided by consultants, accountants, lawyers, and other vendors, which services were related to certain types of events that are not reflective of our business operations.

The following table presents a reconciliation of Adjusted EBITDA to net loss, which is the most directly comparable GAAP measure, for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net loss	\$ (11,166)	\$ (16,505)	\$ (50,027)	\$ (57,161)
Net loss from discontinued operations	-	646	-	1,329
Net loss from continued operations	(11,166)	(15,859)	(50,027)	(55,832)
Add (deduct):				
Interest expense, net (1)	4,042	3,184	13,225	8,510
Income tax provision (benefit)	61	547	168	(1,180)
Depreciation and amortization (2)	6,917	6,891	21,110	20,223
Stock-based compensation (3)	4,362	8,311	16,978	24,777
Change in fair value of contingent consideration (4)	60	-	469	-
Liquidated damages (5)	151	339	455	639
Loss on impairment of assets (6)	-	-	119	257
Employee retention credit (7)	-	-	(6,868)	-
Employee restructuring payments (8)	735	-	4,997	679
Professional and vendor fees (9)	1,194	-	1,194	-
<b>Adjusted EBITDA</b>	<b>\$ 6,356</b>	<b>\$ 3,413</b>	<b>\$ 1,820</b>	<b>\$ (1,927)</b>

- (1) Interest expense is related to our capital structure and varies over time due to a variety of financing transactions. Interest expense includes \$533 and \$280 for amortization of debt discounts for the three months ended September 30, 2023 and 2022, respectively, as presented in our condensed consolidated statements of cash flows, which is a noncash item. Interest expense includes \$2,178 and \$1,215 for amortization of debt discounts for the nine months ended September 30, 2023 and 2022, respectively. Investors should note that interest expense will recur in future periods.
- (2) Depreciation and amortization is related to our developed technology and Platform included within cost of revenues of \$2,191 and \$2,413, for the three months ended September 30, 2023 and 2022, respectively, and depreciation and amortization included within operating expenses of \$4,726 and \$4,478 for the three months ended September 30, 2023 and 2022, respectively. Depreciation and amortization is related to our developed technology and Platform included within cost of revenues of \$6,883 and \$7,099, for the nine months ended September 30, 2023 and 2022, respectively, and depreciation and amortization included within operating expenses of \$14,227 and \$13,124 for the nine months ended September 30, 2023 and 2022, respectively. We believe (i) the amount of depreciation and amortization expense in any specific period may not directly correlate to the underlying performance of our business operations and (ii) such expenses can vary significantly between periods as a result of new acquisitions and full amortization of previously acquired tangible and intangible assets. Investors should note that the use of tangible and intangible assets contributed to revenue in the periods presented and will contribute to future revenue generation and should also note that such expense will recur in future periods.
- (3) Stock-based compensation represents noncash costs arise from the grant of stock-based awards to employees, consultants and directors. We believe that excluding the effect of stock-based compensation from Adjusted EBITDA assists management and investors in making period-to-period comparisons in our operating performance because (i) the amount of such expenses in any specific period may not directly correlate to the underlying performance of our business operations, and (ii) such expenses can vary significantly between periods as a result of the timing of grants of new stock-based awards, including grants in connection with acquisitions. Additionally, we believe that excluding stock-based compensation from Adjusted EBITDA assists management and investors in making meaningful comparisons between our operating performance and the operating performance of other companies that may use different forms of employee compensation or different valuation methodologies for their stock-based compensation. Investors should note that stock-based compensation is a key incentive offered to employees whose efforts contributed to the operating results in the periods presented and are expected to contribute to operating results in future periods. Investors should also note that such expenses will recur in the future.
- (4) Change in fair value of contingent consideration represents the change in the put option on our common stock in connection with the Fexy Studios acquisition.
- (5) Liquidated damages (or interest expense related to accrued liquidated damages) represents amounts we owe to certain of our investors in private placements offerings conducted in fiscal years 2018 through 2020, pursuant to which we agreed to certain covenants in the respective securities purchase agreements and registration rights agreements, including the filing of resale registration statements and becoming current in our reporting obligations, which we were not able to timely meet.
- (6) Loss on impairment of assets represents certain assets that are no longer useful.
- (7) Employee retention credit represents payroll related tax credits under the Cares Act.
- (8) Employee restructuring payments represents severance payments to employees under employer restructuring arrangements and payments to our former Chief Executive Officer for the three and nine months ended September 30, 2023 and 2022, respectively.
- (9) Represents professional and vendor fees that are nonrecurring in connection with the Business Combination resulting in a change of control, including fees incurred by consultants, accountants, lawyers, and other vendors.

## **Critical Accounting Policies and Estimates**

Our management's discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements, which have been prepared in accordance with GAAP. In preparing the condensed consolidated financial statements, we make estimates and judgments that affect the reported amounts of assets, liabilities, stockholders' equity, revenue, expenses, and related disclosures. We re-evaluate our estimates on an on-going basis. Our estimates are based on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Because of the uncertainty inherent in these matters, actual results may differ from these estimates and could differ based upon other assumptions or conditions.

Except as described in Note 1, *Summary of Significant Accounting Policies*, of the Notes to our condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q, there have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022 that was filed with the SEC on March 31, 2023.

## **Recent Accounting Pronouncements**

See Note 1, *Summary of Significant Accounting Policies*, of the Notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for a discussion about new accounting pronouncements adopted as of the date of this report.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK**

Not applicable to a "smaller reporting company" as defined in Item 10(f)(1) of SEC Regulation S-K.

## **ITEM 4. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

Our management is responsible for establishing and maintaining a system of disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) that is designed to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized, and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive officer(s) and principal financial officer(s), or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

In accordance with Exchange Act Rules 13a-15 and 15d-15, an evaluation was completed under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report. In light of the material weaknesses described in Part II, Item 9A to our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 31, 2023 that continue and have not been remediated as of the date of filing of this Quarterly Report, we have performed additional analyses, reconciliations, and other post-closing procedures to determine whether our condensed consolidated financial statements are prepared in accordance with GAAP. Based on that evaluation, our management, including our Chief Executive Officer and Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of September 30, 2023 in providing reasonable assurance that the information required to be disclosed in our reports filed or submitted under the Exchange Act was recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms.

### **Changes in Internal Control over Financial Reporting**

In connection with our continued monitoring and maintenance of our control procedures as part of the implementation of Section 404 of the Sarbanes-Oxley Act of 2002, we continue to review, test, and improve the effectiveness of our internal controls. There have not been any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the three months ended September 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### **Inherent Limitations on the Effectiveness of Controls**

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, in designing and evaluating the disclosure controls and procedures, management recognizes that any system of internal control over financial reporting, including ours, no matter how well designed and operated, can only provide reasonable, not absolute assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business but cannot assure you that such improvements will be sufficient to provide us with effective internal control over financial reporting.

## PART II - OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

From time to time, we may be subject to claims and litigation arising in the ordinary course of business. We are not currently subject to any pending or threatened legal proceedings that we believe would reasonably be expected to have a material adverse effect on our business, financial condition, results of operations or cash flows.

### ITEM 1A. RISK FACTORS

There are numerous factors that affect our business and operating results, many of which are beyond our control. The following risk factors supplement and, to the extent inconsistent, supersede, the risk factors described in Part I, "Item IA. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 31, 2023 (the "2022 10-K"). The risk factors included herein as well as the risk factors described in the 2022 Form 10-K should be carefully considered, together with the other information contained or incorporated by reference in this Quarterly Report on Form 10-Q and in our other filings with SEC in connection with evaluating us, our business and the forward-looking statements contained in this Quarterly Report on Form 10-Q. Additional risks and uncertainties not known to us at present, or that we currently deem immaterial, may affect us. The occurrence of any of these known or unknown risks could have a material adverse impact on our business, financial condition and results of operations.

#### **Risks Related to the Pending Transaction with Bridge Media Networks and Simplify.**

***The Transactions may not be completed on the terms or timeline currently contemplated, or at all, and failure to complete the Transactions may result in material adverse consequences to our business and operations.***

The Transactions are subject to several closing conditions, including the adoption of the Transaction Agreement and approval of the Transactions by our stockholders, the effectiveness of a registration statement relating to the registration of the issuance of the New Arena common stock in the Transactions, the approval of the listing of the New Arena common stock on the NYSE American and the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"). If any one of these conditions is not satisfied or waived, the Transactions may not be completed. There is no assurance that the Transactions will be completed on the terms or timeline currently contemplated, or at all.

Under the Transaction Agreement, the parties' obligations to complete the Transactions are conditioned on the expiration or termination of the applicable waiting period under the HSR Act.

If our stockholders do not adopt the Transaction Agreement and approve the Transactions or if the Transactions are not completed for any other reason, we would be subject to a number of risks, including the following:

- our stockholders would not become stockholders of New Arena and therefore would not realize the anticipated benefits of the Transactions, including any anticipated synergies from combining New Arena and Bridge Media;
- the failure to consummate the Transactions by December 31, 2023 would result in an event of default under certain of our debt facilities; and
- the trading price of our common stock may experience increased volatility to the extent that the current market prices reflect a market assumption that the Transactions will be completed.

The occurrence of any of these events individually or in combination could have a material adverse effect on our results of operations or the trading price of our common stock. We are also exposed to general competitive pressures and risks, which may be increased if the Transactions are not completed.



***Each of Arena and Bridge Media will be subject to business uncertainties and contractual restrictions while the Transactions are pending that could adversely affect each of them.***

Uncertainty about the effect of the Transactions on employees, customers and suppliers may have an adverse effect on either or both of us and Bridge Media, regardless of whether the Transactions are eventually completed, and, consequently, on New Arena. These uncertainties may impair our and Bridge Media's ability to attract, retain and motivate key personnel until the Transactions are completed, or the Transaction Agreement is terminated, and for a period of time thereafter, and could cause customers, suppliers and others that deal with us or Bridge Media to seek to change or discontinue existing business relationships with us or Bridge Media.

Employee retention and recruitment may be particularly challenging for us and Bridge Media during the pendency of the Transactions, as employees and prospective employees may experience uncertainty about their future roles with New Arena. For each of us and Bridge Media, the departure of existing key employees or the failure of potential key employees to accept employment with New Arena, despite Arena's and Bridge Media's retention and recruiting efforts, could have a material adverse impact on our and New Arena's business, financial condition and operating results, regardless of whether the Transactions are eventually completed.

The pursuit of the Transactions and the preparation for the integration of Arena and Bridge Media have placed, and will continue to place, a significant burden on the management and internal resources of Arena and Bridge Media. There is a significant degree of difficulty and management distraction inherent in the process of closing the Transactions and integrating Arena and Bridge Media, which could cause an interruption of, or loss of momentum in, the activities of each of the existing businesses, regardless of whether the Transactions are eventually completed. Before and immediately following the closing, the management teams of Arena and Bridge Media will be required to devote considerable amounts of time to this integration process, which will decrease the time they will have to manage their respective existing businesses, service existing customers, attract new customers and develop new products, services or strategies. One potential consequence of such distractions could be the failure of management to realize other opportunities that could be beneficial to Arena or Bridge Media, respectively. If Arena's or Bridge Media's senior management is not able to effectively manage the process leading up to and immediately following the closing, or if any significant business activities are interrupted as a result of the integration process, the business of Arena or Bridge Media could suffer.

In addition, the Transaction Agreement restricts Arena and Simplify (with respect to Bridge Media) from taking specified actions without the consent of the other until the Transactions are consummated or the Transaction Agreement is terminated. These restrictions may prevent Arena and Simplify (with respect to Bridge Media) from pursuing otherwise attractive business opportunities and making other changes to their businesses before completion of the Transactions or termination of the Transaction Agreement.

Further, we and our directors could become subject to lawsuits relating to the Transactions that may be filed. While we intend to defend against any such actions vigorously, the costs of the defense of such lawsuits and other effects of such litigation could have an adverse effect on our business, financial condition and operating results.

***The integration of Arena and Bridge Media following the closing will present challenges that may not result in the anticipated benefits of the Transactions.***

The Transactions involve the combination of businesses that currently operate as independent businesses. New Arena will be required to devote management attention and resources to integrating its business practices and operations, and prior to the Transactions, management attention and resources will be required to plan for such integration. Potential difficulties New Arena may encounter in the integration process include the following:

- the inability to successfully integrate the businesses, including operations, technologies, products and services, in a manner that permits New Arena to achieve the anticipated benefits from the Transactions, which could result in the anticipated benefits of the Transactions not being realized partly or wholly in the time frame currently anticipated or at all;
- lost sales and customers as a result of certain customers of any of the businesses deciding not to do business with New Arena;
- the necessity of coordinating geographically separated organizations, systems and facilities;
- potential unknown liabilities and unforeseen increased expenses, delays or regulatory conditions associated with the Transactions;
- integrating personnel with diverse business backgrounds and business cultures, while maintaining focus on providing consistent, high-quality products and services;
- consolidating and rationalizing information technology platforms and administrative infrastructures as well as accounting systems and related financial reporting activities and difficulty implementing effective internal controls over financial reporting and disclosure controls and procedures in particular; and
- preserving important relationships of Arena and Bridge Media and resolving potential conflicts that may arise.

If New Arena experiences difficulties with the integration process, the anticipated benefits of the Transactions may not be realized fully or at all, or may take longer to realize than expected. These integration matters could have an adverse effect on the business, results of operations, financial condition or prospects of New Arena during this transition period and for an undetermined period after completion of the Transactions.

***The Transaction Agreement contains provisions that may discourage other companies from trying to acquire Arena.***

The Transaction Agreement contains provisions that may discourage third parties from submitting business combination proposals to Arena that might result in greater value to Arena stockholders than the Transactions. The Transaction Agreement generally prohibits Arena from soliciting any competing acquisition proposal.

***Following the completion of the Transactions, New Arena will be controlled by Simplify. The interests of Simplify may differ from the interests of other stockholders of New Arena.***

Immediately following the closing, Simplify will beneficially own 58.02% of the outstanding shares of New Arena common stock and 5-Hour will own 6.98% of the outstanding shares of New Arena common stock, in each case on a fully diluted basis. 5-Hour is an affiliate of Simplify. Such amounts exclude the ownership of shares of New Arena common stock that may be issued from time to time pursuant to the additional equity issuances to be provided to Arena by Simplify or an affiliate thereof.

Through its ownership of at least a majority of the shares of New Arena common stock and the provisions set forth in the certificate of incorporation of New Arena, the bylaw of New Arena and the nominating agreement to be entered into in connection with the Transactions, Simplify will have the ability to designate and elect a majority of the directors of the New Arena board of directors. New Arena will avail itself of available "Controlled Company" exemptions to the corporate governance listing standards of the NYSE American that would otherwise require New Arena to have (i) a majority of the board of directors consist of independent directors, (ii) a nominating/corporate governance committee that is composed solely of independent directors and (iii) a compensation committee that is composed solely of independent directors.

For as long as Simplify beneficially owns a majority of the outstanding shares of Common Stock, Simplify will also have control over all other matters submitted to stockholders for approval, including changes in capital structure, transactions requiring stockholder approval under Delaware law and corporate governance. Simplify and its subsidiaries may have different interests than other holders of New Arena common stock and may make decisions adverse to your interests.

Among other things, Simplify's control could delay, defer, or prevent a sale of New Arena that New Arena's other stockholders support, or, conversely, this control could result in the consummation of such a transaction that other stockholders do not support. This concentrated control could discourage a potential investor from seeking to acquire New Arena common stock and, as a result, might impact the market price of New Arena common stock.

***Arena and New Arena will incur transaction-related costs in connection with the Transactions and the integration of the businesses.***

Arena has incurred transaction-related costs in connection with the Transactions and both Arena and New Arena will incur costs in connection with the integration of Arena's and Bridge Media's businesses. There are many systems that must be integrated, including information management, purchasing, accounting and finance, sales, billing, payroll and benefits, fixed asset and lease administration systems and regulatory compliance. Arena and Bridge Media are in the early stages of assessing the magnitude of these costs and, therefore, are not able to provide estimates of these costs. Moreover, many of the expenses that will be incurred, by their nature, are difficult to estimate accurately at the present time. These expenses could, particularly in the near term, reduce the anticipated benefits that New Arena expects to achieve from the elimination of duplicative expenses and the realization of economies of scale and cost synergies related to the integration of the businesses following the completion of the Transactions, and accordingly, any net synergies may not be achieved in the near term or at all. These integration expenses may result in New Arena taking significant charges against earnings following the completion of the Transactions. Some of these costs and expenses will be incurred even if the Transactions are not consummated.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

None.

## ITEM 6. EXHIBITS

The following documents are filed as part of this Quarterly Report:

Exhibit Number	Description of Document
4.1	<a href="#">Form of 2023 Notes</a>
10.1	<a href="#">Binding Letter of Intent, dated August 14, 2023, by and between the Company and Simplify Inventions, LLC</a>
10.2	<a href="#">Form of Voting and Support Agreement, dated August 14, 2023, by and between the Company and certain stockholders</a>
10.3	<a href="#">Amendment to Third Amended and Restated Note Purchase Agreement, dated August 14, 2023, by and between the Company, the subsidiary guarantors party thereto, BRF Finance Co., LLC, as agent and purchaser, and the other purchasers from time to time party thereto</a>
10.4+	<a href="#">Amendment No. 3 to Second Amended &amp; Restated Executive Employment Agreement, dated as of September 7, 2023, by and between the Company and Ross Levinsohn</a>
10.5+	<a href="#">First Amendment to Executive Employment Agreement, dated August 15, 2023, by and between the Company and Henry Robertson Barrett</a>
10.6+	<a href="#">Severance Agreement, dated August 14, 2023, by and between the Company and Henry Robertson Barrett</a>
10.7+	<a href="#">Severance Agreement, dated August 14, 2023, by and between the Company and Douglas B. Smith</a>
10.8	<a href="#">Seventh Amendment to Financing and Security Agreement, dated August 31, 2023, by and among the Company, certain subsidiaries of the Company party thereto and SLR Digital Finance LLC</a>
10.9^	<a href="#">Side Letter to Licensing Agreement, dated October 1, 2023, by and between the Company and ABG-SI LLC</a>
31.1*	<a href="#">Chief Executive Officer's Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2*	<a href="#">Chief Financial Officer's Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1#	<a href="#">Chief Executive Officer's Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2#	<a href="#">Chief Financial Officer's Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS*	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document

\* Filed herewith.

+ Indicates a management or compensatory plan or arrangement in which directors or executive officers are eligible to participate.

^ Registrant has omitted portions of the exhibit as permitted under Item 601(b)(10) of Regulations S-K.

# This certification is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act.

**SIGNATURES**

In accordance with the requirements of the Securities and Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**The Arena Group Holdings, Inc.**

Date: November 14, 2023

By: /s/ ROSS LEVINSOHN

Ross Levinsohn  
Chief Executive Officer  
(Principal Executive Officer)

Date: November 14, 2023

By: /s/ DOUGLAS B. SMITH

Douglas B. Smith  
Chief Financial Officer  
(Principal Financial Officer)

## EXECUTION COPY

## 2023 NOTE

THIS 2023 NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR OTHER APPLICABLE SECURITIES LAW AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT COVERING THE TRANSFER OR PURSUANT TO AN EXEMPTION FROM REGISTRATION.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS 2023 NOTE MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND THIS LEGEND IS REQUIRED BY TREASURY REGULATIONS PROMULGATED UNDER SECTION 1275(c) OF THE CODE.

HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF OID (IF ANY), THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THE NOTES BY CONTACTING THE LEGAL DEPARTMENT AT THE ARENA GROUP HOLDINGS, INC., 200 VESEY STREET, 24<sup>TH</sup> FLOOR, NEW YORK, NY 10281, LEGAL@THEARENAGROUP.NET, OR AT (212) 321-5002.

THE ARENA GROUP HOLDINGS, INC.

Note due December 31, 2026

No. 1  
\$5,000,000.00

August 31, 2023

THE ARENA GROUP HOLDINGS, INC., a Delaware corporation (the "Company"), for value received, hereby promises to pay to BRF FINANCE CO., LLC (the foregoing, and any successors or its registered assigns of this 2023 Note, "Holder"), the principal amount of FIVE MILLION DOLLARS (\$5,000,000.00) on the Maturity Date, with interest (computed on the basis of the actual number of days elapsed over a 360-day year) on the unpaid balance of such principal amount at the rates, on the dates and in the manner specified in the Note Purchase Agreement (as defined below); provided that in no event shall the amount payable by the Company as interest on this 2023 Note exceed the highest lawful rate permissible under any law applicable hereto. Payments of principal, premium, if any, and interest hereon shall be made in lawful money of the United States of America by the method and at the address for such purpose specified in the Note Purchase Agreement hereinafter referred to, and such payments shall be overdue for purposes hereof if not made on the originally scheduled date of payment therefor, without giving effect to any applicable grace period.

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This 2023 Note is one of the Company's 2023 Notes due on the Maturity Date, issued pursuant to that certain Third Amended and Restated Note Purchase Agreement dated December 15, 2022 (such agreement, as amended, modified and supplemented from time to time, the "Note Purchase Agreement"), including by that certain Amendment No. 1 to Third Amended and Restated Note Purchase Agreement, dated as of the date hereof) by, among others, the Company, the other Note Parties named therein, and the Purchasers named therein, and the holder hereof is entitled to the benefits of the Note Purchase Agreement and the other Note Documents referred to in the Note Purchase Agreement and may enforce the agreements contained therein and exercise the remedies provided for thereby or otherwise available in respect thereof, all in accordance with the terms thereof.

This 2023 Note is subject to prepayment only as specified in the Note Purchase Agreement.

Capitalized terms used herein without definition have the meanings ascribed to them in the Note Purchase Agreement.

This 2023 Note is in registered form and is transferable only by surrender hereof at the principal executive office of the Company as provided in the Note Purchase Agreement. This 2023 Note may not be transferred except in accordance with the provisions of the Note Purchase Agreement and any purported transfer in violation of the terms of the Note Purchase Agreement shall be null and void. The Company may treat the person in whose name this 2023 Note is registered on the Note register maintained at such office pursuant to the Note Purchase Agreement as the owner hereof for all purposes, and the Company shall not be affected by any notice to the contrary.

In case an Event of Default, as defined in the Note Purchase Agreement, shall occur and be continuing, the unpaid balance of the principal of this 2023 Note may be declared and become due and payable in the manner and with the effect provided in the Note Purchase Agreement.

The parties hereto, including the makers and all guarantors and endorsers of this 2023 Note, hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance or enforcement of this 2023 Note.


THIS 2023 NOTE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

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IN WITNESS WHEREOF, the Company has executed this 2023 Note as an instrument under seal as of the date first above written.

**THE ARENA GROUP HOLDINGS, INC.**

By:   
Name: Douglas B Smith  
Title: CFO

[Signature Page to 2023 Note]

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**BINDING LETTER OF INTENT**

August 14, 2023

The Arena Group Holdings, Inc.  
200 Vesey Street, 24<sup>th</sup> Floor  
New York, NY 12801  
Attention: Ross Levinsohn, Chairman and CEO

Ladies and Gentlemen:

This binding letter of intent (this "**Letter of Intent**") records the mutual understanding of Simplify Inventions, LLC (collectively, "**SI**") and The Arena Group Holdings, Inc., a Delaware corporation ("**Arena**"), concerning the proposed transactions, (the "**Transactions**") by SI, as more fully described in the term sheet attached as **Annex A** hereto and made a part of this Letter of Intent (the "**Term Sheet**"). SI and Arena are sometimes referred to herein, individually, as a "**Party**" and, collectively, as the "**Parties**".

1. **Intentions of the Parties.** This Letter of Intent constitutes a binding summary statement of the intentions of the Parties. Upon the satisfaction of the conditions set forth in the Term Sheet ("Signing and Closing Conditions"), the signing of the definitive agreement(s) (which will be materially consistent with the terms set forth in the Term Sheet), and closing of the Transactions, respectively, shall occur.

2. **Assignment.** This Letter of Intent may not be assigned by a party by operation of law or otherwise without the express written consent of the other party (which consent may be granted or withheld in the sole discretion of such other party); provided, however, that SI may assign this Letter of Intent to an affiliate with prior written notice to Arena (but without requiring Arena's express written consent).

3. **No Third-Party Beneficiaries.** This Letter of Intent shall be binding upon and inure solely to the benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other individual or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Letter of Intent.

4. **Entire Agreement.** This Letter of Intent constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other prior agreements and undertakings, both written and oral, between the Parties with respect to the subject matter hereof.

5. **Amendment; Waiver.** This Letter of Intent may not be amended or modified except by (a) an instrument in writing signed by, or on behalf of, both Parties or (b) a waiver. Any amendment or waiver to this Letter of Intent shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Letter of Intent. The failure of any Party to assert any of its rights hereunder shall not constitute a waiver of any such rights.

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6. Counterparts. This Letter of Intent may be executed and delivered (including by email) in one or more counterparts, and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

7. Governing Law. This Letter of Intent shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed in that State. Each of the Parties hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States, in each case located in the City of Wilmington, for any litigation arising out of or relating to this Letter of Intent (and agrees not to commence any litigation relating thereto except in such courts). Each of the Parties hereby irrevocably and unconditionally waives any objection to the laying of venue of any litigation arising out of this Letter of Intent in the courts of the State of Delaware or the United States, in each case located in the City of Wilmington, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such litigation brought in any such court has been brought in an inconvenient forum. This section 7 will replace the "Binding Provisions" section of the Term Sheet after the first sentence thereof.

*[Signature Page Follows]*

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If you agree to the terms set forth in this Letter of Intent and the Term Sheet, please indicate your acceptance by signing in the space provided below. We look forward to working with you toward the completion of a mutually beneficial transaction.

Very truly yours,

SIMPLIFY INVENTIONS, LLC

By  \_\_\_\_\_  
Name: Manoj Bhargava  
Title: CEO

Agreed and accepted as of  
the date first written above:

THE ARENA GROUP HOLDINGS, INC.

By  \_\_\_\_\_  
Name: Ross Levinsohn  
Title: Chairman and CEO



## ANNEX A

## TERM SHEET

<b>Issuer</b>	The Arena Group Holdings, Inc., a Delaware corporation (" <i>Arena</i> ").
<b>Purchaser</b>	Simplify Inventions, LLC, a Delaware limited liability company (in aggregate " <i>SI</i> ").
<b>Consideration</b>	SI shall purchase a 65% ownership in Arena via the following consideration: <ul style="list-style-type: none"> <li>• \$25,000,000 cash for common stock</li> <li>• \$25,000,000 cash for Series L Preferred Stock</li> <li>• Assets of Bridge Media Networks (not the station group)</li> <li>• \$12,000,000 of guaranteed media spend per year for 5 years (\$60,000,000 total)</li> </ul>
<b>Ownership</b>	SI will own 65% of Arena common stock upon completion of the transaction.  Share issuance calculated at \$5.00 per common AREN share.
<b>Explanation of Preferred Stock</b>	25,000 shares of Series L Preferred Stock, par value of \$1,000 for and aggregate subscription amount of \$25,000,000. The 25,000 shares of Series L Preferred Stock shall have a PIK coupon at a rate of 10% per annum for a term of 5 years and in form otherwise approved by SI. The company will register stock related to the Series L within 12 months of Issuance
<b>Use of Cash Proceeds</b>	The use of the cash proceeds will be as follows: <ul style="list-style-type: none"> <li>• \$30,000,000 for working capital/Arena's general corporate purposes and to pay estimated transaction fees and costs</li> <li>• \$20,000,000 (plus up to \$8,000,000 additional payments to the extent such additional amounts were borrowed following the signing of this agreement and used for working capital and general corporate purposes) to pay the aggregate debt owed to B. Riley Financial, Inc. and/or its subsidiaries and affiliates (the "<i>Riley Debt</i>") as part of the debt restructure with B. Riley Financial, Inc. (and its subsidiaries and/or affiliates, as applicable) as described below.</li> </ul>
<b>Board Composition</b>	Upon completion of the transaction, the board shall be made up of a simple majority (with the current board size, that would be 4 of the 7 board seats) of diverse qualified individuals selected by SI (the " <i>SI Directors</i> "), and SI shall retain the right to replace any SI Director. The remaining board members (currently 3 of the 7 board seats) shall include one (1) representative from B. Riley for as long as it holds the senior debt and/or greater than a 10% ownership stake in the company, the CEO of Arena, and one (1) other



	independent board members to be selected through normal board processes in accordance with Delaware law but not connected to the business interests of SI or B. Riley.
<b>Form of Transaction</b>	The parties will, in consultation with counsel, determine an appropriate structure to include all the consideration in a way that is tax-free to both parties. It is expected that such structure will consist of a variation of a PIPE pursuant to a stock purchase agreement (the " <i>Stock Purchase Agreement</i> ") containing standard representations and warranties, covenants and indemnification in favor of SI. Arena will register for resale in the public markets all stock in this transaction, as well as the stock purchased in the PIPE by third parties as described above and will use its commercially reasonable efforts to file the Resale Registration Statement within 365 days of the Closing.
<b>Announce, Sign, and Close Dates</b>	<ul style="list-style-type: none"> <li>● ANNOUNCE – Parties will sign this term sheet prior to and announce the transaction simultaneously with the Arena 2Q Earnings (coordinated press release with discussion on the earnings call) on August 14<sup>th</sup>.</li> <li>● SIGN – The parties will use commercially reasonable efforts to negotiate and sign definitive agreements prior to August 30, 2023.</li> <li>● CLOSE – The parties will use commercially reasonable efforts to consummate the transaction as soon as reasonably possible thereafter.</li> </ul>
<b>Signing &amp; Closing Conditions</b>	<p>(1) Signing Conditions</p> <ul style="list-style-type: none"> <li>● Arena represents and warrants to SI that prior to the Parties' execution of this Letter of Intent and Term Sheet, B. Riley Financial, Inc. and its applicable subsidiaries and affiliates have agreed to accept a \$20,000,000 (plus up to \$8,000,000 additional payments to the extent such additional amounts were borrowed as referenced above) principal reduction payment toward the Riley Debt and to extend the credit line for the remaining Riley Debt for 3 years following the closing date of the transaction at a fixed 10% per annum aggregate interest rate with no prepayment penalty.</li> <li>● Neither B. Riley Financial, Inc. (and/or its subsidiaries and/or affiliates, as applicable), Bryant Riley nor SI Capital LLC shall be entitled to any extension, closing, finder or similar fees in connection with the closing of this transaction.</li> <li>● Voting agreement reached with certain shareholders of Arena (specifically Bryant Riley (and/or his respective subsidiaries and affiliates, as applicable), 180 Degree Capital, and management) to vote to approve the terms of this transaction.</li> <li>● Reasonable confirmatory diligence by both parties.</li> </ul> <p>(2) Closing Conditions</p> <ul style="list-style-type: none"> <li>● Fairness opinion letter from Arena's banker or other appropriate and reputable third party.</li> <li>● Shareholder vote to approve the terms of this transaction.</li> </ul>



- Any required regulatory approvals (e.g. FCC).







<b>Description of Bridge Media Assets</b>	The acquired Bridge Media Network entity, including all content creation assets, studios, studio equipment, advertising/media systems and personnel, intercompany agreements, and such other assets of Bridge Media Network (including, without limitation, <i>Driven</i> and <i>TravelHost</i> ) to be identified and agreed upon by SI and Arena prior to the closing of the transaction. Both parties acknowledge that the Bridge Media team is still building out the studios and ad infrastructure. It is proposed that this infrastructure be completed prior to the transfer of the Bridge Media assets instead of having to use the cash being infused into the Arena business for the buildout.
<b>Advertising Spend Commitment</b>	Upon consummation of the transaction, Agency 5 commits, irrevocably, to purchase media across Arena print, television and digital media properties at a minimum of \$12 million per year in advertising spend for five years from the Closing Date, totaling at least \$60 million in aggregate spend. This spend is guaranteed, with all parties using commercially reasonable efforts to provide opportunities for such spend (on Arena's part) and the enactment of this commitment (on Agency 5's part) on an even and distributed basis. This spend will be at favorable market rates to Agency 5 with priority placement. Premium inventory is all inventory available including video sponsorship, video pre-roll, print, programmatic guaranteed, podcast inventory, banners and traditional digital ad units, custom programming, and similar. Open Market programmatic inventory is excluded from the spend calculation.
<b>Confidentiality</b>	All information contained in this Term Sheet (the " <i>Term Sheet</i> ") is confidential, and each recipient, by such recipient's receipt of this Term Sheet, agrees to maintain all information contained herein in strict confidence and hereby agrees not to disclose the terms and provisions of this Term Sheet, the existence of this Term Sheet, the PIPE or the terms of the transaction to any party (including disclosure to public officials) other than to the officers and directors of, and counsel to, Arena and to the legal, accounting or investment advisors of such recipient, subject to such advisors maintaining in strict confidence all information contained herein as a recipient of this Term Sheet.
<b>Binding Provisions</b>	This Term Sheet and the information contained herein shall be binding on the parties, including the foregoing provisions regarding Confidentiality and the choice of law provision contained in this sentence, each of which is intended to be legally binding between the parties and governed by the laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.
<b>Other</b>	<p>The parties will work with counsel to determine standard and customary representations, warranties, and covenants for such transactions.</p> <p>Each party will be responsible for their legal fees in this transaction. Fees to Arena's banker will be paid out of the cash proceeds received by Arena as denoted above.</p>

## VOTING AND SUPPORT AGREEMENT

This VOTING AND SUPPORT AGREEMENT (this “Agreement”), dated as of August 14, 2023, is entered into by and between The Arena Group Holdings, Inc., a Delaware corporation (the “Company”) and [●], a [●] (“Stockholder”). All terms used but not otherwise defined in this Agreement shall have the respective meanings ascribed to such terms in the Binding LOI (as defined below).

WHEREAS, concurrently with the execution hereof, Company, Simplify Inventions, LLC (“Simplify”) are entering into a Binding Letter of Intent and Term Sheet, dated as of the date hereof (a copy of which is attached hereto as Attachment 1, as it may be amended from time to time, the “Binding LOI”), which provides, among other things, for the issuance and sale by the Company, and the purchase by the Simplify of (i) shares of Common Stock for an aggregate purchase price of \$25.0 million and (ii) shares of Series L Preferred Stock for an aggregate purchase price of \$25.0 million upon the terms and subject to the conditions set forth in the Binding LOI (the shares referred to in (i) and (ii) above being referred to herein as the “Company Securities”);

WHEREAS, the transactions contemplated by the Binding LOI (the “Transactions”) will require the approval of the Company’s shareholders (the “Stockholder Approval”) pursuant to the rules of the NYSE American which require shareholder approval for (i) the sale or issuance of common stock equal to 20% or more of the presently outstanding common stock of the Company for less than the greater of book or market value and (ii) issuances of common stock of the Company that will result in a change of control of the Company (the “Company Change in Control”);

WHEREAS, as of the date hereof, Stockholder is the record and beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of the shares of Common Stock set forth on the signature page hereto (such shares, the “Current Owned Common Stock” and together with any shares of Common Stock or other voting equity securities of the Company that are hereafter issued to or otherwise directly or indirectly acquired or beneficially owned by Stockholder prior to the valid termination of this Agreement, being referred to herein as the “Subject Shares”); and

WHEREAS, as a condition to the willingness of Simplify to enter into the Binding LOI, and as an inducement and in consideration for the SIC Entities to enter into the Binding LOI, Stockholder has agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Agreement to Vote and Approve. Stockholder agrees that it shall, and shall cause any other holder of record of any Subject Shares to, at any meeting of the stockholders of the Company (whether annual or special and whether or not an adjourned or postponed meeting) or in any other circumstances upon which a vote, consent or other approval of the stockholders of the Company is sought (a) when a meeting is held, appear at such meeting or otherwise cause the Subject Shares to be counted as present for the purpose of establishing a quorum; and (b) vote (or cause to be voted, including by proxy or by delivering a written consent) the Subject Shares (i) in favor of (A) the Transactions, including, but not limited to the issuance of the Company Securities (the “Stock Issuance Proposal”) and the resultant Company Change in Control (the “Change in Control Proposal”), and (B) any proposal to adjourn or postpone any such meeting of stockholders of the Company to a later date if there are not sufficient votes to adopt both the Stock Issuance Proposal and the Change in Control Proposal; and (ii) against any other proposal, action or agreement for an acquisition of, or change in control transaction involving, the Company. Stockholder agrees to waive, and to not exercise, any appraisal rights that may be available under Delaware law with respect to the Transactions. Any attempt by Stockholder to vote, consent or express dissent with respect to (or otherwise to utilize the voting power of), the Subject Shares in contravention of this Section 1 shall be null and void *ab initio*. Except as set forth in this Section 1, Stockholder shall not be restricted from voting in favor of, against or abstaining with respect to any matter presented to the stockholders of the Company.

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2. No Transfer. Except in accordance with the terms of this Agreement, the Binding LOI and the definitive agreement to be entered into between Simplify and the Company in furtherance of the Transactions (the “Stock Purchase Agreement”), Stockholder hereby covenants and agrees that during the term of this Agreement, Stockholder will not (a) sell, transfer, pledge, encumber, assign, tender, exchange, hedge, short sell or otherwise dispose of (“Transfer”) any of the Subject Shares, (b) enter into any legally binding contract, option or other arrangement or undertaking providing for the Transfer of any Subject Shares, (c) deposit any of the Subject Shares into a voting trust or enter into a voting agreement or arrangement with respect to the Subject Shares or grant any proxy or power of attorney with respect thereto that is inconsistent with this Agreement or (d) knowingly take any action that would make any representation or warranty of Stockholder contained herein untrue or incorrect in any material respect or have the effect of materially preventing or disabling Stockholder from performing its obligations under this Agreement. Any action taken in violation of the immediately preceding sentence shall be null and void *ab initio*. If any involuntary Transfer of any of the Subject Shares shall occur (including, but not limited to, a sale by Stockholder’s trustee in any bankruptcy, or a sale to a purchaser at any creditor’s or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall, subject to applicable Law, take and hold the Subject Shares subject to all of the restrictions, obligations, liabilities and rights under this Agreement, which shall continue in full force and effect until valid termination of this Agreement in accordance with its terms.

### 3. Effectiveness of Agreement; Termination.

(a) This Agreement shall not be effective unless and until (i) the Binding LOI is executed and delivered by all parties thereto and (ii) this Agreement is executed by all parties hereto.

(b) This Agreement shall terminate automatically, without any notice or other action by any person, entity or organization upon the first to occur of (i) the valid termination or expiration of the Binding LOI (or, if executed by the Company prior to such termination, the valid termination or expiration of the Stock Purchase Agreement) in accordance with their respective terms without the consummation of the transactions contemplated thereby, (ii) the consummation of the Transactions pursuant to the Letter of Intent or the Stock Purchase Agreement, (iii) the mutual written consent of the Company and Stockholder and (iv) fourteen days following a Change in Board Recommendation. Upon termination of this Agreement, no party shall have any further obligations or liabilities under this Agreement; provided, however, that nothing set forth in this Section 3 shall relieve any party from liability for fraud or any breach of this Agreement prior to termination hereof; and provided, further, that the provisions of this Section 3 and Sections 5 through 14 hereof, inclusive, shall survive any termination of this Agreement.

(c) As used herein: a “Change in Board Recommendation” means, prior to obtaining the Stockholder Approval and upon receipt of a Superior Proposal, the withdrawal, change, amendment, modification or qualification of the recommendation of the Company’s Board of Directors (the “Board”) to approve the Transactions and adopt the Stock Purchase Agreement pursuant to a determination by the Board in good faith that the failure to so withdraw, change, amend, modify or qualify such recommendation would be inconsistent with the fiduciary duties of the Board, (ii) a “Superior Proposal” means any bona fide written Acquisition Proposal that the Board determines in its good faith judgment (after consultation with the Company’s financial advisors and outside legal counsel), and considering such factors as the Board considers to be relevant in good faith, to be (A) more favorable to the shareholders of the Company from a financial point of view than the Transactions and (B) reasonably capable of being completed in accordance with its terms, in each case, taking into account all financial, regulatory, legal and other aspects of the proposal, (iii) an “Acquisition Proposal” means any proposal or offer from any person or group (other than IC or its affiliates) relating to, in a single transaction or series of related transactions, (A) any (1) direct or indirect acquisition the assets or business of the Company (including securities, assets or business of the subsidiaries of the Company) equal to more than 50% of the Company’s consolidated assets or to which more than 50% of the Company’s revenues or earnings on a consolidated basis are attributable, (2) direct or indirect acquisition or issuance of more than 50% of any class of voting equity securities of the Company, (B) any tender offer or exchange offer, as defined pursuant to the Exchange Act, that if consummated would result, directly or indirectly, in any person or group (or the shareholders of any person or group) beneficially owning 50% or more of the outstanding voting power of the Company or (C) any merger, consolidation, business combination, share exchange, recapitalization or other similar transaction involving the Company that would result in any person or group (or the shareholders of any person or group) beneficially owning, directly or indirectly, more than 50% of the outstanding voting power of the Company or 50% of the voting power of the surviving entity in a merger involving the Company or the resulting direct or indirect parent of the Company or such surviving entity (or any securities convertible into, or exchangeable for, securities representing such voting power), (iv) the “Exchange Act” means the Securities Exchange Act of 1934 and (v) “group” has the meaning set forth in Rule 13d-3 of the Exchange Act.

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4. Representations and Warranties. Stockholder represents and warrants to the Company that:

(a) Existence, Power; Binding Agreement. If Stockholder is an entity, Stockholder is validly existing and in good standing under the laws of the jurisdiction of its formation. Stockholder has the requisite power and authority (if Stockholder is an entity) or legal capacity (if Stockholder is a natural person) to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Stockholder and, assuming due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of Stockholder, enforceable against Stockholder in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

(b) No Conflicts. Except for filings required under, and compliance with other applicable requirements of, the Exchange Act and the rules and regulations of The New York Stock Exchange, (i) no consent, approval, order, authorization, release or waiver of, or registration, declaration or filing with, any governmental entity or other person is necessary on the part of Stockholder for the execution and delivery of this Agreement by Stockholder and the consummation by Stockholder of the transactions contemplated hereby and (ii) neither the execution and delivery of this Agreement by Stockholder nor the consummation by Stockholder of the transactions contemplated hereby or compliance by Stockholder with any of the provisions hereof shall (A) if Stockholder is an entity, conflict with or violate any provision of its certificate of formation or operating agreement (or similar organizational documents), (B) result in any breach or violation of, or constitute a default (or an event which, with notice or lapse of time or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a lien on any property or asset of Stockholder pursuant to any contract or agreement to which it is a party or by which Stockholder or any of its properties or assets are bound or affected or (C) violate any law, judgment, order or decree applicable to Stockholder or any of its properties or assets, except in the case of (B) or (C) for violations, breaches or defaults that would not in the aggregate materially impair the ability of Stockholder to perform its obligations hereunder.

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(c) Ownership. As of the date hereof, Stockholder is the record and beneficial owner of, and has good and valid title to, the Current Owned Common Stock. As of the date hereof, Stockholder has full voting power, full power of disposition, full power to issue instructions with respect to the matters set forth herein and full power to agree to all of the matters set forth in this Agreement, in each case, with respect to all of the Current Owned Common Stock. Except as disclosed in the Company's most recent proxy statement filed with the U.S. Securities and Exchange Commission, as of the date hereof, Stockholder does not own any options, equity awards, warrants, or equity interests or shares of the Company other than the Current Owned Common Stock.

(d) No Inconsistent Agreements. Stockholder (i) has not entered into any voting agreement or voting trust with respect to the Subject Shares, (ii) has not granted a proxy or power of attorney with respect to the Subject Shares that is inconsistent with its obligations pursuant to this Agreement and (iii) has not entered into any agreement or undertaking that is otherwise inconsistent with its obligations pursuant to this Agreement.

5. Notices. All notices and other communications hereunder must be in writing and will be deemed to have been duly delivered and received hereunder (a) four Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; or (c) immediately upon delivery by hand (with a written or electronic confirmation of delivery) or by email transmission, in each case to the intended recipient as set forth on the signature pages to this Agreement. Any notice received at the addressee's location, or by email at the addressee's email address, on any Business Day after 5:00 p.m., addressee's local time, or on any day that is not a Business Day will be deemed to have been received at 9:00 a.m., addressee's local time, on the next Business Day. From time to time, any party may provide notice to the other parties of a change in its address, email address, or fax number through a notice given in accordance with this Section 5, except that that notice of any change to the address, email address or any of the other details specified in or pursuant to this Section 5 will not be deemed to have been received until, and will be deemed to have been received upon, the later of the date (A) specified in such notice; or (B) that is five Business Days after such notice would otherwise be deemed to have been received pursuant to this Section 5.

6. Fiduciary Duties. Notwithstanding anything in this Agreement to the contrary, (a) Stockholder makes no agreement or understanding herein in any capacity other than in such Stockholder's capacity as a record holder and beneficial owner of the Subject Shares and (b) nothing herein will be construed to limit or affect any action or inaction by such Stockholder (or its representative) in such person's capacity as a member of the board of directors of the Company or as an officer, employee or fiduciary of the Company, in each case, acting in such person's capacity as a director, officer, employee or fiduciary of the Company.

7. Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective. The waiver by any party of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

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8. Entire Agreement; Assignment. This Agreement and the other documents and certificates delivered pursuant hereto, constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. This Agreement shall not be assigned by any party (including by operation of law, by merger or otherwise) without the prior written consent of (a) the Company, in the case of an assignment by Stockholder and (b) Stockholder, in the case of an assignment by the Company; provided that the Company may assign any of its rights and obligations to any direct or indirect Subsidiary of the Company, but no such assignment shall relieve the Company of its obligations hereunder.

9. Rules of Construction. The parties to this Agreement have been represented by counsel during the negotiation and execution of this Agreement and waive the application of any laws or rules of construction providing that ambiguities in any agreement or other document will be construed against the party drafting such agreement or other document.

10. Governing Law; Consent to Jurisdiction.

(a) This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be governed by, and construed, interpreted and enforced in accordance with, the Laws of the State of Delaware, without regard to conflict of laws principles that would result in the application of the laws of another jurisdiction.

(b) Any legal action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be heard and determined exclusively in the Court of Chancery of the State of Delaware or, in the event (but only in the event) that such court does not have subject matter jurisdiction over such action or proceeding, in the federal courts of the United States of America located in the State of Delaware. Each party hereto hereby irrevocably (i) submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or federal courts of the United States of America located in the State of Delaware in respect of any legal action, suit or proceeding arising out of or relating to this Agreement and (ii) waives, and agrees not to assert, as a defense in any such action, suit or proceeding, any claim that it is not subject personally to the jurisdiction of such courts, that its property is exempt or immune from attachment or execution, that the action, suit or proceeding is brought in an inconvenient forum, that the venue of action, suit or proceeding is improper or that this Agreement or the transactions contemplated hereby may not be enforced in or by such courts.

(c) To the fullest extent permitted by law, each party hereto agrees that notice or the service of process in any action, suit or proceeding arising out of or relating to this Agreement shall be properly served or delivered if delivered in the manner contemplated by Section 5.

(d) The consents to jurisdiction set forth in this Section 9 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this Section 9 and shall not be deemed to confer rights on any person other than the parties hereto. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

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11. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the parties hereto shall be entitled to specific performance of the terms hereof and injunctive and other equitable relief, in addition to any other remedy at law or equity, without posting any bond or other undertaking.

13. Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

14. Further Assurances. Stockholder will execute and deliver, or cause to be executed and delivered, all further documents and instruments and use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable law, to perform its obligations under this Agreement.

15. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterpart, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same.

[signature page to follow]

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IN WITNESS WHEREOF, the Company and Stockholder have executed or caused to be executed this Agreement as of the date first written above.

**THE ARENA GROUP HOLDINGS, INC.**

By: \_\_\_\_\_

Name:

Title:

Notice to the Company:

The Arena Group Holdings, Inc.  
200 Vesey Street, 24<sup>th</sup> Floor  
New York, NY 12081  
Attention: Legal Department  
legal@thearenagroup.net

With a copy (which does not constitute notice) to:

Fenwick & West LLP  
555 California Street, #12  
San Francisco, CA 94104  
Attention: Samuel Angus; Victoria Lupu  
E-mail: [sangus@fenwick.com](mailto:sangus@fenwick.com); [vlupu@fenwick.com](mailto:vlupu@fenwick.com)

*[Signature Page to Voting Agreement]*

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IN WITNESS WHEREOF, the Company and Stockholder have executed or caused to be executed this Agreement as of the date first written above.

**STOCKHOLDER**

By: \_\_\_\_\_

Name:

Title:

Shares of Common Stock: \_\_\_\_\_

Notice to Stockholder:

[Name]

[Address]

[Address]

[Attention]

[Email]

With a copy (which does not constitute notice) to:

[Name]

[Address]

[Address]

[Attention]

[Email]

*[Signature Page to Voting Agreement]*

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**Attachment 1**

Binding LOI

*See attached.*

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## EXECUTION COPY

**AMENDMENT NO. 1 TO THIRD AMENDED AND RESTATED NOTE PURCHASE AGREEMENT**

This **AMENDMENT NO. 1 TO THIRD AMENDED AND RESTATED NOTE PURCHASE AGREEMENT** (this "**Amendment No. 1**") is made and entered into as of August 14, 2023, by and among The Arena Group Holdings, Inc., a Delaware corporation (the "**Borrower**"), the Guarantors from time to time party to the Note Purchase Agreement (as defined below), each of the Purchasers from time to time named on Schedule I to the Note Purchase Agreement, and BRF Finance Co., LLC, in its capacity as agent for the Purchasers (in such capacity, "**Agent**"). Capitalized terms used herein without definition shall have the respective meanings assigned to such terms in the Note Purchase Agreement, as amended hereby.

**WHEREAS**, pursuant to the Third Amended and Restated Note Purchase Agreement dated as of December 15, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the "**Note Purchase Agreement**"), by and among the Borrower, the Guarantors from time to time party thereto, the Purchasers from time to time party thereto and the Agent, the Purchasers have purchased certain Notes from the Borrower, and the Guarantors have guaranteed the payment of the Obligations, all upon the terms and subject to the conditions set forth therein; and

**WHEREAS**, the Borrower has requested that the Purchasers and the Agent make certain amendments to the Note Purchase Agreement, in each case, contingent upon the conditions set forth in Section II hereof.

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**I. AMENDMENTS TO NOTE PURCHASE AGREEMENT ON THE AMENDMENT NO. 1 EFFECTIVE DATE:**

Effective as of the Amendment No. 1 Effective Date:

(1) the Note Purchase Agreement (excluding the schedules and exhibits thereto, which shall remain in full force and effect) is hereby amended as set forth in Annex A attached hereto such that all of the newly inserted double underlined text (indicated textually in the same manner as the following example: double-underlined text) and any formatting changes attached hereto shall be deemed to be inserted and all stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) shall be deemed to be deleted therefrom; and

(2) Schedule I to the Note Purchase Agreement shall be amended and restated in the form attached to this Amendment No. 1 as Annex B.

**II. CONDITIONS PRECEDENT TO EFFECTIVENESS:**

This Amendment No. 1 shall become effective as of the first date upon which each of the following conditions is satisfied (the "**Amendment No. 1 Effective Date**"):

(1) **Amendment Documents.** The Borrower and Guarantors shall have delivered or caused to be delivered to the Agent an executed version of this Amendment No. 1.

(2) **SLR Indebtedness Documents.** The Agent shall have received from the Borrower a copy of an amendment to the SLR Indebtedness Documents duly executed and delivered by the parties thereto,

which amendment shall permit the 2023 Note and shall otherwise be in form and substance acceptable to the Agent.

(3) **2023 Fee Letter.** The Agent shall have received from the Borrower the 2023 Fee Letter dated the date hereof among Agent and the Borrower, duly executed and delivered on its behalf.

(4) **2023 Note.** The Agent shall have received from the Borrower an executed version of the 2023 Note dated the date hereof.

(5) **Amendment to SLR Intercreditor Agreement.** The Agent shall have received from SLR Digital Finance LLC a copy of an amendment to the SLR Intercreditor Agreement duly executed and delivered by the parties thereto, which amendment shall be in form and substance acceptable to the Agent.

(6) **Officer's Certificate.** An officer's certificate for each Note Party certifying as to (A) true and complete copies of all governing documents of such Note Party attached thereto, (B) resolutions of the Board of Directors or other organizational action authorizing execution, delivery and performance of all Note Documents to which such Note Party is a party, (C) the good standing (or equivalent status) of each Note Party in its jurisdiction of organization, as evidenced by good standing certificates (or the equivalent thereof issued by any applicable jurisdiction) attached thereto, in each case, dated as of a recent date and issued by the Secretary of State or other appropriate official of each applicable jurisdiction, (D) the charter, articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, as applicable, of each Note Party attached thereto, in each case, dated as of a recent date and issued by the Secretary of State or other appropriate official of each applicable jurisdiction and (E) the incumbency and signature of the officers of each Note Party authorized to execute this Amendment No. 1 and the other Note Documents executed in connection herewith.

(7) **Representations and Warranties.** The representations and warranties set forth in the Note Purchase Agreement and the other Note Documents shall be true and correct in all material respects (or in all respects with respect to any representation or warranty which by its terms is limited as to materiality, in each case, after giving effect to such qualification) on and as of the Amendment No. 1 Effective Date.

(8) **No Default.** Both before and after giving effect to Amendment No. 1 and the transactions contemplated thereby, no event shall have occurred or be continuing or would result from the amendments contemplated hereby that would constitute an Event of Default or a Default.

(9) **No Prohibition.** No order, judgment or decree of any court, arbitrator or Governmental Authority shall purport to enjoin or restrain Agent or any Purchaser from entering into this Amendment No. 1 or consummating the transactions contemplated hereby.

(10) **Fees and Expenses.** The Borrower shall have paid all documented or invoiced fees, costs and expenses due and payable on or prior to the Amendment No. 1 Effective Date under the Note Purchase Agreement and the other Note Documents.

### **III. CONDITIONS SUBSEQUENT TO EFFECTIVENESS:**

This Amendment No. 1 shall only remain effective to the extent each of the following conditions subsequent have been fulfilled within the time periods set forth below to the reasonable satisfaction of the Agent. The failure of such conditions subsequent to have been fulfilled within the time periods set forth below to the reasonable satisfaction of the Agent shall result in an immediate Event of Default:

- (1) The Approved SI Deal shall have occurred on or prior to December 31, 2023.

(2) The Borrower shall have made a prepayment of outstanding principal and interest under the Notes in an amount not less than \$20,000,000 plus the lesser of (i) \$8,000,000 and (ii) the outstanding principal balance of the 2023 Notes upon the earlier of (x) December 31, 2023 and (y) the closing of the Approved SI Deal.

#### IV. MISCELLANEOUS:

(1) **Ratification, Etc.** Except as expressly amended hereby, the Note Purchase Agreement and the other Note Documents and all documents, instruments and agreements related thereto are hereby ratified and confirmed in all respects and shall continue in full force and effect. This Amendment No. 1 and the Note Purchase Agreement shall hereafter be read and construed together as a single document, and all references in the Note Purchase Agreement, any other Note Document or any agreement or instrument related to the Note Purchase Agreement shall hereafter refer to the Note Purchase Agreement as amended by this Amendment No. 1. This Amendment No. 1 shall constitute a Note Document for all purposes of the Note Purchase Agreement and the other Note Documents.

(2) **Reaffirmation.** Each of the Note Parties as borrower, debtor, grantor, chargor, pledgor, assignor, guarantor, or in other any other capacity in which such Note Party grants Liens or security interests in its property, assets or undertakings or acts as a guarantor or co-obligor, as the case may be, hereby (a) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Note Documents to which it is a party and (b) to the extent such Note Party granted Liens on or security interests in any of its property, assets or undertakings pursuant to any such Note Document as security for or otherwise guaranteed the Obligations, ratifies and reaffirms such guarantee and grant of security interests and Liens and confirms and agrees that such security interests and Liens shall continue in full force and effect and ranks as continuing security for the payment and discharge of the liabilities and obligations secured or guaranteed thereunder (as the case may be) including, without limitation, all of the Obligations as amended hereby.

(3) **No Waiver.** Nothing contained in this Amendment No. 1 shall be deemed to (a) constitute a waiver of any Default or Event of Default that may hereafter occur or heretofore have occurred and be continuing, (b) except as a result of the amendments expressly set forth in Section I of this Amendment No. 1, otherwise modify any provision of the Note Purchase Agreement or any other Note Document, or (c) give rise to any defenses or counterclaims to the Agent's or any Purchaser's right to compel payment of the Obligations when due or to otherwise enforce their respective rights and remedies under the Note Purchase Agreement and the other Note Documents.

(4) **Release.** Each Note Party hereby remises, releases, acquits, satisfies and forever discharges the Agent and the Purchasers, their agents, employees, officers, directors, predecessors, attorneys and all others acting on behalf of or at the direction of the Agent or the Purchasers, of and from any and all manner of actions, causes of action, suit, debts, accounts, covenants, contracts, controversies, agreements, variances, damages, judgments, claims and demands whatsoever, in law or in equity, which any of such parties ever had, or now has, to the extent arising from or in connection with any act, omission or state of facts taken or existing on or prior to the Amendment No. 1 Effective Date, against the Agent and the Purchasers, their agents, employees, officers, directors, attorneys and all persons acting on behalf of or at the direction of the Agent or the Purchasers ("Releasees"), for, upon or by reason of any matter, cause or thing whatsoever arising under, or in connection with, or otherwise related to, the Note Documents through the Amendment No. 1 Effective Date. Without limiting the generality of the foregoing, each Note Party hereby waives and affirmatively agrees not to allege or otherwise pursue any defenses, affirmative defenses, counterclaims, claims, causes of action, setoffs or other rights they have or may have under, or in connection with, or otherwise related to, the Note Documents as of the Amendment No. 1 Effective Date, including, but not limited to, the rights to contest any conduct of the Agent, the Purchasers or other Releasees on or prior to the Amendment No. 1 Effective Date.

(5) **Governing Law.** THIS AMENDMENT NO. 1 SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT ANY SUCH OTHER NOTE DOCUMENT EXPRESSLY SELECTS THE LAW OF ANOTHER JURISDICTION AS GOVERNING LAW THEREOF, IN WHICH CASE THE LAW OF SUCH OTHER JURISDICTION SHALL GOVERN.

(6) **Counterparts; Effectiveness.** This Amendment No. 1 may be executed via facsimile or other electronic method of transmission in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, each of the undersigned has duly executed this Amendment No. 1 to Note Purchase Agreement as of the date first set forth above.

NOTE PARTIES:

**The Arena Group Holdings, Inc.**, formerly known as TheMaven, Inc., as the Borrower

By: Douglas B. Smith  
Name: Douglas B. Smith  
Title: Chief Financial Officer

**The Arena Platform, Inc.**, formerly known as Maven Coalition, Inc., as a Guarantor

By: Douglas B. Smith  
Name: Douglas B. Smith  
Title: Secretary and Treasurer

**THE STREET, INC.** (as successor by merger to TST ACQUISITION CO, INC.), as a Guarantor

By: Douglas B. Smith  
Name: Douglas B. Smith  
Title: Secretary and Treasurer

**THE ARENA MEDIA BRANDS, LLC**, formerly known as Maven Media Brands, LLC, as a Guarantor

By: Douglas B. Smith  
Name: Douglas B. Smith  
Title: Secretary and Treasurer

**COLLEGE SPUN MEDIA INCORPORATED,**  
as a Guarantor

By: Douglas B. Smith  
Name: Douglas B. Smith  
Title: Chief Financial Officer, Treasurer and  
Secretary

**ATHLON HOLDINGS, INC.,** as a Guarantor

By: Douglas B. Smith  
Name: Douglas B. Smith  
Title: Chief Financial Officer, Treasurer and  
Secretary

**ATHLON SPORTS COMMUNICATIONS,  
INC.,** as a Guarantor

By: Douglas B. Smith  
Name: Douglas B. Smith  
Title: Chief Financial Officer, Treasurer and  
Secretary

AGENT AND PURCHASERS:

**BRF FINANCE CO., LLC**, as Agent and a Purchaser

By: \_\_\_\_\_  
Name: Bryant R. Riley  
Title: Co-Chief Executive Officer

[Signature Page – Amendment No. 1 to Third Amended and Restated Note Purchase Agreement]

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ANNEX A

Conformed Note Purchase Agreement

[See attached.]



**Third Amended and Restated Note Purchase Agreement**

**dated as of December 15, 2022**

**by and among**

**The Arena Group Holdings, Inc.,  
as the Borrower,**

**The Guarantors Named Herein,**

**BRF Finance Co., LLC,  
as Agent and a Purchaser,**

**and**

**The Other Purchasers From Time to Time Party Hereto**

### **THIRD AMENDED AND RESTATED NOTE PURCHASE AGREEMENT**

This THIRD AMENDED AND RESTATED NOTE PURCHASE AGREEMENT (this "Agreement") is dated as of December 15, 2022 and entered into by and among **The Arena Group Holdings, Inc.**, a Delaware corporation (the "Borrower"), the Guarantors from time to time party hereto, each of the Purchasers (as defined herein) from time to time named on Schedule I attached hereto and **BRF Finance Co., LLC**, in its capacity as agent for the Purchasers ("Agent").

#### **RECITALS**

The Borrower, the Guarantors, the Purchasers and the Agent are parties to a Note Purchase Agreement, dated as of June 10, 2019 (as amended prior to the Second Amended and Restated Note Purchase Agreement, the "Original Note Purchase Agreement"), as such Original Note Purchase Agreement was amended and restated in its entirety by that certain Amended and Restated Note Purchase Agreement, dated as of June 14, 2019, as such Amended and Restated Note Purchase Agreement was amended and restated in its entirety by that certain Second Amended and Restated Note Purchase Agreement dated March 24, 2020 (the "Second Amended and Restated Note Purchase Agreement"), as such Second Amended and Restated Note Purchase Agreement was amended by that certain Amendment No. 1 to Second Amended and Restated Note Purchase Agreement, dated as of October 23, 2020, that certain Amendment No. 2 to Second Amended and Restated Note Purchase Agreement, dated as of May 19, 2021, that certain Amendment No. 3 to Second Amended and Restated Note Purchase Agreement dated December 6, 2021, and that certain Amendment No. 4 to Second Amended and Restated Note Purchase Agreement dated January 23, 2022 (and as further amended and in effect immediately prior to the Third A&R Effective Date referred to below, the "Existing Note Purchase Agreement").

The Borrower, the Guarantors, the Purchasers and the Agent have agreed to amend and restate the Existing Note Purchase Agreement on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the Borrower, Guarantors, Agent and Purchasers agree as follows:

#### **SECTION 1. DEFINITIONS AND ACCOUNTING TERMS**

1.1. Certain Defined Terms. The capitalized terms not otherwise defined in this Agreement shall have the meanings set forth below:

"2023 Fee Letter" means that certain fee letter dated as of the 2023 Note Effective Date between the Borrower and the Agent.

"2023 Note Effective Date" means the first date upon which each of the conditions listed in Section II of Amendment No. 1 hereto are satisfied.

"2023 Note Advance Date" means a date each of the conditions in Section 3.1(C) are satisfied and the advances under the 2023 Notes requested on such date are funded.

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“2023 Note Commitments” means for any Purchaser, such Purchaser’s option to purchase the 2023 Notes hereunder up to the principal amount set forth in Schedule I as such amount shall be automatically reduced from time to time upon the (x) termination thereof by the Borrower or (y) funding of 2023 Notes. The aggregate 2023 Note Commitments prior to the funding of the 2023 Notes on the 2023 Notes Effective Date is Five Million Dollars (\$5,000,000).

“2023 Note Termination Date” has the meaning assigned to that term in Section 2.1(A).

“2023 Notes” means the additional notes purchased by the Purchasers from the Borrower on the 2023 Note Effective Date or any other 2023 Note Advance Date in the amounts set forth on Schedule I under the heading “2023 Notes”.

“A&R Effective Date” means June 14, 2019.

“A&R Notes” means the additional notes purchased by the Purchasers from the Borrower on the A&R Effective Date in the amounts set forth on Schedule I under the heading “A&R Notes”.

“ABG License” means that certain Licensing Agreement dated as of the A&R Effective Date by and between the Borrower, as licensee, and ABG-SI LLC, a Delaware limited liability company, as licensor.

“ABG-SI License” means that certain Content Creation and Licensing Agreement, dated as of May 24, 2019, by and between Meredith Corporation, ABG-SI LLC and, solely for purposes of Section 1 of Schedule C thereto, ABG Intermediate Holdings 2 LLC, as in effect on the A&R Effective Date.

“Affiliate” means, with respect to any Person, another Person: (a) directly or indirectly controlling, controlled by, or under common control with, the Person specified; (b) directly or indirectly owning or holding ten percent (10%) or more of any Equity Interest in the Person specified; or (c) ten percent (10%) or more of whose stock or other Equity Interest having ordinary voting power for the election of directors or the power to direct or cause the direction of management, is directly or indirectly owned or held by the Person specified; provided, however, that neither Agent nor any Purchaser shall be an Affiliate of any Note Party or of any Subsidiary of any Note Party for purposes of this definition. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Equity Interests, or by contract or otherwise.

“Agent” has the meaning assigned to that term in the introductory paragraph, together with any successor Agent appointed pursuant to Section 9.1(G).

“Agreement” has the meaning assigned to that term in the introductory paragraph hereof.

“Amended and Restated Fee Letter” means that certain fee letter dated as of the A&R Effective Date between the Borrower and the Agent.

“Anti-Terrorism Laws” means (i) the Money Laundering Control Act of 1986 (i.e., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act, as amended by the USA PATRIOT Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) the Proceeds of Crime (Money Laundering) and, to the extent applicable to the Borrower or any of its Subsidiaries, the Terrorist Financing Act (Canada), (vi) any law enacted in the United States or any other jurisdiction in which the Borrower or any of its Subsidiaries operate prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), (vii) the foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any enabling legislation or executive order relating thereto, or (viii) any similar laws relating to terrorism or money laundering enacted in the United States or any other jurisdictions in which the Borrower or any of its Subsidiaries operate, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced and all other 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.

“Applicable ECF Percentage” means, for any Fiscal Quarter, (a) if Excess Cash Flow is greater than or equal to \$5,000,000, fifty percent (50%), and (b) if Excess Cash Flow is less than \$5,000,000, thirty percent (30%).

“Applicable Law” means all laws, rules and regulations applicable to the Person, conduct, transaction, covenant, Note Document or contract in question, including all applicable common law and equitable principles; all provisions of all applicable state, provincial, federal and foreign constitutions, statutes, rules, regulations and orders of any Governmental Authority, and all orders, judgments and decrees of all applicable courts and arbitrators.

“Approved SI Deal” means the transactions contemplated by that certain [Binding Letter of Intent, dated as of August 14, 2023, by and between the Borrower and Simplify Inventions, LLC, which transaction must be consummated on or prior to December 31, 2023 upon terms reasonably acceptable to Agent.](#)

“Approved Fund” means any Fund that is administered or managed by (a) a Purchaser, (b) an Affiliate of a Purchaser or (c) an entity or an Affiliate of an entity that administers or manages a Purchaser.

“Asset Disposition” means the disposition, whether by sale, lease, transfer, loss, damage, destruction, condemnation or otherwise, of any or all of the assets of any Note Party or any of its Subsidiaries, other than sales or other dispositions expressly permitted under [Section 7.3\(A\)](#).

“Assignment and Assumption Agreement” means an assignment and assumption Agreement in form acceptable to Agent.

“B. Riley” means BRF Finance Co., LLC and any Affiliate thereof as a Purchaser hereunder.



“Bankruptcy Code” means Title 11 of the United States Code, or any similar Federal or state law for the relief of debtors.

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

“Blocked Person” has the meaning assigned to that term in Section 4.11(B).

“Borrower” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“BRF Finance Co. Letter of Credit” means that certain Irrevocable Standby Letter of Credit No. MV-0001, dated as of February 7, 2020, by and between BRF Finance Co., LLC as the issuer and the BRF Finance Co. Letter of Credit Beneficiary, not to exceed the BRF Finance Co. Letter of Credit Cap.

“BRF Finance Co. Letter of Credit Beneficiary” means Saks & Company LLC in its capacity as beneficiary under the BRF Finance Co. Letter of Credit.

“BRF Finance Co. Letter of Credit Cap” means \$3,024,232.

“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 any such state are closed.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements (or of any replacements or substitutions thereof or additions thereto) which, in accordance with GAAP, would be classified as capital expenditures.

“Capitalized Lease Obligation” means any Indebtedness of any Note Party represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Certificate of Exemption” has the meaning assigned to that term in Section 2.7.

“Change in Control” means each occurrence of any of the following:

(a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) (other than by B. Riley or Simplify Inventions, LLC or any of its Affiliates) of beneficial ownership of more than 50% of the aggregate outstanding voting or economic power of the Equity Interests of the Borrower;

(b) the acquisition, directly or indirectly, by Simplify Inventions, LLC or any of its Affiliates of beneficial ownership of more than 70% of the aggregate outstanding voting or economic power of the Equity Interests of the Borrower;

(c) a transaction pursuant to which the Borrower’s Equity Interests are no longer publicly traded on a nationally recognized stock exchange in the US pursuant to the Securities Act of 1934;

(d) ~~(b)~~ the Borrower shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Note Party (other than in connection with any transaction explicitly permitted hereunder), free and clear of all Liens; or

(e) ~~(e)~~-a "Change in Control" (or any comparable term or provision) occurs under or with respect to (i) any of the Equity Interests of the Borrower or any of its Subsidiaries, (ii) any Subordinated Indebtedness Document, or (iii) any Indebtedness of the Borrower or any of its Subsidiaries having an aggregate principal amount outstanding in excess of \$500,000.

"Charges" means all taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation and property taxes, custom duties, fees, assessments, liens, claims and charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts, imposed by any taxing or other Governmental Authority, domestic or foreign (including, without limitation, the PBGC or any environmental agency or superfund), upon the Collateral, the Note Parties or any of their Affiliates, except Excluded Taxes.

"Closing Date" means June 10, 2019.

"Collateral" means all property (whether real or personal, movable or immovable) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document.

"Common Stock" means the Borrower's common stock, \$0.01 par value per share.

"Confirmation and Ratification Agreement" means each of (a) that certain Confirmation and Ratification of Ancillary Note Documents and Amendment to Pledge and Security Agreement dated as of the A&R Effective Date by and among the Borrower, each Guarantor, and the Agent (ii) that certain Confirmation and Ratification of Ancillary Note Documents dated as of the Second A&R Effective Date by and among the Borrower, each Guarantor, and the Agent and (iii) that certain Confirmation and Ratification of Ancillary Note Documents dated as of the Third A&R Effective Date by and among the Borrower, each Guarantor, and the Agent.

"Control Agreement" has the meaning assigned to that term in Section 4.9(A).

"Conversion Election" has the meaning assigned to that term in Section 2.4(D).

"Conversion Election Payment Date" has the meaning assigned to that term in Section 2.1(C)(1).

"Conversion Portion" means an amount equal to 28% of the aggregate cash proceeds raised by the Borrower from the issuance and sale of Series K Preferred Stock during the Series K Exception Period.

“Debt Payments” means for any period, in each case, all cash actually expended by any Note Party to make: (a) interest payments on the Notes, plus (b) principal payments on the Note, plus (c) payments for all fees, commissions and charges set forth herein, plus (d) payments on Capitalized Lease Obligations, plus (e) payments in cash with respect to any other Indebtedness for borrowed money permitted hereunder.

“Default” means a condition, act or event that, after notice or lapse of time or both, would constitute an Event of Default if that condition, act or event were not cured or removed within any applicable grace or cure period.

“Default Rate” means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 4.00%.

“Delayed Draw PIK Amounts” has the meaning provided in Section 2.1(C)(2).

“Delayed Draw Term Notes” means the notes purchased by the Delayed Draw Term Note Purchasers from the Borrower on any Delayed Draw Term Note Advance Date in an aggregate principal amount of up to Twelve Million Dollars (\$12,000,000).

“Delayed Draw Term Note Advance Date” means a date each of the conditions in Section 3.1(B) are satisfied and the advances under the Delayed Draw Term Notes requested on such date are funded.

“Delayed Draw Term Note Option” means for any Delayed Draw Term Note Purchaser, such Delayed Draw Term Note Purchaser’s option to purchase the Delayed Draw Term Notes hereunder up to the principal amount set forth in Schedule I as such amount shall be automatically reduced from time to time upon the (x) termination thereof by the Borrower, or (y) funding of Delayed Draw Term Notes. The aggregate Delayed Draw Term Notes Options on the Third A&R Effective Date are Two Million Seventy-One Thousand Nine Hundred and Ninety-Nine Dollars (\$2,071,999).

“Delayed Draw Term Note Purchaser” shall mean each Person having a Delayed Draw Term Note Option or holding a portion of the outstanding Delayed Draw Term Notes.

“Delayed Draw Term Note Termination Date” has the meaning assigned to that term in Section 2.1(B).

“Delayed Draw Term Notes First Maturity Date” means, with respect to the Delayed Draw Term Notes issued on the Second A&R Effective Date plus the next \$1,086,135 in aggregate principal amount of Delayed Draw Term Notes (including Delayed Draw PIK Amounts) issued after the Second A&R Effective Date, the earlier of (i) March 31, 2022; *provided* that such date shall be extended to December 31, 2022 in the event that the Specified Equity Issuance shall have been consummated, or (ii) the date that the Obligations have been accelerated pursuant to and in accordance with the terms of this Agreement.

~~“Delayed Draw Term Notes Second Maturity Date” means, with respect any portion of the Delayed Draw Term Notes that do not mature on the Delayed Draw Term Notes First Maturity Date, the earlier of (i) the Existing Notes Maturity Date or (ii) the date that the~~

~~Obligations have been accelerated pursuant to and in accordance with the terms of this Agreement.~~

“EBITDA” shall mean for any period with respect to the Note Parties on a consolidated basis; the sum of (a) net income (or loss) for such period (excluding (x) extraordinary gains, (y) extraordinary non-recurring non-cash losses and extraordinary non-recurring charges and expenses, and (z) other items from time to time consented to in writing by Agent in its sole discretion), plus (b) all interest expense for such period, plus (c) tax expense based on income, profits or capital, including federal, state, local, excise franchise and similar taxes, plus (d) depreciation expenses for such period, plus (e) amortization expenses for such period.

“Employee Benefit Plan” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan) which is subject to ERISA and (a) which is maintained by the Borrower, any Subsidiary or any ERISA Affiliate, or (b) with respect to which the Borrower, any Subsidiary or any ERISA Affiliate contributes or has an obligation to contribute.

“Equity Interests” of any Person means any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation, or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

“ERISA Affiliate” means any Person, which together with the Borrower or a Subsidiary, would be deemed to be a “single employer” within the meaning of Section 414(b) or (c) of the IRC, or, solely for purposes of Section 302 of ERISA and Section 412 of the IRC, would be treated as a single employer under Section 414(m) or (o) of the IRC.

“Event of Default” has the meaning assigned to that term in Section 8.1.

“Excess Cash Flow” means, for any fiscal period, in each case for the Note Parties on a consolidated basis, EBITDA, minus each of the following, to the extent actually paid in cash during such fiscal period and without duplication: (a) Capital Expenditures, (b) tax expense based on income, profits or capital, including federal, state, local, excise franchise and similar taxes, (c) dividends and distributions permitted by this Agreement, and (d) Debt Payments; provided that, in no event shall Excess Cash Flow be less than zero (\$0.00).

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Account” means (a) payroll accounts, trust accounts, escrow accounts, accounts used exclusively, and within the ordinary course of business, for withholding tax, goods and services tax, sales tax or payroll tax and other fiduciary accounts and (b) zero balance disbursement accounts.



“Excluded Shares” has the meaning assigned to that term in Section 2.4(A)(2).

“Excluded Taxes” has the meaning assigned to that term in Section 2.7(A).

“Executive Order No. 13224” means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“Existing Note Purchase Agreement” has the meaning assigned to that term in the Recitals hereto.

“Existing Notes” has the meaning assigned to that term in Section 2.1(A).

“Existing Notes Maturity Date” means the earlier of (i) ~~December 31, 2022~~; *provided that such date shall be extended to December 31, 2023 in the event that the Specified Equity Issuance shall have been consummated, or (ii) the date that the Obligations have been accelerated pursuant to and in accordance with the terms of this Agreement.*

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

“Fee Letters” means, collectively, the Amended and Restated Fee Letter, the First Amendment Fee Letter ~~and~~, the Second Amended and Restated Fee Letter and the 2023 Fee Letter.

“First Amendment” means the First Amendment to Amended and Restated Note Purchase Agreement dated as of the First Amendment Effective Date, by and among the Borrower, the Guarantors, the Purchasers and the Agent.

“First Amendment Effective Date” means August 27, 2019.

“First Amendment Fee Letter” means that certain fee letter dated as of the First Amendment Effective Date between the Borrower and the Agent.

“First Amendment Notes” means the additional notes purchased by the Purchasers from the Borrower on the First Amendment Effective Date in the amounts set forth on Schedule I under the heading “First Amendment Notes”.

“First Closing Date” means the first Closing Date (as defined in the Securities Purchase Agreement).

“Fiscal Month” means any of the monthly accounting periods of the Borrower ending on the last day of each calendar month.

“Fiscal Quarter” means, with respect to the Borrower and its Subsidiaries, each three month period ending on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>.

“Fiscal Year” means, with respect to the Borrower and its Subsidiaries, each four (4) Fiscal Quarter period ending on December 31<sup>st</sup> in each year.

“Foreign Purchaser” has the meaning assigned to that term in Section 2.7(B).

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

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board that are applicable to the circumstances as of the date of determination.

“Governmental Authority” means (i) any international, foreign, federal, state, provincial, county or municipal government, or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body or (iii) any court or administrative tribunal of competent jurisdiction.

“Guarantor(s)” means, collectively, each Subsidiary Guarantor and any other Person which guarantees the Obligations.

“Guaranty” means any guaranty of the Obligations executed by a Guarantor in favor of Agent, for its benefit and for the ratable benefit of the Secured Parties, in form and substance satisfactory to Agent, including pursuant to Section 10.

“Hazardous Material” means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any environmental laws or regulations as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic substances” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity; (b) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; and (d) asbestos in any form or electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls.

“Indebtedness”, as applied to any Person, means without duplication: (a) all indebtedness for borrowed money; (b) obligations under leases which in accordance with GAAP constitute capital leases; (c) 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 (other than (i) trade accounts and accrued expenses payable in the ordinary course of business and not outstanding for more than sixty (60) days after the date on which such trade account payable was created, and (ii) accruals for payroll and other liabilities accrued in the ordinary course of business); (e) all Indebtedness of another

Person secured by any Lien on any property or asset owned or held by such Person regardless of whether the Indebtedness secured thereby shall have been assumed by such Person or is non-recourse to the credit of such Person (but excluding, for the avoidance of doubt, letters of credit and similar instruments) and only to the extent of the fair market value of such property or assets; (f) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (g) all net obligations of such Person under interest rate protection agreement, foreign currency exchange agreement or other interest or currency exchange rate, interest rate swap, or other similar agreements, (h) any advances under any factoring arrangement; (i) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off-balance sheet financing product; and (j) all guarantees by such Person of Indebtedness of others, to the extent of the liability of such Person under such guarantee.

"Indemnified Liabilities" has the meaning assigned to that term in Section 11.2.

"Indemnitees" has the meaning assigned to that term in Section 11.2.

"Intellectual Property" has the meaning assigned to that term in the Security Agreement.

"IRC" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

"IRS" means the United States of America Internal Revenue Service or any successor thereto.

"Liabilities" has the meaning given that term in accordance with GAAP and shall include, without limitation, Indebtedness.

"Letter of Credit Amount" has the meaning assigned to that term in Section 2.1(E).

"Letter of Credit Draw" has the meaning assigned to that term in Section 2.1(E).

"Lien" means any lien (statutory or otherwise), mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, any trust, and any agreement to give any security interest).

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, properties, assets or financial condition of the Borrower and its Subsidiaries taken as a whole; (b) the ability of the Note Parties (taken as a whole) to perform their respective obligations under the Note Documents, (c) the ability of Agent or any Purchaser to enforce or collect on the Obligations (after giving effect to any consents, waivers, amendments or other modifications not prohibited hereunder); or (d) the rights, remedies and benefits available to, or conferred upon, Agent and the Purchasers under the Note Documents.

“Maturity Date” means the earlier of (i) December 31, 2026, or (ii) the date that the Obligations have been accelerated pursuant to and in accordance with the terms of this Agreement.

“MJ Acquisition” means the acquisition by The Arena Media Brands, LLC, a wholly-owned subsidiary of Borrower, of certain assets related to the Men’s Journal and Adventure Sports Network businesses from Weider Publications, LLC and A360 Media, LLC, pursuant to the terms of the MJ Acquisition Documents.

“MJ Acquisition Agreement” means that certain Asset Purchase Agreement, dated as of December 7, 2022, among The Arena Media Brands, LLC, Weider Publications, LLC and A360 Media, LLC.

“MJ Acquisition Documents” means, collectively, (i) the MJ Acquisition Agreement, and (ii) all related agreements entered into in connection with the MJ Acquisition, in each case of the preceding clauses (i)-(ii), in form and substance satisfactory to the Agent and the Purchasers.

“Multiemployer Plan” means any “multiemployer plan” (as such term is defined in Section 4001(a)(3) of ERISA) which is subject to ERISA and to which the Borrower, any Subsidiary Guarantor or any ERISA Affiliate contributes or has an obligation to contribute.

“New York Lease” means that certain sublease entered into on January 14, 2020, which is expected to become effective on or about February 1, 2020, by and between Maven Coalition, Inc., as tenant, and Saks & Company LLC, as sublandlord.

“Note Documents” means this Agreement, the Security Documents, the Notes (if any), the BRF Finance Co. Letter of Credit, the Fee Letters, the Perfection Certificate, the SLR Intercreditor Agreement, any Subordination Agreements, the Side Letter, each Confirmation and Ratification Agreement, and all other agreements executed by or on behalf of any Note Party and delivered concurrently herewith or at any time hereafter to or for the Agent or any Purchaser in connection with the Notes, all as amended, restated, supplemented or modified from time to time.

“Note Party” means the Borrower and each Guarantor.

“Notes” means the Existing Notes, the Delayed Draw Term Notes ~~and~~, the Third A&R Notes ~~and the 2023 Notes~~.

“Obligations” means all obligations, liabilities and indebtedness of every nature of each Note Party from time to time owed to Agent, any Purchaser or any other Secured Party under the Note Documents (whether incurred before or after the ~~Existing Notes Maturity Date, the Delayed Draw Term Notes First Maturity Date or the Delayed Draw Term Notes Second Maturity Date, as applicable~~).

“OFAC Sanctions Programs” means the laws, regulations and Executive Orders administered by OFAC, including but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as it has been or shall thereafter be renewed, extended, amended, or replaced, and the list of Specially Designated Nationals and Blocked Persons administered by OFAC, as such list may be amended from time to time.



“Original Note Purchase Agreement” has the meaning assigned to that term in the Recitals hereto.

“Original Notes” means the notes purchased by the Purchasers from the Borrowers under the Original Note Purchase Agreement in the amounts set forth on Schedule I under the heading “Original Notes”.

“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Title IV of ERISA, or any successor agency or other Governmental Authority succeeding to the functions thereof.

“Pension Benefit Plan” means any Employee Benefit Plan subject to the provisions of Title IV of ERISA or the minimum funding standards under Section 412 of the IRC.

“Perfection Certificate” means the Perfection Certificate and the responses thereto provided by Note Parties and delivered to Agent.

“Permitted Encumbrances” means the following types of Liens:

(a) Liens for Taxes not yet due and payable, or being Properly Contested;

(b) statutory Liens of landlords, carriers, warehousemen, mechanics, vendors, materialmen and other similar liens imposed by law, which are incurred in the ordinary course of business for sums not more than thirty (30) days delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto and for which adequate reserves in accordance with GAAP are being maintained;

(c) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds, trade contracts and other similar obligations (exclusive of obligations for the payment of borrowed money); provided, that, for the avoidance of doubt, any grant of a security interest under the UCC in the Collateral shall not be permitted under this sub-clause (c);

(d) zoning restrictions, building codes, land use laws, easements, licenses, reservations, provisions, covenants, waivers, rights-of-way, restrictions, minor irregularities of title (and with respect to leasehold interests, mortgages, obligations, Liens and other encumbrances incurred, created, assumed or permitted to exist and arising by, through or under a landlord, ground lessor or owner of the leased property, with or without consent of the lessee) and other similar charges or encumbrances with respect to real property not interfering in any material respect with the ordinary conduct of the business of the Borrower or any of its Subsidiaries and which do not secure obligations for payment of money;

(e) Liens in favor of Agent, on behalf of itself and the other Secured Parties;

(f) Liens pursuant to the SLR Indebtedness Documents;

(g) subject to Section 5.8, Liens existing on the Third A&R Effective Date set forth on Schedule 7.3(B) including replacement Liens, provided, that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.1(B);

(h) precautionary financing statements filed in connection with operating leases;

(i) Liens consisting of judgment or judicial attachment liens with respect to judgments the existence of which do not constitute an Event of Default; provided, that, the holder of such judgment Lien has not commenced any enforcement action;

(j) licenses, sublicenses, leases or subleases (including any license of Intellectual Property) granted to third parties in the ordinary course of business or not materially interfering with the business of the Borrower or any of its Subsidiaries;

(k) Liens in favor of collecting banks arising under Section 4-210 of the UCC;

(l) Liens arising from customary rights of set-off, revocation, refund or chargeback in favor of a bank or other depository institution where the Borrower or any of its Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;

(m) Liens consisting of contractual obligations of the Borrower or any of its Subsidiaries to sell or otherwise dispose of assets solely to the extent such disposition is permitted hereunder; and

(n) Liens consisting of customary security deposits under operating leases entered into by the Borrower or a Subsidiary in the ordinary course of business.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof.

“PIK Amounts” has the meaning provided in Section 2.1(C)(1).

“Projections” has the meaning assigned to that term in Section 5.1(D).

“Properly Contested” means, in the case of any Taxes of any Person that are not paid as and when due or payable by reason of such Person’s bona fide dispute concerning its liability to pay the same or concerning the amount thereof: (a) such Taxes are being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such

Person has established appropriate reserves as shall be required in conformity with GAAP; (c) the non-payment of such Taxes will not have a Material Adverse Effect or will not result in the forfeiture of any assets of such Person; (d) no Lien is imposed upon any of such Person's assets with respect to such Taxes unless such Lien (x) is at all times junior and subordinate in priority to the Liens in favor of the Agent (except only with respect to property Taxes that have priority as a matter of Applicable Law) and (y) enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute.

"Public Offering Indebtedness" means Indebtedness consisting of unsecured notes to be sold pursuant to an underwritten public offering for whom B. Riley Securities, Inc. is acting as representative of the underwriters in the offering, which Indebtedness (a) shall have a maturity date that is at least 181 days later than the ~~Existing Notes~~ Maturity Date, and (b) shall have terms (including without limitation, payment terms, interest rating covenants, remedies, defaults and other material terms) reasonably satisfactory to the Agent and the Purchasers.

"Purchaser" or "Purchasers" means, either the purchasers of the Existing Notes, the 2023 Notes or the Third A&R Notes or the Delayed Draw Term Note Purchasers, as the context may require, from time to time or at any time, and each assignee thereof that becomes party to this Agreement in accordance with its terms.

"Register" has the meaning assigned to that term in Section 11.12(C).

"Reportable Event" means a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder other than an event for which the requirement to provide notice to the PBGC has been waived.

"Requisite Purchasers" means, at any time, Purchasers holding more than fifty percent (50.00%) of the sum of (a) the principal amount outstanding under the Existing Notes, the Delayed Draw Term Notes, the 2023 Notes and the Third A&R Notes, plus (b) the outstanding ~~Delayed-Draw-Term~~2023 Note Options Commitments at such time.

"Responsible Officer" means the president, any vice president, the chief financial officer, the director of finance or the controller of any Note Party or any other officer having substantially the same authority and responsibility.

"Restricted Junior Payment" means: (a) any dividend or other distribution, direct or indirect, on account of any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding; (b) any payment or prepayment of principal of, premium, if any, or interest on, or any redemption, conversion, exchange, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of the Borrower or any of its Subsidiaries 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 Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding; (d) any payment by any Note Party of any management, consulting or similar fees to any Affiliate of the Borrower or any of its Subsidiaries, whether pursuant to a management agreement or otherwise; (e) any voluntary prepayment of any Indebtedness of the Borrower or any of its Subsidiaries (other than the Obligations), or (f) any payment or prepayment of

principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to any Subordinated Indebtedness or the Public Offering Indebtedness. Payments in kind on account of the Borrower's Series L Preferred Stock shall not constitute Restricted Junior Payments.

"SEC" means the United States Securities and Exchange Commission.

"Second A&R Closing" has the meaning has the meaning assigned to that term in Section 2.2(A).

"Second A&R Effective Date" means March 24, 2020.

"Second Amended and Restated Fee Letter" means that certain fee letter dated as of the Second A&R Effective Date between the Borrower and the Agent.

"Second Amended and Restated Note Purchase Agreement" has the meaning assigned to that term in the Recitals hereto.

"Secured Parties" means Agent, any Purchaser and any Indemnitees.

"Securities Act" means the Securities Act of 1933, as amended and together with all rules, regulations and interpretations thereunder or related thereto.

"Security Agreement" means that certain Pledge and Security Agreement dated as of the Closing Date by and among the Note Parties and Agent (as amended, modified, supplemented or restated from time to time).

"Security Documents" means the Security Agreement and all other agreements as shall from time to time secure or relate to the Obligations, or any part thereof (in each case, as amended, modified, supplemented or restated from time to time).

"Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated as of May 19, 2021, by and among the Borrower and the purchasers identified on the signature pages thereto, as amended, restated, supplemented or otherwise modified from time to time.

"Series K Exception Period" has the meaning assigned to that term in Section 2.4(A)(2).

"Series K Preferred Stock" means the Borrower's Series K Convertible Preferred Stock, \$0.01 par value per share.

"Series L Preferred Stock" means the Borrower's contemplated Series L Preferred Stock which will mature on the date that is five years from the closing date of the Approved SI Deal and upon maturity will require a repayment by the Borrower of \$25.0 million in cash and all accrued PIK payments thereon.

"Side Letter" means that certain side letter dated as of the Closing Date by and among the Borrower and Agent (in each case, as amended, modified, supplemented or restated from time to time).



“SLR Indebtedness” means Indebtedness incurred in connection with the SLR Indebtedness Documents.

“SLR Indebtedness Documents” means that certain Financing and Security Agreement, dated as of February 6, 2020 (as amended, restated, supplemented or otherwise modified to date), by and among the Note Parties and SLR Digital Finance LLC, and all other agreements entered into in connection therewith.

“SLR Intercreditor Agreement” means that certain intercreditor agreement dated as of February 24, 2020 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement), by and among the Agent, SLR Digital Finance LLC and the Note Parties.

“Specified Equity Issuance” means the receipt by the Borrower of at least \$20,000,000 in gross cash proceeds from the issuance and sale of the Excluded Shares on or prior to 5:00 pm New York City time on February 14, 2022 (or such later date as shall be agreed to by the Agent in its sole discretion).

“Subsidiary” means, with respect to any Person, any corporation, association or other business entity of which more than fifty percent (50%) of the total voting power of Equity Interests (or equivalent ownership or controlling interest) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees 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. Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Borrower.

“Subsidiary Guarantor” means each direct or indirect Subsidiary of the Borrower, whether now existing or hereafter created or acquired.

“Subordinated Creditor” means any Person that shall have entered into a Subordination Agreement with the Agent, on behalf of the Secured Parties.

“Subordinated Debentures” means, collectively, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with B. Riley FBR, Inc. as Holder, issued December 12, 2018, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with BRC Partners Opportunity Fund, LP as Holder, issued December 12, 2018, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with Dialectic Antithesis Partners, LP, as Holder, issued December 12, 2018, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with B. Riley FBR, Inc. as Holder, issued March 18, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with John Fitchthorn as Holder, issued March 18, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with Strome Mezzanine Fund II, LP as Holder, issued March 18, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with B. Riley FBR, Inc. as Holder, issued March 27, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with SFS Growth Fund, LP as Holder, issued March 27, 2019, and 12%

Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with Todd Sims, Inc. as Holder, issued April 8, 2019, issued pursuant to those certain Securities Purchase Agreements by and among the Borrower and the purchasers party thereto dated as of December 12, 2018, March 18, 2019, March 27, 2019, and April 8, 2019, respectively, in each case, as each Subordinated Debenture may be amended from time to time in a manner permitted by the Agent.

“Subordinated Indebtedness” means (a) the Subordinated Debentures and (c) other unsecured Indebtedness of any Note Party, in each case, which has a maturity date that is at least 181 days later than the ~~Existing Notes~~ Maturity Date and the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are reasonably satisfactory to the Agent and the Requisite Purchasers and which has been expressly subordinated in right of payment to all Indebtedness of such Note Party under the Note Documents (i) by the execution and delivery of a Subordination Agreement, or (ii) otherwise on terms and conditions reasonably satisfactory to the Agent and the Requisite Purchasers. For the avoidance of doubt, Public Offering Indebtedness shall not constitute Subordinated Indebtedness.

“Subordinated Indebtedness Documents” means all documents evidencing Subordinated Indebtedness, including, without limitation, each subordinated promissory note or agreement issued by a Note Party to a Subordinated Creditor, and each other promissory note, instrument and agreement executed in connection therewith, all on terms and conditions reasonably satisfactory to the Agent and the Requisite Purchasers.

“Subordination Agreement” means each subordination agreement by and among, as applicable, the Agent, the applicable Note Parties, the applicable Subsidiaries of the Note Parties and the applicable Subordinated Creditor, each in form and substance satisfactory to the Agent and the Requisite Purchasers and each evidencing and setting forth the senior priority of the Obligations over such Subordinated Indebtedness and to the extent applicable, Liens.

“Taxes” has the meaning assigned to that term in Section 2.7(A).

“Tax Liabilities” has the meaning assigned to that term in Section 2.7(A).

“Termination Event” means (i) a Reportable Event with respect to any Pension Benefit Plan; (ii) the withdrawal of any Note Party or any ERISA Affiliate from any Pension Benefit Plan during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA; (iii) the providing of notice of intent to terminate any Pension Benefit Plan in a distress termination described in Section 4041(c) of ERISA; (iv) the institution by the PBGC of proceedings to terminate any Pension Benefit Plan or Multiemployer Plan; (v) any event or condition which could reasonably be expected to (a) constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Benefit Plan, (b) result in the termination of a Multiemployer Plan pursuant to Section 4041A of ERISA or (c) result in the imposition of any Lien on the assets of any Note Party by operation of Section 4069 of ERISA; or (vi) the partial or complete withdrawal within the meaning of Sections 4203 and 4205 of ERISA of any Note Party or any ERISA Affiliate from a Multiemployer Plan resulting in withdrawal liability to any Note Party.

“TheStreet” means TheStreet, Inc., a Delaware corporation.

“Third A&R Effective Date” means December 15, 2022.

“Third A&R Notes” means the additional notes purchased by the Purchasers from the Borrower on the Third A&R Effective Date in the amounts set forth on Schedule I under the heading “Third A&R Notes”.

“Transactions” means collectively, the transactions contemplated by the TS Acquisition Documents, the Note Documents (including with respect to the issuance of Notes on such date), and the financial accommodations contemplated herein and therein.

“TS Acquisition” means the merger, pursuant to the terms of the TS Acquisition Documents, of TheStreet and TST AcquisitionCo, with TheStreet continuing as the surviving corporation.

“TS Acquisition Agreement” means that certain Agreement and Plan of Merger, dated as of the Closing Date, among the Borrower, TST AcquisitionCo, and TheStreet.

“TS Acquisition Documents” means, collectively, (i) the TS Acquisition Agreement, (ii) the TS Escrow Agreement, and (iii) all related agreements entered into in connection with the TS Acquisition, in each case of the preceding clauses (i)-(iii), in form and substance satisfactory to the Agent and the Purchasers.

“TS Escrow Agreement” means that certain Escrow Agreement, dated as of the Closing Date, by and among the Borrower, TheStreet, and Citibank, N.A.

“TST AcquisitionCo” means TST ACQUISITION CO., INC., a Delaware corporation.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, to the extent the law of any other state or other jurisdiction applies to the attachment, perfection, priority or enforcement of any Lien granted to Agent in any of the Collateral, “UCC” means the Uniform Commercial Code as in effect in such other state or jurisdiction for purposes of the provisions hereof relating to such attachment, perfection, priority or enforcement of a Lien in such Collateral. To the extent this Agreement defines the term “Collateral” by reference to terms used in the UCC, each of such terms shall have the broadest meaning given to such terms under the UCC as in effect in any state or other jurisdiction.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001).

1.2. UCC Defined Terms. The following terms used in this Agreement shall have the respective meanings provided for in the UCC: “Accounts”, “Account Debtor”, “Chattel Paper”, “Deposit Account”, “Documents”, “General Intangibles”, and “Inventory”.

1.3. Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP. Financial statements and other information furnished to Agent or any Purchaser shall be prepared in accordance with GAAP (as in effect at the time of such preparation) on a consistent



basis. For all purposes hereunder, only those leases (assuming for purposes hereof that such leases were in existence on January 1, 2015) that would have constituted capital leases or financing leases in conformity with GAAP on January 1, 2015, shall be considered capital leases or financing leases hereunder, and all calculations and deliverables under this Agreement or any other Note Document shall be made or delivered, as applicable, in accordance therewith.

1.4. Other Definitional Provisions. References to “Sections” and “Schedules” shall be to Sections, and Schedules, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in Section 1.1 or otherwise in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. In this Agreement, words importing any gender include the other genders; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”; references to agreements and other contractual instruments shall be deemed to include subsequent amendments, assignments, and other modifications thereto, but only to the extent such amendments, assignments and other modifications are not prohibited by the terms of this Agreement or any other Note Document; references to Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and unless the context requires otherwise, all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.

## SECTION 2. NOTES; SUPPLEMENTAL NOTE ISSUANCES

### 2.1. Authorization of Notes.

(A) (1) Existing Notes. The Borrower sold to the Purchasers, and the Purchasers purchased from the Borrower, in reliance on the representations, warranties and covenants of the Borrower and the other Note Parties under the (i) Original Note Purchase Agreement, and (ii) the Existing Note Purchase Agreement, in each case upon the terms and subject to the conditions set forth therein, notes in the original principal amounts set forth after such Purchaser’s name under the headings “Original Notes”, “A&R Notes” and “First Amendment Notes”, respectively, contained on Schedule I, and any additional Notes issued in respect of any Letter of Credit Draw after the Second A&R Effective Date (collectively, the “Existing Notes”). The aggregate outstanding principal amount of the Existing Notes as of the Third A&R Effective Date is \$62,690,753. The Existing Notes remain in full force and effect as of the Third A&R Effective Date and are hereby ratified and reaffirmed in all respects.

(2) Third A&R Notes. Subject to and in reliance upon the representations, warranties, terms and conditions of this Agreement, each Purchaser agrees (severally and not jointly) to purchase from the Borrower on the Third A&R Effective Date, and Borrower agrees to sell to each Purchaser, the Third A&R Notes in the original principal amount set forth after such Purchaser’s name under the heading “Third A&R Notes” contained on Schedule I. On the Third A&R Effective Date, the Borrower shall deliver to each Purchaser the Third A&R Notes reflecting the aggregate original principal amount of such Purchaser’s notes as set forth after such Purchaser’s name under the heading “Third A&R Notes” contained on Schedule I. The aggregate outstanding original principal amount of the Third A&R Notes as of the Third A&R Effective Date is \$36,000,000.

(3) 2023 Notes. Subject to and in reliance upon the representations, warranties, terms and conditions of this Agreement, including, without limitation, Section 3.1(C) of this Agreement, each Purchaser agrees (severally and not jointly) to fund its pro rata share of any advances under the 2023 Notes not to exceed its 2023 Note Commitment on the applicable 2023 Note Advance Date. Any draw under the 2023 Note Commitments will be made pro rata and must be in an amount not less than \$1,000,000. The 2023 Note Commitments will expire and be terminated upon the earliest of (x) the date the Borrower provides written notice to the Administrative Agent that it is terminating all and not less than all, of the 2023 Note Commitments, (y) November 30, 2023 and (z) the consummation of the Approved SI Deal (the earliest of clauses (x), (y) and (z) the “2023 Note Termination Date”). Once repaid, whether such payments are voluntary or required, the 2023 Notes may not be reborrowed without the Agent’s express written consent.

(1) At Borrowers’ option, upon not less than five (5) Business Days’ prior written notice to Agent by the Borrower, the Borrower may terminate all, but not less than all, of the 2023 Note Commitments.

(2) On the 2023 Note Effective Date, the Borrower shall deliver to each Purchaser the 2023 Notes reflecting the aggregate amount of 2023 Note Commitments of such Purchaser as set forth after such Purchaser’s name under the heading “2023 Notes” contained on Schedule I. The aggregate outstanding original principal amount of the 2023 Notes as of the 2023 Note Effective Date is \$5,000,000. For the avoidance of doubt, the 2023 Notes were fully drawn on the 2023 Note Effective Date.

(B) Delayed Draw Term Notes. Subject to and upon the terms and conditions contained herein including, without limitation, Section 3.1(B) of this Agreement, each Delayed Draw Term Purchaser severally (and not jointly) has the option in its sole discretion to fund its pro rata share of any advances under the Delayed Draw Term Notes not to exceed its Delayed Draw Term Note Option on the applicable Delayed Draw Note Advance Date. Any draw under the Delayed Draw Term Note Options will be made pro rata and must be in an amount not less than \$2,000,000. The Delayed Draw Term Note Options will expire and be terminated upon the earliest of (x) the date the Borrower provides written notice to the Administrative Agent that it is terminating all and not less than all, of the Delayed Draw Term Note Options, (y) the Delayed Draw Term Notes First Maturity Date and (z) the ~~Delayed Draw Term Notes Second Maturity~~2023 Note Effective Date (the earliest of clauses (x), (y) and (z) the “Delayed Draw Term Note Termination Date”). Once repaid, whether such payments are voluntary or required, the Delayed Draw Term Notes may not be reborrowed without the Agent’s express written consent.

(1) At Borrowers’ option, upon not less than five (5) Business Days’ prior written notice to Agent by the Borrower, the Borrower may terminate all, but not less than all, of the Delayed Draw Term Note Options.

(2) Any payment of principal made on the Notes shall be applied to the 2023 Notes until they are paid in full, then to the Third A&R Notes until they are paid in full, then to the Delayed Draw Term Notes until they are paid in full and then to the Existing Notes.

(C) Interest Rate.

(1) Existing Notes. Interest on the Existing Notes is payable in cash quarterly in arrears on the last day of each Fiscal Quarter, and shall accrue for each calendar quarter on the outstanding principal amount of the Existing Notes at an aggregate rate of 10.00% per annum, provided that, after the occurrence and during the continuance of an Event of Default, the Existing Notes shall bear interest at the Default Rate, provided further, that in no event shall the amount paid or agreed to be paid by the Borrower as interest and premium on any Existing Note exceed the highest lawful rate permissible under the law applicable thereto, provided further, that, with respect to interest payable on (x) March 31, 2020, June 30, 2020 and September 30, 2020 and (y) on December 31, 2020, March 31, 2021, June 30, 2021, September 30, 2021 and December 31, 2021 (each such interest payment under this clause (y), a "Conversion Election Payment Date"), the Borrower will, in lieu of the payment in cash of all or any portion of the interest due on such dates pay any such amounts by adding such amounts to the principal amount of the Notes on such dates (such amounts, the "PIK Amounts"), which PIK Amounts shall capitalize and thereafter shall themselves accrue interest at the rate applicable to the Existing Notes, provided, however, that with respect to interest payable on a Conversion Election Payment Date, each Purchaser will have the option to take all or a portion of the interest due on such date in the form of an issuance of Equity Interests pursuant to a Conversion Election, and provided further that from and after January 23, 2022, interest on the Existing Notes shall be payable, at the Agent's sole discretion, either (a) in cash quarterly in arrears on the last day of each Fiscal Quarter or (b) by continuing to add such interest due on such payment dates the principal amount of the Existing Notes in accordance with this Section.

(2) Delayed Draw Term Notes. Interest on amounts outstanding under the Delayed Draw Term Notes is payable, at the Agent's sole discretion, either (a) in cash quarterly in arrears on the last day of each Fiscal Quarter or (b) in kind quarterly in arrears on the last day of each Fiscal Quarter (such amounts, the "Delayed Draw PIK Amounts"), and in each case shall accrue for each Fiscal Quarter on the principal amount outstanding under the Delayed Draw Term Notes at an aggregate rate of 10.00% per annum (~~such amounts, the "Delayed Draw PIK Amounts"~~), which Delayed Draw PIK Amounts shall capitalize and shall themselves accrue interest at the rate applicable to the Delayed Draw Term Notes, provided that, after the occurrence and during the continuance of an Event of Default, the Delayed Draw Term Notes shall bear interest at the Default Rate, provided further, that in no event shall the amount paid or agreed to be paid by the Borrower as interest and premium on any Delayed Draw Term Note exceed the highest lawful rate permissible under the law applicable thereto.

(3) Third A&R Notes. Interest on the Third A&R Notes is payable in cash quarterly in arrears on the last day of each Fiscal Quarter, and shall accrue for each calendar quarter on the outstanding principal amount of the Third A&R Notes at an aggregate rate of ~~12.00~~10.00% per annum, provided that, ~~on each of March 1, 2023, May 1, 2023~~after the occurrence and July 1, 2023~~during the annual interest rate on the Third A&R Notes shall increase by 1.50% per annum, provided further, that after the occurrence and during the~~ continuance of an Event of Default, the Third A&R Notes shall bear interest at the Default Rate, provided further, that in no event shall the amount paid or agreed to be paid by the Borrower as interest and premium on any Third A&R Note exceed the highest lawful rate permissible under the law applicable thereto.



(4) 2023 Notes. Interest on the 2023 Notes is payable in cash quarterly in arrears on the last day of each Fiscal Quarter, and shall accrue for each calendar quarter on the outstanding principal amount of the 2023 Notes at an aggregate rate of 10.00% per annum, provided, that after the occurrence and during the continuance of an Event of Default, the 2023 Notes shall bear interest at the Default Rate, provided further, that in no event shall the amount paid or agreed to be paid by the Borrower as interest and premium on any 2023 Note exceed the highest lawful rate permissible under the law applicable thereto.

(D) The obligations of the Borrower under the Note Documents shall be guaranteed by each of the Guarantors.

(E) In the event that, pursuant to the terms of the BRF Finance Co. Letter of Credit, the BRF Finance Co. Letter of Credit Beneficiary makes any full or partial draw on the BRF Finance Co. Letter of Credit (each such draw, a “Letter of Credit Draw”) in any amount (each such amount, a “Letter of Credit Draw Amount”), such Letter of Credit Draw Amount shall automatically be added to the principal balance of the Notes hereunder as additional Existing Notes, and at all times thereafter shall be deemed to be part of the Obligations.

(F) In the event that the BRF Finance Co. Letter of Credit is renewed beyond one year from the date of its effectiveness, whether such renewal occurs by the terms of the BRF Finance Co. Letter of Credit or by mutual election by BRF Finance Co. and the BRF Finance Co. Letter of Credit Beneficiary, the Agent shall have the right to charge a fee in connection with such renewal, which renewal fee shall be determined in the Agent’s sole discretion.

2.2. Sales; Third A&R Closing; 2023 Note Closing.

(A) On the Third A&R Effective Date, the Borrower will issue and sell to each Purchaser and, subject to the terms and conditions hereof and in reliance upon the representations and warranties of the Borrower and Guarantors contained herein and in the other Note Documents, each Purchaser, acting severally and not jointly, will purchase from the Borrower, at the Third A&R Closing, Third A&R Notes in an aggregate amount of \$36,000,000, and in the amounts set forth for such Purchaser on Schedule I. The closing of the sale and purchase of the Third A&R Notes hereunder the (“Third A&R Closing”) shall take place at the office of Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 on the Third A&R Effective Date. The Third A&R Closing shall occur not later than 3:00 P.M. Boston, Massachusetts time on the Third A&R Effective Date.

(B) Delivery of the Third A&R Notes to be purchased by each Purchaser at the Third A&R Closing shall be made in the form of one or more Third A&R Notes. If at the Third A&R Closing, the Borrower shall fail to tender the Third A&R Notes to be delivered to each Purchaser as provided herein, each Purchaser shall, at its election, be relieved of all further obligations to purchase the Third A&R Notes under this Agreement, without thereby waiving any other rights it may have by reason of such failure or such non-fulfillment.

(C) On the 2023 Note Effective Date, the Borrower will issue and sell to each Purchaser and, subject to the terms and conditions hereof and in reliance upon the representations and warranties of the Borrower and Guarantors contained herein and in the other

Note Documents, each Purchaser, acting severally and not jointly, will purchase from the Borrower, at the 2023 Note Closing, 2023 Notes in the amounts set forth for such Purchaser on Schedule I. The closing of the sale and purchase of the 2023 Notes hereunder the (“2023 Note Closing”) shall take place at the office of Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 on the 2023 Note Effective Date. The 2023 Note Closing shall occur not later than 3:00 P.M. Boston, Massachusetts time on the 2023 Note Effective Date.

(D) Delivery of the 2023 Notes to be purchased by each Purchaser at the 2023 Note Closing shall be made in the form of one or more 2023 Notes. If at the 2023 Note Closing, the Borrower shall fail to tender the 2023 Notes to be delivered to each Purchaser as provided herein, each Purchaser shall, at its election, be relieved of all further obligations to purchase the 2023 Notes under this Agreement, without thereby waiving any other rights it may have by reason of such failure or such non-fulfillment.

2.3. Computation of Interest and Fees. All computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a 360-day year. Each determination by the Purchasers of an interest amount or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

2.4. Prepayments and Repayments.

(A) Mandatory Prepayments.

(1) Prepayments from Proceeds of Asset Dispositions. Promptly, but in no event later than one (1) Business Day after receipt by the Borrower or any of its Subsidiaries of net cash proceeds of any Asset Disposition (including, without limitation, any insurance or condemnation proceeds), which net cash proceeds exceed \$250,000 in the aggregate for any Fiscal Year after the A&R Effective Date, the Borrower shall prepay the Obligations in an amount equal to the net cash proceeds (i.e., gross proceeds less the reasonable costs of such sales or other dispositions, all of the costs and expenses (including the amount, if any, of all taxes paid by the Borrower or any of its Subsidiaries) as a result thereof after taking into account any available tax credits or deductions and any tax sharing arrangements) incurred in connection with the collection of such proceeds, award or other payments, and any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payment) from such Asset Dispositions.

(2) Prepayments from Equity Issuances. Promptly, but in no event later than one (1) Business Day after receipt by the Borrower of cash proceeds from any issuance of Equity Interests, unless otherwise agreed to by the Agent and the Purchasers, the Borrower shall prepay the Obligations in an amount equal to such cash proceeds, net of underwriting discounts and commissions and other reasonable costs associated therewith. Notwithstanding the foregoing, ~~(x)~~ this Section 2.4(A)(2) shall not apply to proceeds received from issuances of (i) Series K Preferred Stock during the ninety (90) day period commencing on October 23, 2020 (the “Series K Exception Period”) or (ii) one or more issuances of Equity Interests of currently authorized shares of the Borrower’s common stock, par value \$0.001 per share, that are proposed to be sold pursuant to a firm commitment underwritten public offering for whom B. Riley Securities, Inc. is acting as representative of the underwriters in the offering (such shares,



including any shares that are issued pursuant to the exercise of the underwriters' over-allotment option under the underwriting agreement relating to such offering, the "Excluded Shares"), for which a registration statement on Form S-1 was initially filed with the Securities and Exchange Commission on January 12, 2022 and (y) with respect to the Approved SI Deal, only the first \$20,000,000 plus the lesser of (i) \$8,000,000 and (ii) the outstanding principal balance of the 2023 Notes, of cash proceeds received by the Borrower shall be required to prepay the Notes.

(3) Prepayments from the Issuance of Indebtedness. Promptly, but in no event later than one (1) Business Day after receipt by the Borrower or any of its Subsidiaries of the proceeds of the sale, issuance or incurrence of any Indebtedness (other than Indebtedness permitted by Section 7.1 (other than the Public Offering Indebtedness)), unless otherwise agreed to by the Agent and the Purchasers, the Borrower shall prepay the Obligations in an amount equal to such proceeds, net of underwriting discounts and commissions and other reasonable costs associated therewith.

(4) Prepayments upon a Liquidation Plan. If the board of directors (or other applicable governing body) of the Borrower shall approve any plan for the liquidation or other disposition of all or substantially all of the Borrower's assets, then the Borrower shall promptly, but in no event later than one (1) Business Day after the approval of such plan (but prior to any such liquidation or disposition), prepay the outstanding amount of the Notes and all other Obligations hereunder.

(5) Prepayments upon a Change in Control. If any Change in Control is to occur, then not less than fifteen (15) days nor more than sixty (60) days prior to the occurrence of such Change in Control, the Borrowers will notify each holder of any Notes of such pending Change in Control and the date upon which it is scheduled to occur. Upon such Change in Control, the Borrowers will prepay all of the Notes and other Obligations of such holder or holders then outstanding. Each such prepayment shall occur on the date upon which the Change in Control occurs.

(6) Prepayments from Escrow Funds. If the Borrower or any of its Subsidiaries receives any of the Escrow Funds (as defined in the TS Escrow Agreement), the Borrower or such Subsidiary shall promptly (and in any event within one (1) Business Day after receipt thereof) prepay the Obligations in an amount equal to such Escrow Funds so received.

(7) Excess Cash Flow. No later than five (5) Business Days after the quarterly financial statements are required to be delivered pursuant to Section 5.1(B) hereof, commencing with the Fiscal Quarter ending September 30, 2019, the Borrower shall prepay the Obligations in an aggregate amount equal to the Applicable ECF Percentage of Excess Cash Flow for such Fiscal Quarter. Such payment shall be accompanied by a certificate signed by a Responsible Officer and in form and substance satisfactory to the Agent, calculating Excess Cash Flow for such Fiscal Quarter and the resulting mandatory prepayment due and payable hereunder.

(8) Pro-Rata Application. All prepayments pursuant to this Section 2.4(A) shall be applied first to the 2023 Notes on a pro rata basis until they are paid in full, second to the Third A&R Notes on a pro rata basis until they are paid in full, ~~second~~third to the

Delayed Draw Term Notes ~~maturing on the Delayed Draw Term Notes First Maturity Date on a pro-rata basis until they are paid in full, third to the Delayed Draw Term Notes maturing on the Delayed Draw Term Notes Second Maturity Date~~ on a pro rata basis until they are paid in full and finally to the Existing Notes on a pro-rata basis, and shall be subject to the terms of the Fee Letters. The immediately preceding sentence shall not apply to prepayments of the Delayed Draw Term Notes maturing on the Delayed Draw Term Notes First Maturity Date on the date of this Agreement.

(B) Optional Prepayments and Repayments. The Borrower may, at its option, prepay all or any part of the Notes at any time, and from time to time, without penalty or premium. In the case of each optional prepayment, the Borrower shall give at least two (2) days prior written notice thereof to each holder of any Notes. Each such notice shall set forth: (a) the date fixed for prepayment; (b) the aggregate principal amount of Notes to be prepaid on such date; and (c) the aggregate principal amount of Notes held by such holder to be prepaid on such date and the amount of accrued interest to be paid to such holder on such date; provided that any such notice delivered by the Borrower may state that such notice is conditioned upon the effectiveness and/or funding of any such other credit facilities or debt or equity offering, or the occurrence of any other event specified therein, in which case such notice may be revoked by the Borrower or the date fixed for prepayment delayed, in each case by notice to such holder on or prior to the date fixed for prepayment, if such condition has not been satisfied. All prepayments pursuant to this Section 2.4(B) shall be applied first to the 2023 Notes on a pro rata basis until they are paid in full, second to the Third A&R Notes on a pro rata basis until they are paid in full, ~~second to the Delayed Draw Term Notes maturing on the Delayed Draw Term Notes First Maturity Date on a pro-rata basis until they are paid in full,~~ third to the Delayed Draw Term Notes ~~maturing on the Delayed Draw Term Notes Second Maturity Date~~ on a pro rata basis until they are paid in full and finally to the Existing Notes on a pro-rata basis, and shall be subject to the terms of the Fee Letters. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, on the date of this Agreement, the Borrower will prepay in full the Delayed Draw Term Notes maturing on the Delayed Draw Term Notes First Maturity Date with a portion of the proceeds of the Third A&R Notes. By their execution of this Agreement, the Purchasers consent to the prepayment referenced in the immediately foregoing sentence and waive the notice requirements related to such prepayment.

(C) Maturity; Accrued Interest; Surrender, etc. of Notes. The Existing Notes, the 2023 Notes and the Third A&R Notes shall mature and be due and payable in full on the ~~Existing Notes~~ Maturity Date. In the case of each prepayment of all or any part of any Note, the principal amount to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date. Any Note prepaid in full shall be surrendered to the Borrower at its principal place of business promptly following prepayment and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

(D) Conversion Election. Each Purchaser, at its sole option, may elect, in lieu of the receipt of PIK Amounts due on any Conversion Election Payment Date specified by such Purchaser, or in lieu of receiving cash payments up to the Conversion Portion of such amount of Delayed Draw Term Notes due and payable on the Delayed Draw Term Notes First Maturity Date, to receive shares of Series K Preferred Stock (or, in the event that Series K Preferred Stock

has been converted into Common Stock, shares of Common Stock based upon the conversion rate specified in the Certificate of Designations of the Borrower establishing the Series K Preferred Stock), with an aggregate liquidation preference of the Series K Preferred Stock so issued for each \$1,000 of the Obligations elected to be so converted pursuant to a written notice delivered by such Purchaser to the Borrower (such election, a "Conversion Election"), to be equal to the purchase price paid for \$1,000 in liquidation preference of the Series K Preferred Stock during the Series K Exception Period. Written notice of a Conversion Election with respect to any PIK Amount due on a Conversion Election Payment Date, must be delivered to Borrower not less than two (2) Business Days prior to such Conversion Election Payment Date, and with respect to any other Conversion Election, at any time during the period commencing on the last day of the Series K Exception Period through and including the date that is not less than two (2) Business Days prior to the Delayed Draw Term Notes First Maturity Date. In connection with a Conversion Election, at the reasonable request of the Borrower, the Purchaser making such Conversion Election shall make customary representations and warranties that are consistent with the representations and warranties made by purchasers of Series K Preferred Stock pursuant to securities purchase agreements entered into by the Borrower and such purchasers.

2.5. Purchase of Notes. The Borrower will not, and will not permit any of its Affiliates to, directly or indirectly, purchase or otherwise acquire, or offer to purchase or otherwise acquire, any outstanding Notes except by way of payment or prepayment in accordance with the provisions of the Notes and this Agreement.

2.6. Payment on Non-Business Day. If any amount hereunder or under the Notes shall become due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day without including the additional day(s) elapsed in the computation of the interest payable on such next succeeding Business Day.

2.7. Taxes.

(A) No Deductions. Any and all payments or reimbursements made hereunder shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or with the Borrower, and all liabilities with respect thereto (all such taxes, levies, imposts, deductions, charges or with the Borrower and all liabilities with respect thereto referred to herein as "Tax Liabilities"); excluding, however, (i) Taxes imposed on or measured by the net income (however denominated), franchise and branch profits Taxes of any Purchaser or Agent by the jurisdiction under the laws of which Agent or such Purchaser is organized or doing business or any political subdivision thereof, (ii) Taxes imposed on or measured by the net income (however denominated), franchise and branch profits Taxes of any Purchaser or Agent by the jurisdiction of such Purchaser's or Agent's applicable lending office (or relevant office for receiving payments from or on account of the Borrower or making funds available to or for the benefit of the Borrower) or any political subdivision, (iii) U.S. federal withholding Taxes that are (or would be) required to be withheld on amounts payable to or for the account of any Purchaser or Agent pursuant to a law in effect on the date on which (A) such Purchaser acquires an interest in the Notes or such Agent becomes Agent or (B) such Purchaser changes its office for receiving payments by or on account of the Borrower or making funds available to or for the benefit of the Borrower, except in each case to the extent that, pursuant to Section 2.7, amounts with respect to



such Taxes were payable either to such Agent or Purchaser's predecessor immediately before such Purchaser or Agent became a party hereto or to such Agent or Purchaser immediately before it changed its office for receiving payments by or on account of the Borrower or making funds available to or for the benefit of the Borrower, (iv) Taxes attributable to such recipient's failure to comply with Section 2.7, (v) U.S. backup withholding Taxes, (vi) Taxes imposed under FATCA on any Purchaser or Agent, (vii) Taxes imposed by a jurisdiction as a result of any connection between the recipient and such jurisdiction other than any connection arising solely from (and that would not have existed but for) executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under or enforcing any Note Document, (viii) Taxes resulting from the gross negligence or willful misconduct of the Purchaser or Agent as determined by a court of competent jurisdiction in a final non-appealable judgment and (ix) penalties, interest and additions to Tax relating to any of the foregoing (all Taxes included in clauses (i) through (ix), the "Excluded Taxes", and together with the Tax Liabilities, the "Taxes") unless the applicable withholding agent is compelled by law to make payment subject to such Tax Liabilities. If any applicable withholding agent shall be required by law to deduct any such Tax Liabilities from or in respect of any sum payable hereunder to Agent or any Purchaser, then the sum payable hereunder shall be increased as may be necessary so that, after making all required deductions, Agent or such Purchaser receives an amount equal to the sum it would have received had no such deductions been made.

(B) Status of Purchasers. Any Purchaser that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Note Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Purchaser, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Purchaser is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth below in this paragraph (B)) shall not be required if in the Purchaser's reasonable judgment such completion, execution or submission would subject such Purchaser to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Purchaser (it being understood that providing any information currently required by any U.S. federal income tax withholding form shall not be considered prejudicial to the position of a Purchaser).

Without limiting the generality of the preceding paragraph, each Purchaser organized under the laws of a jurisdiction outside the United States (a "Foreign Purchaser") as to which payments to be made under this Agreement are exempt from United States withholding tax or are subject to United States withholding tax at a reduced rate under an applicable statute or tax treaty shall provide to Borrower and Agent (1) a properly completed and executed IRS Form W-8BEN, W-8BEN-E or Form W-8ECI or other applicable form, certificate or document prescribed by the IRS or reasonably requested by Agent or Borrower, certifying as to such Foreign Purchaser's entitlement to such exemption or reduced rate of withholding with respect to payments to be made to such Foreign Purchaser under this Agreement, and, in the case of a Foreign Purchaser claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, a

certificate, in a form reasonably acceptable to Borrower and Agent, showing such Foreign Purchaser is not a “bank” within the meaning of Section 881(c)(3)(A) of the IRC, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the IRC or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the IRC (a “Certificate of Exemption”). Prior to becoming a Purchaser under this Agreement and within fifteen (15) days after a reasonable written request of Borrower or Agent from time to time thereafter, each Foreign Purchaser that becomes a Purchaser under this Agreement shall provide a Certificate of Exemption to Borrower and Agent.

If a Foreign Purchaser is entitled to an exemption with respect to payments to be made to such Foreign Purchaser under this Agreement (or to a reduced rate of withholding) and does not provide the information in the preceding paragraph establishing its entitlement to such exemption to Borrower and Agent within the time periods set forth in the preceding paragraph, Note Parties shall withhold taxes from payments to such Foreign Purchaser at the applicable statutory rates and no Note Party shall be required to pay any additional amounts as a result of such withholding; provided, however, that all such withholding shall cease at such time that such Foreign Purchaser establishes its entitlement to such exemption to Borrower and Agent.

Each Purchaser that is a “U.S. Person” within the meaning of Section 7701(a)(30) of the IRC shall execute and deliver to the relevant Borrower and Agent, on or prior to the date on which such Purchaser becomes a Purchaser under this Agreement, and from time to time thereafter upon the request of Borrower or Agent, two properly completed and duly signed original copies of Form W-9 or any successor form that such Purchaser is entitled to provide at such time, establishing an exemption from United States backup withholding requirements; provided, however, that if a Purchaser is a disregarded entity for U.S. federal income tax purposes, it shall provide the appropriate withholding form of its owner (together with appropriate supporting documentation). The Borrower shall not be required to pay additional amounts in respect of Taxes to any Purchaser pursuant to this Section 2.7 to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Purchaser to comply with this Section 2.7.

Each Purchaser shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to Borrower and Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify Borrower and Agent of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Note Document to or for a Purchaser are not subject to withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, Agent or other applicable withholding agent shall withhold amounts required to be withheld by Applicable Law from such payments at the applicable statutory rate.

Notwithstanding this Section 2.7, a Purchaser shall not be required to deliver any form pursuant to this Section 2.7 that such Purchaser is not legally able to deliver.

(C) Withholding Taxes under FATCA. If a payment made to a Purchaser under the Note Documents would be subject to withholding tax imposed by FATCA if such

Purchaser fails to comply with the applicable requirements of FATCA (including the reporting requirements contained in Section 1471(b) or 1472(b) of the IRC), such Purchaser shall deliver to Borrower and Agent (i) a certification signed by the chief financial officer, principal accounting officer, treasurer or controller, and (ii) other documentation reasonably requested by Borrower and Agent sufficient for Agent and Borrower to comply with their obligations under FATCA and to determine that such Purchaser has complied with such applicable reporting requirements; provided that if such Purchaser fails to provide any documentation described in clause (i) or (ii) hereof, Borrower or Agent shall be entitled to withhold all amounts required to comply with FATCA, by setoff or otherwise. Each of Agent and Borrower shall provide notice to the other party in the event Agent or Borrower, as applicable, reasonably determines that a Purchaser (and/or any participant of such Purchaser) is not complying with the requirements of FATCA (including the reporting requirements contained in Section 1471(b) or 1472(b) of the IRC, as applicable); provided that failure to provide such notice shall not result in liability to either party. If, at any time, Agent or Borrower reasonably believe that a Purchaser and/or its participant is not complying with the requirements of FATCA (including the reporting requirements contained in Section 1471(b) or 1472(b) of the IRC, as applicable), Agent or Borrower may withhold all amounts required to comply with FATCA, by setoff or otherwise.

(D) 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 2.7 (including by the payment of additional amounts pursuant to this Section 2.7), 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 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 any 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 paragraph (D) (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. 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.

(E) Each party's obligations under this Section 2.7 shall survive the replacement of a Purchaser and the repayment, satisfaction or discharge of all Obligations.

#### 2.8. Incremental Third A&R Notes.

(a) The Borrower may, from time to time after the Third A&R Effective Date, by written notice to the Agent, request additional Third A&R Notes (collectively, "Incremental Third A&R Notes"), from one or more Purchasers (in the sole discretion of such Purchasers), in an aggregate principal amount of up to \$15,000,000 provided that at the time of the incurrence of such Incremental Third A&R Notes and immediately after giving effect thereto and to the use of the proceeds thereof (assuming the full utilization thereof), no Default or Event of Default shall have occurred and be continuing or would result therefrom. Such notice shall set forth (i) the amount of the Incremental Third A&R Notes being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$5,000,000), and (ii) the date on which



such Incremental Third A&R Notes are requested to become effective (which shall not be less than 10 Business Days nor more than 60 calendar days after the date of such notice, unless otherwise agreed to by the Agent). There is no commitment by the Purchasers hereunder to purchase any Incremental Third A&R Notes and each of the Purchasers shall have the right to purchase any Incremental Third A&R Notes in their sole discretion.

(b) The Borrower and each Purchaser shall execute and deliver to the Agent such documentation as the Agent shall reasonably specify to evidence the Incremental Third A&R Notes of such Purchaser. Each of the parties hereto hereby agrees that, upon the effectiveness of the issuance of any Incremental Third A&R Notes, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of such Incremental Third A&R Notes. Any such deemed amendment may be memorialized in writing by the Agent with the Borrower's consent (not to be unreasonably withheld or delayed) and furnished to the other parties hereto.

(c) Any Incremental Third A&R Notes shall constitute Third A&R Notes for all purposes of this Agreement and the other Loan Documents as of the date of issuance.

(d) No Incremental Third A&R Notes shall become effective under this Section 2.8 unless, on the date of such effectiveness, (i) the conditions set forth in Section 3.1(B)(3) and (4) shall be satisfied as if it was a borrowing date and the Agent shall have received a certificate to that effect dated such date and executed by a Responsible Officer of the Borrower; and (ii) the Agent shall have received (with sufficient copies for each of the Purchasers) closing certificates, opinions of counsel and other customary documentation reasonably requested by the Agent.

#### 2.9. Incremental 2023 Notes.

(a) The Borrower may, from time to time after the 2023 Note Effective Date, by written notice to the Agent, request additional 2023 Notes (collectively, "Incremental 2023 Notes"), from one or more Purchasers (in the sole discretion of such Purchasers), in an aggregate principal amount of up to \$3,000,000 provided that at the time of the incurrence of such Incremental 2023 Notes and immediately after giving effect thereto and to the use of the proceeds thereof (assuming the full utilization thereof), no Default or Event of Default shall have occurred and be continuing or would result therefrom. Such notice shall set forth (i) the amount of the Incremental 2023 Notes being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$1,000,000), and (ii) the date on which such Incremental 2023 Notes are requested to become effective (which shall not be less than 10 Business Days nor more than 60 calendar days after the date of such notice, unless otherwise agreed to by the Agent). There is no commitment by the Purchasers hereunder to purchase any Incremental 2023 Notes and each of the Purchasers shall have the right to purchase any Incremental 2023 Notes in their sole discretion.

(b) The Borrower and each Purchaser shall execute and deliver to the Agent such documentation as the Agent shall reasonably specify to evidence the Incremental 2023 Notes of such Purchaser. Each of the parties hereto hereby agrees that, upon the effectiveness of the issuance of any Incremental 2023 Notes, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of such Incremental 2023

Notes. Any such deemed amendment may be memorialized in writing by the Agent with the Borrower's consent (not to be unreasonably withheld or delayed) and furnished to the other parties hereto.

(c) Any Incremental 2023 Notes shall constitute 2023 Notes for all purposes of this Agreement and the other Loan Documents as of the date of issuance.

(d) No Incremental 2023 Notes shall become effective under this Section 2.9 unless, on the date of such effectiveness, (i) the conditions set forth in Section 3.1(C)(3) and (4) shall be satisfied as if it was a borrowing date and the Agent shall have received a certificate to that effect dated such date and executed by a Responsible Officer of the Borrower; and (ii) the Agent shall have received (with sufficient copies for each of the Purchasers) closing certificates, opinions of counsel and other customary documentation reasonably requested by the Agent.

### SECTION 3. CONDITIONS TO PURCHASE OF NOTES

3.1. Any purchase of Notes pursuant to this Agreement shall be subject to the applicable provisions in this Section 3.1.

(A) Conditions to All Purchases. The effectiveness of this Agreement and the obligations of each Purchaser to purchase the Notes on and after the Third A&R Effective Date, are subject to satisfaction of all of the terms and conditions set forth below, except to the extent that any of the following items are permitted by the Agent in writing to be delivered by a date after the Third A&R Effective Date:

(1) Note Documents. Agent shall have received, in form and substance reasonably satisfactory to Agent and the Purchasers, this Agreement, the Confirmation and Ratification Agreement, and all other Note Documents, each duly executed by the applicable parties thereto.

(2) Security Interests. Agent shall have received satisfactory evidence that all security interests and liens on the Collateral granted to Agent for the benefit of Agent and the other Secured Parties pursuant to the Security Documents or the other Note Documents have been duly perfected to the extent such perfection is required hereunder or under any other Note Document.

(3) Representations and Warranties. The representations and warranties contained herein and in the other Note Documents shall be true and correct in all material respects (or in all respects with respect to any representation or warranty which by its terms is limited as to materiality, in each case, after giving effect to such qualification) on and as of the Third A&R Effective Date, except for such representations and warranties that are made as of a specified date, which shall be on and as of such specified date.

(4) Fees. The Borrower shall have paid all fees due to Agent, including all legal fees and expenses of the Agent, or any Purchaser and payable on the Third A&R Effective Date.



(5) SLR Consent. Agent shall have received all necessary consents, if any, from SLR Digital Finance LLC authorizing any such purchase of Notes on or prior to the Third A&R Effective Date, in form and substance satisfactory to Agent.

(6) No Default. No event shall have occurred and be continuing or would result from purchasing a Note that would constitute an Event of Default or a Default.

(7) Performance of Agreements. Each Note Party shall have performed in all material respects all agreements and satisfied all conditions which any Note Document provides shall be performed by it on or before the Third A&R Effective Date.

(8) No Prohibition. No order, judgment or decree of any court, arbitrator or Governmental Authority shall purport to enjoin or restrain Agent or any Purchaser from purchasing any Notes.

(9) Payment Direction Letter; Funds Flow Memorandum; Etc. Agent shall have received a letter of direction from the Borrower directing where the proceeds of the Notes are to be made and attaching a funds-flow memorandum setting forth the sources and uses of such proceeds.

(10) Corporate Documents. Agent and Purchasers shall have received on or prior to the Third A&R Effective Date customary corporate resolutions, certificates and similar documents as the Agent or any Purchasers shall reasonably require, which shall be, as applicable, certified by the applicable Governmental Authority or the Secretary of the applicable Note Parties as of a recent date.

(11) [Reserved].

(12) Other Documents. Agent and Purchasers shall have received such other documents as Agent, any Purchaser or their respective counsel may have reasonably requested.

(B) Conditions to Delayed Draw Term Notes. The option of each Delayed Draw Term Note Purchaser to make advances under the Delayed Draw Term Notes are subject to satisfaction of all of the terms and conditions set forth below:

(1) The Borrower has provided irrevocable written notice requesting an advance under the Delayed Draw Term Notes at least one (1) Business Day prior to the requested funding date (the "Delayed Draw Term Note Advance Date"), in increments of \$100,000 (but in no event less than \$2,000,000 or, if lesser, the entire amount of Delayed Draw Term Note Option then available), not to exceed the Delayed Draw Term Note Option;

(2) The Delayed Draw Term Note Options shall not have terminated;

(3) All representations and warranties contained in this Agreement and the other Note Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects (except in the case of any representation and warranty qualified by materiality, in which case they shall be true and correct in all respects)

with the same effect as if made on and as of such date, other than representations and warranties that relate solely to an earlier date; and

(4) Both before and after giving effect to any advance under the Delayed Draw Term Notes, no Default or Event of Default shall have occurred and be continuing.

The request by the Borrower for, and the acceptance by the Borrower of, an advance under Delayed Draw Term Notes shall be deemed to be a representation and warranty by the Borrower that the conditions specified in this Section 3.1(B) have been satisfied at that time. The conditions set forth in this Section 3.1(B) are for the sole benefit of the Agent and each other Delayed Draw Term Note Purchaser and may be waived by the Agent (with the consent of the Delayed Draw Term Note Purchasers), in whole or in part, without prejudice to the rights of the Agent or any other Delayed Draw Term Note Purchaser.

(C) Conditions to 2023 Notes. The commitment of each Purchaser to make advances under the 2023 Notes are subject to satisfaction of all of the terms and conditions set forth below:

(1) The Borrower has provided irrevocable written notice requesting an advance under the 2023 Notes at least two (2) Business Days prior to the requested funding date in increments of \$100,000 (but in no event less than \$1,000,000 or, if lesser, the entire amount of 2023 Note Commitments then available), not to exceed the 2023 Note Commitments;

(2) The 2023 Note Commitments shall not have terminated;

(3) All representations and warranties contained in this Agreement and the other Note Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects (except in the case of any representation and warranty qualified by materiality, in which case they shall be true and correct in all respects) with the same effect as if made on and as of such date, other than representations and warranties that relate solely to an earlier date; and

(4) Both before and after giving effect to any advance under the 2023 Notes, no Default or Event of Default shall have occurred and be continuing.

The request by the Borrower for, and the acceptance by the Borrower of, an advance under 2023 Notes shall be deemed to be a representation and warranty by the Borrower that the conditions specified in this Section 3.1(C) have been satisfied at that time. The conditions set forth in this Section 3.1(C) are for the sole benefit of the Agent and each other Purchaser and may be waived by the Agent (with the consent of the Purchasers), in whole or in part, without prejudice to the rights of the Agent or any other Purchaser.

#### SECTION 4. REPRESENTATIONS, WARRANTIES AND CERTAIN COVENANTS

To induce Agent and each Purchaser to enter into the Note Documents ~~and~~, to purchase the Notes, to make advances under the 2023 Notes, and make advances under the Delayed Draw Term Notes, each Note Party represents, warrants and covenants to Agent and each Purchaser that:

4.1. Organization, Powers, Capitalization.

(A) Organization and Powers. The Borrower and each of its Subsidiaries (i) is an entity duly organized, incorporated or established (as the case may be), validly existing and, to the extent applicable, in good standing under the laws of its jurisdiction of organization, incorporation or establishment (as the case may be), (ii) is qualified to do business in all states, provinces and other jurisdictions where such qualification is required except where failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, and (iii) has all requisite power and authority to (x) own and operate its properties, to carry on its business as now conducted and proposed to be conducted and (y) to enter into each Note Document to which it is a party.

(B) Capitalization. The capitalization of the Borrower is as described in its most recently filed Quarterly Report on Form 10-Q, except for: stock option exercises, restricted stock unit delivery, issuances pursuant to equity incentive plans, exercises of warrants, issuances of warrants or conversions of preferred stock. Schedule 4.1(B) sets forth a list of all Subsidiaries of the Borrower and the percentage ownership of the Borrower therein. All issued and outstanding shares of capital stock or other Equity Interests of Borrower and each Subsidiary is duly authorized and validly issued, fully paid, non-assessable (if applicable), free and clear of all Liens other than Permitted Encumbrances, and such Equity Interests were issued in compliance with all applicable state, provincial, federal and foreign laws concerning the issuance of securities.

4.2. Authorization of Borrowing, No Conflict.

(A) Each Note Party has the power and authority to incur the Obligations and to grant security interests in the Collateral.

(B) On the Third A&R Effective Date, the execution, delivery and performance of the Note Documents by each Note Party signatory thereto will have been duly authorized by all necessary company and shareholder action.

(C) The execution, delivery and performance by each Note Party of each Note Document to which it is a party and the consummation of the transactions contemplated by the Note Documents by each Note Party (i) do not contravene any material Applicable Law or the corporate charter or bylaws or other organizational documents of any Note Party, (ii) will not result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of the Borrower or any of its Subsidiaries, other than liens created by the Note Documents in favor of the Agent, and (iii) do not require any approval of the interest holders of any Note Party or any approval or consent of any Person under any material contractual obligation of any Note Party, other than consents or approvals that have been obtained and that are still in force and effect or that will be obtained after the date hereof to the extent set forth in Schedule 5.8, or the failure of which to obtain would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(D) The Note Documents are the legally valid and binding obligations of the Note Parties party thereto, each enforceable against the Note Parties party thereto in accordance



with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

4.3. Solvency. After giving effect to this Agreement and the MJ Acquisition, (a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities (whether subordinated, contingent or otherwise), (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay their debts and other liabilities (whether subordinated, contingent or otherwise), on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (whether subordinated, contingent or otherwise), as such liabilities become absolute and matured, and (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

4.4. Insurance. The Borrower and each of its Subsidiaries maintains and shall continue to maintain adequate insurance policies and shall provide Agent with evidence of such insurance coverage for liability, property damage, and business interruption with respect to its business and properties against loss or damage of the kinds customarily carried or maintained by corporations of established reputation engaged in similar businesses and on such terms and in such amounts reasonably acceptable to Agent. Each Note Party shall cause Agent at all times to be named as lender loss payee and additional insured, as applicable, on all insurance policies and shall insure that Agent receives notice of cancellation with respect to all such insurance policies, in each case pursuant to appropriate endorsements in form and substance reasonably satisfactory to Agent and shall collaterally assign to Agent, for itself and on behalf of the other Secured Parties, as security for the payment of the Obligations all business interruption insurance of each Note Party. No written notice of cancellation has been received with respect to such policies and each Note Party is in compliance with all conditions contained in such policies, in each case, except any such insurance policies that any Note Party is in the process of extending, replacing or renewing in the ordinary course of business, so long as there is no lapse in coverage during such period of extension, replacement or renewal. Any proceeds received from any policies of insurance relating to any Collateral shall be applied to the Obligations to the extent required by Section 2.4(A)(1). Each Note Party shall provide Agent evidence of the insurance coverage and of the assignments and endorsements required by this Agreement promptly upon request by Agent. If the Borrower or any of its Subsidiaries elects to change insurance carriers, policies or coverage amounts, the Borrower shall notify Agent and provide Agent with evidence of the updated insurance coverage and, in the case of a Note Party, of the assignments and endorsements required by this Agreement. In the event any Note Party fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may, but is not required to, purchase insurance at the Note Parties' expense to protect Agent's and the Purchaser's interests in the Collateral, upon not less than five (5) Business Days' notice to Borrower. Agent will notify the Note Parties of such purchase within two (2) Business Days of such purchase. This insurance may, but need not, protect the Note Parties' interests. The coverage purchased by Agent may not pay any claim made by any Note Party or any claim that is made against such Note Party in connection with the Collateral. Note Parties may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that each Note

Party has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Note Parties will be responsible for the costs of that insurance, including interest thereon and other charges imposed on Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs may be added to the Obligations. The costs of the insurance purchased by Agent may be more than the cost of insurance Note Parties are able to obtain on its own.

4.5. Compliance with Laws; Government Authorizations; Consents. Neither the Borrower nor any of its Subsidiaries is in violation of any law, ordinance, rule, regulation, order, policy, guideline or other requirement of (a) any Governmental Authority in all jurisdictions in which the Borrower or any of its Subsidiaries is now doing business, and (b) any Governmental Authority otherwise having jurisdiction over the conduct of the Borrower or any of its Subsidiaries or any of their respective businesses, or the ownership of any of their respective properties, in any case, which violation would subject the Borrower or any of its Subsidiaries, or any of their respective officers to criminal liability could reasonably be expected to result in a material liability to the Borrower and its Subsidiaries and no such violation has been alleged in writing. The Borrower and each of its Subsidiaries will comply with the requirements of all Applicable Laws, ordinances, rules, regulations, orders, policies, guidelines or other requirements of (a) any Governmental Authority as now in effect and which may be imposed in the future in all jurisdictions in which the Borrower or any of its Subsidiaries is now doing business or may hereafter be doing business, and (b) any government authority otherwise having jurisdiction over the conduct of the Borrower or any of its Subsidiaries or any of their respective businesses, or the ownership of any of its respective properties, except to the extent the noncompliance with which could reasonably be expected to result in a material liability to the Borrower and its Subsidiaries.

4.6. Governmental Regulation. Neither the Borrower nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.

4.7. Access to Accountants and Management. The Borrower, on behalf of itself and each of its Subsidiaries, authorizes Agent and Purchasers to discuss the financial condition and financial statements of the Borrower and its Subsidiaries with Note Parties' accountants upon reasonable notice to Note Parties of its intention to do so, and authorizes Note Parties' accountants to respond to all of Agent's and any Purchaser's inquiries; provided however, Agent and/or the Purchasers shall submit such inquiries to Borrower prior to contacting any such representatives, and Borrower shall be present at all times during any such discussions. Agent and each Purchaser may, confer at reasonable times during normal business hours with the Borrower and its Subsidiaries' senior management and key employees directly regarding the Borrower and its Subsidiaries' business, operations and financial condition.

4.8. Inspection. Each Note Party shall, and the Borrower shall cause each of its Subsidiaries to, permit Agent and any authorized representatives designated by Agent to visit and inspect any of the properties of any Note Party or any Subsidiary, including their financial and accounting records, and, in conjunction with such inspection, to make copies and take extracts therefrom, and to discuss their affairs, finances and business with their officers and the Note

Parties' accountants, at such reasonable times during normal business hours. If any of the properties, books or records of any Note Party or any Subsidiary are in the possession of a third party, each of the Borrower and such Subsidiary authorizes that third party to permit any Person designated by Agent in writing or any agents thereof to have access to perform inspections or audits and to respond to Agent's request for information concerning such property, books and records to the same extent as if such information was held by such Note Party or Subsidiary.

#### 4.9. Control Agreements.

(A) Each Note Party shall cause each of its Deposit Accounts (other than Excluded Accounts), lockbox accounts and securities accounts to be subject to a "springing" account control agreement in form and substance reasonably satisfactory to Agent (a "Control Agreement"). No Note Party will open any new Deposit Accounts, lockbox account or securities account (other than "Excluded Accounts") unless a Control Agreement is entered into concurrently with the opening thereof.

(B) All account debtors or other payment obligors of such Note Party shall be directed to directly remit all payments on each Note Party's Accounts directly to a Deposit Account subject to a Control Agreement and each Note Party will immediately deposit in a Deposit Account subject to a Control Agreement all payments received from account debtors or other payments constituting proceeds of Collateral received by such Note Party in the identical form in which such payment was made, whether by cash or check.

(C) Agent agrees that it shall only be permitted to give instructions or directions under any Control Agreement after the occurrence and during the continuance of an Event of Default. In addition, if the Event of Default giving rise to such instructions is cured or waived, as applicable, and no other Event of Default exists at such time, Agent shall give notice to the applicable bank canceling instructions provided in accordance with this Section 4.9.

(D) Each Note Party hereby agrees that all payments made to any Deposit Account, securities account or otherwise received by Agent and whether on the Accounts or as proceeds of other Collateral or otherwise, in each case, to the extent constituting Collateral, will be subject to the Lien of Agent, for the benefit of itself and the other Secured Parties. If any Note Party, or any of their respective Affiliates, employees, agents or any other Persons acting for or in concert with such Note Party, shall receive any monies, checks, notes, drafts or any other payments relating to and/or proceeds of any Note Party's Accounts or other Collateral, such Note Party or such Person shall hold such instrument or funds in trust for Agent, and immediately upon receipt thereof, shall remit the same or cause the same to be remitted, in kind, to a Deposit Account subject to a Control Agreement and, if requested by Agent after the occurrence and during the continuance of an Event of Default, to Agent at its address set forth in Section 11.3 below.

4.10. Payment of Taxes by Agent. If any of the Collateral includes a charge for any Tax payable to any Governmental Authority, Agent is hereby authorized (but in no event obligated) in its reasonable discretion and upon reasonable prior notice to Borrower (so as to afford the Borrower the opportunity to pay or contest such Tax) to pay the amount thereof to the proper Governmental Authority for the account of any Note Party and to charge the Note Party's account therefore.



4.11. Anti-Terrorism Laws; OFAC; FCPA.

(A) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law or engages in any transaction that evades or avoids or attempts to violate any of the Anti-Terrorism Laws.

(B) Neither the Borrower nor any of its Subsidiaries is any of the following (each a "Blocked Person"): (A) a Person that is prohibited pursuant to any of the OFAC Sanctions Programs, including a Person named on OFAC's list of Specially Designated Nationals and Blocked Persons; (B) a Person that is owned or controlled by, or that owns or controls any Person described in (A) above; or (C) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law.

(C) Neither the Borrower nor any of its Subsidiaries deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any OFAC Sanctions Programs.

(D) No part of the proceeds of the Notes will be used, directly or, to the Borrower knowledge, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.12. Security Documents. Except as otherwise contemplated hereby or under any other Note Document, the provisions of the Security Documents, together with such filings and other actions required to be taken hereby or by the applicable Security Documents, are effective to create in favor of the Agent, for the benefit of the Secured Parties, a legal, valid, enforceable and perfected Lien on all right, title and interest of the respective Note Parties in the Collateral described therein. The Borrower and each Guarantor hereby (i) ratifies and confirms all of the terms and conditions of, and all of the warranties and representations set forth in, the Note Documents and the Security Documents, (ii) acknowledges and agrees that the Note Documents and Security Documents remain in full force and effect, and (iii) acknowledges, confirms and agrees that the Security Documents and any and all Collateral previously pledged to the Agent, for the benefit of the Lenders, thereunder shall continue to secure all of the Obligations from time to time outstanding under this Agreement and the other Note Documents.

4.13. Offer of Notes. Assuming (i) the Notes are issued, sold and delivered under the circumstances contemplated by this Agreement and (ii) the accuracy of the representations and warranties of Purchasers set forth in Section 11.22(A) and their compliance with the agreements set forth herein and therein, it is not necessary in connection with the offer, sale and delivery of the Notes to Purchasers in the manner contemplated by this Agreement to register the Notes under the Securities Act. No Note Party has, directly or indirectly, offered, sold or solicited any offer to buy, and no Note Party will, directly or indirectly, offer, sell or solicit any offer to buy, any security of a type or in a manner which would be integrated with the sale of the Notes and require the Notes to be registered under the Securities Act. None of the Note Parties, their respective Affiliates or any Person acting on any of their behalf (other than Purchasers, as to whom the Note Parties make no representation or warranty) has engaged or will engage in any



form of general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act) in connection with the offering of the Notes.

4.14. Financial Condition.

(A) (A) All financial statements concerning the Borrower and its Subsidiaries furnished by or on behalf of the Borrower or its Subsidiaries to Agent or any Purchaser pursuant to this Agreement have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as disclosed therein) and, present fairly in all material respects the financial condition of Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended. The Projections represent the good faith estimate of Note Parties and their senior management, as of the date such Projections are delivered concerning the most probable course of their business as of the date such Projections are delivered, it being understood that actual results may vary from such forecasts and that such variations may be material.

(B) Since December 31, 2021, nothing has occurred that has had a Material Adverse Effect.

4.15. Litigation; Adverse Facts. There are no judgments outstanding against the Borrower or any of its Subsidiaries or affecting any property of the Borrower or any of its Subsidiaries nor is there any action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration now pending or, to the knowledge of any Responsible Officer, threatened in writing against or affecting the Borrower or any of its Subsidiaries or any property of the Borrower or any of its Subsidiaries which would reasonably be expected to result in any Material Adverse Effect.

4.16. Payment of Taxes. Except as set forth on Schedule 4.16, all material Tax returns and reports of the Borrower and its Subsidiaries required to be filed by any of them have been timely filed and are complete and accurate in all material respects. All material Taxes which are due and payable by the Borrower and its Subsidiaries have been paid when due; provided that no such Tax need be paid if the Borrower or such Subsidiary is contesting same in good faith by appropriate proceedings promptly instituted and diligently conducted and if the Borrower or such Subsidiary has established appropriate reserves as shall be required in conformity with GAAP. As of the Third A&R Effective Date, none of the income Tax returns of the Borrower or any of its Subsidiaries are under audit and the Borrower or such Subsidiary shall promptly notify Agent in the event that any of its or any of its Subsidiaries' tax returns become the subject of an audit. No Tax liens have been filed against the Borrower or any of its Subsidiaries other than Permitted Encumbrances. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of any Taxes are in accordance with GAAP.

4.17. Disclosure. No representation or warranty of the Borrower, of any other Note Party or made by (or on behalf of) any Subsidiary contained in this Agreement, the financial statements, the other Note Documents, or any other document, certificate or written statement furnished to Agent or any Purchaser by or on behalf of any such Person for use in connection with the Note Documents contains any untrue statement of a material fact or omitted 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. There is no material fact known to any Note Party as of the Third A&R Effective Date that has had or could reasonably be expected to have a Material Adverse Effect and that has not been disclosed herein or in such other documents, certificates and statements furnished to Agent or any Purchaser for use in connection with the transactions contemplated hereby.

## SECTION 5. REPORTING AND OTHER AFFIRMATIVE COVENANTS

Each Note Party covenants and agrees that so long as any of the Obligations remain outstanding (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto), each Note Party shall perform all covenants in this Section 5.

### 5.1. Notices and Reports.

(A) Annual Financial Statements. The Borrower shall furnish Agent and the Purchasers within one hundred and twenty (120) days after the end of each Fiscal Year of the Borrower commencing with the Fiscal Year ending December 31, 2019 financial statements of the Borrower and its Subsidiaries on a consolidated basis, in each case, including, but not limited to, statements of income and stockholders' equity and cash flow from the beginning of the current Fiscal Year to the end of such Fiscal Year and the balance sheet as at the end of such Fiscal Year, all prepared in accordance with GAAP, and in reasonable detail and reported upon without qualification.

(B) Quarterly Financial Statements. The Borrower shall furnish Agent and the Purchasers within sixty (60) days after the end of each Fiscal Quarter commencing with the Fiscal Quarter ending September 30, 2019, an unaudited balance sheet and unaudited statements of stockholders' equity, income and of cash flow of the Borrower and its Subsidiaries on a consolidated and consolidating basis, in each case, reflecting results of operations from the beginning of the Fiscal Year to the end of such Fiscal Quarter and for such Fiscal Quarter, prepared on a basis consistent with prior practices and complete and correct in all material respects, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to the business of the Note Parties. Each such balance sheet, statements of income and cash flow shall set forth a comparison of the figures for the current fiscal period and the current year-to-date with, in either case, the figures for the same fiscal period and year-to-date period of the immediately preceding Fiscal Year.

(C) Monthly Financial Statements The Borrower shall furnish Agent and the Purchasers within thirty (30) days after the end of the each Fiscal Month commencing with the Fiscal Month ending June 30, 2019, an unaudited balance sheet and unaudited statements of and stockholders' equity, income and of cash flow of the Borrower and its Subsidiaries on a consolidated and consolidating basis, in each case, reflecting results of operations from the beginning of the Fiscal Year to the end of such Fiscal Month and for such Fiscal Month, prepared on a basis consistent with prior practices and complete and correct in all material respects, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to the business of the Note Parties. Each such balance sheet, statements of income and cash flow referred shall set forth a comparison of the figures for the

current fiscal period and the current year-to-date with, in either case, the figures for the same fiscal period and year-to-date period of the immediately preceding Fiscal Year.

(D) Projected Operating Budget. The Borrower shall furnish Agent and the Purchasers, within forty-five (45) days (or such longer period as may be agreed by the Requisite Purchasers) after the beginning of each Fiscal Year of the Borrower commencing with the Fiscal Year ending December 31, 2020, a month by month projected operating budget and cash flow of the Borrower and its Subsidiaries on a consolidated and consolidating basis for such Fiscal Year (including an income statement for each Fiscal Month and a balance sheet as at the end of each Fiscal Month) (the "Projections"), such Projections to be accompanied by a certificate signed by the chief financial officer, director of finance, vice president of finance or other officer performing comparable functions of Borrower to the effect that such projections have been prepared on the basis of sound financial planning practice consistent with past budgets and financial statements and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared.

(E) Management Discussion and Analysis. Together with each delivery of financial statements pursuant to Section 5.1(A) and Section 5.1(B), a management discussion and analysis report, in reasonable detail, signed by a Responsible Officer of the Borrower, describing the operations and financial condition of the Note Parties and their Subsidiaries for such period and summarizing all material variances from budgets submitted by Note Parties pursuant to Section 5.1(D) hereof and a discussion and analysis by management with respect to such variances.

(F) Collateral Reports. If requested by Agent or the Purchasers, the Borrower shall furnish such Persons: (a) accounts receivable agings and (b) accounts payable agings.

(G) Disclosure of Material Matters. Immediately upon learning thereof, the Borrower shall report to Agent and the Purchasers all matters materially and adversely affecting the value, enforceability or collectability of any material portion of the Collateral.

(H) Government Accounts. The Borrower shall notify Agent immediately if greater than \$250,000 of its Accounts arise out of contracts between any Note Party and the United States, any state, or any department, agency or instrumentality of any of them.

(I) TS Acquisition. Concurrently with delivery of any notices to any other party under the TS Acquisition Agreement, TS Escrow Agreement, or any other TS Acquisition Document, the Note Party shall deliver a copy thereof to the Agent. Promptly upon receipt of any notice from any other party under the TS Acquisition Agreement, TS Escrow Agreement, or any other TS Acquisition Document, the Note Party shall deliver a copy thereof to the Agent.

(J) ABG License. Concurrently with delivery of any notices to any other party under the ABG License, the Note Parties shall deliver a copy thereof to the Agent. Promptly upon receipt of any notice from any other party under the ABG License, the Note Parties shall deliver a copy thereof to the Agent. Concurrently with delivery, and promptly upon receipt, copies of any Reports (as defined in the ABG License) delivered by or received by, as applicable, any Note Party. Promptly after the Borrower knows that a material breach or default



has occurred under the ABG License, the Note Parties shall deliver a notice thereof to the Agent, which notice shall include a description of such default or breach and the consequences thereof under the ABG License.

(K) Material Occurrences. The Borrower shall promptly notify Agent and Purchasers in writing upon the occurrence of (a) any Event of Default or Default with such notice stating that it is a "Notice of Default"; (b) any event, development or circumstance whereby any financial statements or other reports furnished to Agent fail in any material respect to present fairly, in accordance with GAAP consistently applied, the financial condition or operating results of the Borrower and its Subsidiaries or any Note Party as of the date of such statements; (c) each and every default by any Note Party or any Subsidiary which might result in the acceleration of the maturity of any Indebtedness having an outstanding principal amount in excess of \$500,000 individually or \$1,000,000 in the aggregate, including the names and addresses of the holders of such Indebtedness with respect to which there is a default existing or with respect to which the maturity has been or could be accelerated, and the amount of such Indebtedness; and (d) any other development in the business or affairs of any Note Party or any Subsidiary which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action such Note Party or such Subsidiary propose to take with respect thereto.

(L) Litigation. The Borrower shall promptly notify Agent and the Purchasers in writing of any litigation, suit or administrative proceeding affecting the Borrower or any of its Subsidiaries, whether or not the claim is covered by insurance, and of any suit or administrative proceeding, (i) in which the amount of damages claimed is in excess of \$500,000 individually or \$1,000,000 in the aggregate, (ii) in which injunctive or similar relief is sought and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any other Note Document.

(M) Default Notices. The Borrower shall promptly notify the Agent and the Purchasers in writing of any "default" or "event of default" under any of the documents governing the SLR Indebtedness, any Public Offering Indebtedness, any Subordinated Indebtedness or the New York Lease.

(N) Other Reports. The Borrower shall furnish the Agent and the Purchasers as soon as available, but in any event within five (5) days after the issuance thereof, with (i) copies of all material notices sent to or from the holders of the SLR Indebtedness, the Subordinated Debentures or any other holders of Indebtedness, (ii) copies of all reports as the Borrower or any of its Subsidiaries shall send to its board of directors or any committees thereof and (iii) copies of all reports and material returns as the Borrower or any of its Subsidiaries shall send to its members or stockholders.

(O) Additional Information. The Borrower shall furnish Agent and Purchases with such additional information as Agent or any Purchaser shall reasonably request in order to enable Agent to determine whether the terms, covenants, provisions and conditions of this Agreement have been complied with by the Borrower and its Subsidiaries.

(P) SEC Filings. Promptly upon transmission thereof, the Borrower shall furnish to Agent copies of all registration statements (without exhibits) and all reports, if any, which it files with the SEC (or any Governmental Authority or agency succeeding to the functions of the SEC).

(Q) Notice of Suits, Adverse Events. The Borrower shall furnish Agent with prompt notice of (i) any lapse or other termination of any consent issued to the Borrower or any of its Subsidiaries by any Governmental Authority or any other Person that is material to the operation of the Borrower or any of its Subsidiaries' business; (ii) any refusal by any Governmental Authority or any other Person to renew or extend any such consent; (iii) copies of any periodic or special reports filed by the Borrower or any of its Subsidiaries with any Governmental Authority or Person, if such reports indicate any material change in the business, operations, affairs or condition of the Borrower or any of its Subsidiaries, or if copies thereof are requested by Agent or any Purchaser, and (iv) copies of any material notices and other communications from any Governmental Authority or Person which specifically relate to the Borrower or any of its Subsidiaries, in each case, unless such lapse, termination, refusal, report or communication could not reasonably be expected to have a Material Adverse Effect.

(R) ERISA Notices and Requests. The Borrower shall furnish Agent with prompt written notice in the event of any of the following, in each case, if a Responsible Officer knows that the event has occurred and the event would have a Material Adverse Effect on the Borrower and its Subsidiaries: (i) a Termination Event has occurred, together with a written statement describing such Termination Event and the action, if any, which the Borrower, a Subsidiary Guarantor or any ERISA Affiliate has taken, is taking, or proposes to take with respect thereto and, when known by a Responsible Officer, any action taken or threatened by the IRS, Department of Labor or PBGC with respect thereto; (ii) a non-exempt prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the IRC) has occurred with respect to an Employee Benefit Plan, together with a written statement describing such transaction and the action which the Borrower, such Subsidiary Guarantor or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto; (iii) a funding waiver request has been filed with respect to any Pension Benefit Plan, together with all communications received by the Borrower, any Subsidiary Guarantor or any ERISA Affiliate with respect to such request; (iv) the Borrower or any Subsidiary Guarantor shall receive from the PBGC a notice of intention to terminate a Pension Benefit Plan or to have a trustee appointed to administer a Pension Benefit Plan, together with copies of each such notice; (v) the Borrower or any of its Subsidiaries has received a notice imposing withdrawal liability on the Borrower or any of its Subsidiaries, together with copies of each such notice; (vi) the Borrower, any Subsidiary Guarantor or any ERISA Affiliate has failed to make a required installment or any other required payment under Section 412 of the IRC on or before the due date for such installment or payment; or (vii) (a) a Multiemployer Plan has been terminated, or (b) the PBGC has instituted proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan.

(S) Additional Documents. The Borrower shall execute and deliver to Agent, upon request, such documents and agreements as Agent may, from time to time, reasonably request to carry out the purposes, terms or conditions of this Agreement.

(T) Insurance Report. As soon as practicable and in any event within thirty (30) days (or such longer period as Agent may agree) of the last day of each Fiscal Year, the Borrower shall furnish Agent a report in form and substance reasonably satisfactory to Agent outlining all material insurance coverage maintained as of the date of such report by Note Parties and all material insurance coverage planned to be maintained by Note Parties in the immediately succeeding Fiscal Year.

(U) Accountants. Promptly upon receipt thereof, the Borrower shall furnish to Agent a copy of each other report submitted to the Borrower or any Subsidiary by independent accountants in connection with any annual, interim or special audit made by them of the books of the Borrower or any Subsidiary.

(V) Renewal of the BRF Finance Co. Letter of Credit. At least one hundred and five (105) days prior to each expiration of the BRF Finance Co. Letter of Credit, the Borrower shall provide the Agent with a written request for the renewal thereof.

(W) MJ Acquisition. Concurrently with delivery of any notices to any other party under the MJ Acquisition Agreement or any other MJ Acquisition Document, the Note Party shall deliver a copy thereof to the Agent. Promptly upon receipt of any notice from any other party under the MJ Acquisition Agreement or any other MJ Acquisition Document, the Note Party shall deliver a copy thereof to the Agent.

Notwithstanding anything herein to the contrary, at any time the Agent so directs the Note Parties, no Note Party shall deliver to the Agent or any Purchaser the annual financial statements, quarterly financial statements, monthly financial statements, any other statements or reports, and/or other material non-public information required to be delivered hereunder.

5.2. Beneficial Ownership. At any time or from time to time upon the request of Agent, each Note Party will, at its expense, promptly provide Purchasers with any information and documentation reasonably requested for purposes of compliance with the Beneficial Ownership Regulation or other applicable anti-money laundering laws under 31 U.S.C. 5318(h) and its implementing regulations.

5.3. Real Estate Mortgages and Filings. Within 90 days (or such longer period as Agent may agree) after the acquisition by any Note Party of any fee-owned property (together with fixtures thereon) located in the United States of America that is owned by any Note Party with a fair market value (as reasonably determined by Borrower) that exceeds \$500,000, the Note Parties will deliver such documents as the Agent may reasonably request to perfect the Agent's security interest in such real property and other documents reasonably related thereto, including, without limitation, mortgages, title insurance, surveys, legal opinions, and fixture filings.

5.4. Use of Proceeds and Margin Security.

(A) The Borrower will only use the proceeds of the Original Notes as follows: (i) \$16,500,000 of such proceeds will be deposited with Citibank, N.A. pursuant to the TS Escrow Agreement to be used as the consideration for the TS Acquisition, (ii) \$1,135,000 of such proceeds will be used to pay fees and expenses associated with the Transactions, and (iii)



the remainder will be used for general corporate purposes of the Borrower. The Borrower shall use the proceeds of all Original Notes for proper business purposes consistent with all Applicable Laws, statutes, rules and regulations.

(B) The Borrower will only use the proceeds of the A&R Notes as follows: (i) \$45,000,000 of such proceeds will be used to finance the license fee under the ABG License, and (ii) the remainder will be used to pay fees and expenses associated with the ABG License and related transactions and for general corporate purposes of the Borrower. The Borrower shall use the proceeds of all A&R Notes for proper business purposes consistent with all Applicable Laws, statutes, rules and regulations.

(C) No portion of the proceeds of any Note shall be used for the purpose of purchasing or carrying margin stock within the meaning of Regulation U, or in any manner that might cause the borrowing or the application of such proceeds to violate Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Exchange Act.

(D) The Borrower will only use the proceeds of the First Amendment Notes as follows: \$3,000,000 will be used to pay fees and expenses associated with the First Amendment and for general corporate purposes of the Borrower. The Borrower shall use the proceeds of all First Amendment Notes for proper business purposes consistent with all Applicable Laws, statutes, rules and regulations.

(E) The Borrower will use the proceeds of the Delayed Draw Term Notes to pay fees and expenses associated with the Second A&R Closing and for general corporate purposes of the Borrower. The Borrower shall use the proceeds of all Delayed Draw Term Notes for proper business purposes consistent with all Applicable Laws, statutes, rules and regulations.

(F) The Borrower will use the proceeds of the Third A&R Notes to pay consideration for the MJ Acquisition, to pay fees and expenses associated with the MJ Acquisition, to prepay all of the Delayed Draw Term Notes maturing on the Delayed Draw Term Notes First Maturity Date and to pay fees and expenses associated with the Third A&R Closing. The Borrower shall use the proceeds of all Third A&R Notes for proper business purposes consistent with all Applicable Laws, statutes, rules and regulations.

(G) The Borrower will use the proceeds of the 2023 Notes to pay fees and expenses associated with the issuance of the 2023 Notes and for general corporate purposes of the Borrower. The Borrower shall use the proceeds of all 2023 Notes for proper business purposes consistent with all Applicable Laws, statutes, rules and regulations.

5.5. Maintenance of Properties and Existence. The Note Parties shall, and shall cause their respective Subsidiaries to, maintain and preserve all of their respective material properties (including as relates to Intellectual Property) which are necessary or useful in the proper conduct of their business in good working order and condition, ordinary wear and tear excepted and make or cause to be made all appropriate repairs, renewals and replacements thereof, and comply at all times with the provisions of all material leases to which it is a party as lessee, so as to prevent any loss or forfeiture thereof or thereunder. Each Note Party will and shall cause each of its



Subsidiaries to (i) maintain and preserve and maintain in full force and effect its organizational existence and good standing under the laws of its jurisdiction of incorporation, organization or formation, and (ii) maintain rights, privileges, permits, licenses, authorizations and approvals, and become or remain duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by such Note Party or in which the transaction of its business makes such qualification necessary, in each case under this clause (ii), except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

5.6. Additional Guarantors; Collateral; Further Assurances.

(A) The Borrower shall promptly notify the Agent when, and provide evidence satisfactory to the Agent that, the conditions to the consummation of the TS Acquisition (including the requisite stockholder consent) have been satisfied. Substantially concurrently with the consummation of the TS Acquisition, the Borrower shall cause TheStreet (as the surviving entity in such merger) to become a Guarantor hereunder and cause TheStreet to execute and deliver (x) a joinder agreement in form and substance satisfactory to Agent, (y) each document that would have been required by Section 3.1 to be delivered to Agent with respect to such Subsidiary had such Subsidiary been a Guarantor on the Second A&R Effective Date, and (z) such other documents as Agent may reasonably request, all such documents to be in form and substance reasonably satisfactory to Agent and the Requisite Purchasers. The Borrower shall promptly notify the Agent when, and provide evidence satisfactory to the Agent that, the conditions to the consummation of the MJ Acquisition have been satisfied.

(B) Without limiting the foregoing clause (A), it is the intent of the parties that Maven Media Brands, LLC, a Delaware limited liability company, and any other Subsidiary that is established, created or acquired by the Borrower or any other Note Party after the Second A&R Effective Date become a Guarantor hereunder. Note Parties shall cause any such Subsidiary to become a Guarantor hereunder concurrently with the creation or acquisition thereof and shall cause such Subsidiary to execute and deliver (x) a joinder agreement in form and substance satisfactory to Agent, (y) each document that would have been required by Section 3.1 to be delivered to Agent with respect to such Subsidiary had such wholly-owned Subsidiary been a Guarantor on the Second A&R Effective Date, and (z) such other documents as Agent may reasonably request, including opinions of counsel, all such documents to be in form and substance reasonably satisfactory to Agent and the Requisite Purchasers.

(C) The Note Parties acknowledge that it is their intention to provide Agent with a Lien on all of the Collateral, subject only to Liens permitted hereunder. The Note Parties shall from time to time promptly notify Agent of the acquisition by any Note Party of any material property constituting Collateral in which Agent does not then hold a perfected Lien, or the creation or existence of any such property constituting Collateral, and such Person shall, upon request by Agent, promptly, and in any event within five (5) days of such request, execute and deliver to Agent or cause to be executed and delivered to Agent pledge agreements, security agreements, or other like agreements with respect to such property, together with such other documents, certificates, opinions of counsel and the like as Agent shall reasonably request in connection therewith, in form and substance reasonably satisfactory to Agent, such that Agent shall receive valid and perfected Liens with respect to Collateral on all such property constituting Collateral. In addition, in the event that any Note Party files or acquires any ownership interest

in any Trademarks, Copyrights, or Patents (each as defined in the applicable Security Document) filed or registered with the U.S. Patent and Trademark Office or U.S. Copyright Office, in each case that is material to the business of the Note Parties, then such Note Party shall notify Agent promptly in writing within thirty (30) days of such notice (or such longer period as Agent may agree) and shall execute, or cause the execution of a security agreement and other documents with respect thereto in form and substance reasonably satisfactory to Agent.

(D) Without limiting the foregoing, the Note Parties shall (and, subject to the extent applicable hereinafter set forth, shall cause each of their Subsidiaries to) take such additional actions and execute such documents as the Agent or Requisite Purchasers may reasonably require from time to time in order to carry out more effectively the purposes of this Agreement or any other Note Document.

5.7. **Investment Banker.** The Borrower agrees that the Borrower shall retain B. Riley as the Borrower's exclusive investment banker in connection with any effort by the Borrower to issue Equity Interests or borrow money or to enter into any merger, sale or acquisition transaction so long as such engagement is on commercial terms substantially consistent with those in the investment banking industry required by firms of similar scope of operations in the United States.

5.8. **Post-Closing Obligations.** The Borrower shall deliver, or cause to be delivered, the agreements, instruments and other documents set forth on Schedule 5.8 within the applicable time periods specified therein or in each case, such later date as may be agreed by the Agent in its sole discretion.

SECTION 6. [RESERVED]

#### SECTION 7. NEGATIVE COVENANTS

Each Note Party covenants and agrees that so long as any of the Obligations remain outstanding (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto), such Note Party shall not, and will not permit any of its Subsidiaries to, violate any of the covenants set forth in this Section 7.

7.1. **Indebtedness and Liabilities.** No Note Party will, or will permit any Subsidiary to, directly or indirectly create, incur, assume, guaranty, or otherwise become or remain directly or indirectly liable, on a fixed or contingent basis, with respect to any Indebtedness except:

(A) the Obligations;

(B) Indebtedness existing on the Third A&R Effective Date and identified on Schedule 7.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof, taken as a whole, are not less favorable to the obligor thereon than the Indebtedness being refinanced or extended, and the weighted average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding

clause (i) or (ii) above shall not (x) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, or (y) exceed in a principal amount the Indebtedness being renewed, extended or refinanced (plus an amount equal to any unpaid accrued interest and premiums thereunder and other fees and expenses incurred in connection with such refinancing or extension);

(C) Indebtedness in the form of guarantees permitted by Section 7.2;

(D) Indebtedness consisting of customer deposits received by a Note Party or any Subsidiary in the ordinary course of business;

(E) Indebtedness consisting of intercompany loans permitted by Section 7.4;

(F) Indebtedness of the Note Parties arising under the SLR Indebtedness Documents in an aggregate principal amount not to exceed \$40,000,000;

(G) subject to Section 5.8, Indebtedness of the Borrower arising under the Subordinated Debentures in an aggregate principal amount of \$15,205,528, less any principal payments of such Indebtedness made on or after the date hereof;

(H) 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, provided that such Indebtedness is extinguished within ten (10) Business Days after its incurrence;

(I) Public Offering Indebtedness; ~~and~~

(J) Subordinated Indebtedness (other than the Subordinated Debentures); and

(K) the Series L Preferred Stock.

7.2. Guarantees. Neither any Note Party nor any of its Subsidiaries will guaranty, endorse, or otherwise in any way become or be responsible for any obligations of any other Person, whether directly or indirectly by agreement to purchase the indebtedness of any other Person or through the purchase of goods, supplies or services, or maintenance of working capital or other balance sheet covenants or conditions, or by way of stock purchase, capital contribution, advance or loan for the purpose of paying or discharging any indebtedness or obligation of such other Person or otherwise, except:

(A) as provided under the Note Documents;

(B) for endorsements of instruments or items of payment for collection in the ordinary course of business;

(C) guarantees by Note Parties of the obligations of other Note Parties;

(D) guarantees existing as of the Third A&R Effective Date and listed in Schedule 7.2(D), including extension and renewals thereof which do not increase the amount of

such guarantees as of the date of such extension or renewal (plus an amount equal to any unpaid accrued interest and premiums thereunder and other fees and expenses incurred in connection with such refinancing or extension);

(E) guarantees incurred in the ordinary course of business with respect to leases and other obligations not constituting Indebtedness; and

(F) guarantees arising with respect to customary indemnification obligations in favor of (i) sellers in connection with acquisitions permitted hereunder and (ii) purchasers in connection with dispositions permitted hereunder.

### 7.3. Transfers, Liens and Related Matters.

(A) Transfers. No Note Party will, or will permit any of its Subsidiaries to, sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to any of the Collateral or the assets of any Note Party or any of its Subsidiaries, except:

- (1) dispositions of Inventory in the ordinary course of business;
- (2) dispositions of cash in the ordinary course of business;
- (3) dispositions of (i) obsolete or worn out property and assets in the ordinary course of business, or (ii) property or assets no longer used or useful in the conduct of the business of the Borrower or its Subsidiaries;
- (4) licenses, sublicenses, leases or subleases (excluding Intellectual Property license) granted to third parties in the ordinary course of business and not materially interfering with the business of the Borrower and any of its Subsidiaries;
- (5) licensing or sublicensing on a non-exclusive basis of Intellectual Property in the ordinary course of business;
- (6) the factoring and sale of receivables in the ordinary course of business consistent with past practice; and
- (7) dispositions from any Note Party to any other Note Party;

provided however, no dispositions of Intellectual Property made to any Person (other than a Note Party) shall constitute a disposition permitted hereunder unless such disposition is subject to a non-exclusive royalty-free license of such Intellectual Property in favor of the Agent for use in connection with the exercise of rights and remedies of the Secured Parties under the Note Documents in respect of the Collateral, which license shall be substantially similar to the license described in Section 7.5(c) of the Security Agreement (or otherwise reasonably satisfactory to the Agent and the Requisite Purchasers).

(B) Liens. Except for Permitted Encumbrances, no Note Party will, or will permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of the Collateral or any other assets or any proceeds, income or profits therefrom.



(C) No Negative Pledges. No Note Party will, or will permit any of its Subsidiaries to enter into or assume any agreement (other than (i) the Note Documents, (ii) the SLR Indebtedness Documents, (iii) the Subordinated Debentures, and (iv) any instrument or other document evidencing a Permitted Encumbrance (or the Indebtedness secured thereby) restricting on customary terms the transfer of any property or assets subject to such Permitted Encumbrance) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired.

(D) No Restrictions on Subsidiary Distributions to Note Parties. No Note Party will, or will permit any of its Subsidiaries to, directly or indirectly create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to directly or indirectly: (i) pay dividends or make any other distribution on any of such Subsidiary's Equity Interests owned by a Note Party; (ii) pay any indebtedness owed to a Note Party; (iii) make loans or advances to a Note Party; or (iv) transfer any of its property or assets to a Note Party; provided that the foregoing shall not apply to:

- (1) restrictions and conditions imposed by Applicable Law;
- (2) restrictions and conditions under the Note Documents;
- (3) restrictions and conditions existing on the Third A&R Effective Date and listed on Schedule 7.3(D) and any extensions, renewals, refinancings, replacements, refundings, or modifications thereon (so long as any such extensions, renewals, refinancings, replacements, refundings, or modifications do not make any restriction or condition less favorable to the Borrower or any of its Subsidiaries in any material respect);
- (4) restrictions and conditions imposed by organizational documents as of the Third A&R Effective Date;
- (5) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale and pertaining only to such Subsidiary; provided that such sale is permitted hereunder;
- (6) customary restrictions and conditions contained in agreements relating to a disposition of assets permitted by this agreement;
- (7) restrictions and conditions that were binding on a Subsidiary or assets at the time such Subsidiary or assets were acquired, so long as such restrictions and conditions were not entered into in contemplation of this provision;
- (8) customary restrictions or conditions imposed by an agreement governing Indebtedness permitted hereunder; and
- (9) customary provisions in leases, licenses and other agreements restricting subletting, sublicensing or assignments, including the granting of a Lien.

7.4. Investments and Loans. No Note Party will, or will permit any of its Subsidiaries to, make or permit to exist investments in or loans to any other Person, except:

(A) loans and advances to employees for moving, entertainment, travel and other similar expenses in the ordinary course of business in an aggregate outstanding amount not in excess of \$50,000 at any time;

(B) loans and investments by a Note Party to or in another Note Party;

(C) loans and investments by Subsidiaries that are not Note Parties to or in other Subsidiaries that are not Note Parties;

(D) Restricted Junior Payments permitted under Section 7.5 that constitute investments;

(E) loans and investments existing on the Third A&R Effective Date and set forth on Schedule 7.4(E);

(F) the TS Acquisition ~~and~~, the MJ Acquisition and the Approved SI Deal;

(G) the creation of wholly-owned Subsidiaries, subject to compliance with the terms of Sections 5.6;

(H) asset purchases to be consummated by a Note Party on or prior to March 31, 2023 with an aggregate purchase price not to exceed \$5,000,000; and

(I) other investments in an outstanding amount not to exceed \$100,000 in the aggregate at any time.

provided however, with respect to any investment consisting of Intellectual Property, such investment of Intellectual Property in any Person (other than a Note Party) shall not constitute an investment permitted hereunder unless such investment is subject to a non-exclusive royalty-free license of such Intellectual Property in favor of the Agent for use in connection with the exercise of rights and remedies of the Secured Parties under the Note Documents in respect of the Collateral, which license shall be substantially similar to the license described in Section 7.5(c) of the Security Agreement (or otherwise reasonably satisfactory to the Agent and the Requisite Purchasers).

7.5. Restricted Junior Payments. No Note Party will directly or indirectly declare, order, pay, make or set apart any sum for any Restricted Junior Payment, except that:

(A) Note Parties and their Subsidiaries may make distributions to Note Parties;

(B) The Borrower may, and the other Note Parties and their Subsidiaries may make distributions to the Borrower to allow the Borrower to, repurchase its (or its direct or indirect parent) Equity Interests from directors, executive officers, members of management or employees of the Borrower and its Subsidiaries upon the death, disability, retirement or termination of such directors, executive officers, members of management or employees, so long as no Default or Event of Default is then existing or would be created thereby and the aggregate amount of cash expended by the Borrower does not exceed \$10,000 in the aggregate after the A&R Effective Date;



(C) Note Parties and their Subsidiaries may make payments of interest and principal with respect to intercompany indebtedness incurred from a Note Party;

(D) Subsidiaries that are not Note Parties may make payments of interest and principal with respect to intercompany indebtedness incurred from another Subsidiary that is not a Note Party;

(E) Note Parties and their Subsidiaries may make payments permitted by Section 7.8(B);

(F) Note Parties may make payments of principal, interest and other amounts with respect to Subordinated Indebtedness that is subject to a Subordination Agreement to the extent expressly permitted under the terms of the applicable Subordination Agreement; and

(G) So long as no Default or Event of Default has occurred and is outstanding, the Note Parties may make regularly scheduled payments of interest with respect to Public Offering Indebtedness.

7.6. Restriction on Fundamental Changes. No Note Party will, or will permit any of its Subsidiaries to:

(A) enter into any transaction of merger or consolidation;

(B) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); and

(C) except as permitted by Section 7.3, convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the Equity Interests of any of its Subsidiaries, whether now owned or hereafter acquired,

provided, however, with respect to each of the foregoing clauses (A), (B) and (C):

(x) (i) Note Parties may merge with and into each other and/or into the Borrower, so long as, in the case of a merger with the Borrower, Borrower is the surviving entity, or (ii) Note Parties (other than the Borrower) may convey all or substantially all of their assets to each other or to the Borrower, or (iii) Note Parties (other than the Borrower) may liquidate, wind-up or dissolve, so long as any assets of such Note Party are transferred to another Note Party; and

(y) TST AcquisitionCo may merge with TheStreet in connection with the TS Acquisition, subject to compliance with Section 5.6(A).

7.7. Division. Notwithstanding anything herein or any other Note Document to the contrary, no Note Party that is a limited liability company may divide itself into two or more limited liability companies or series thereof (pursuant to a "plan of division" as contemplated under the Delaware Limited Liability Company Act or otherwise) without the prior written consent of the Agent.

7.8. Transactions with Affiliates. Except as expressly permitted by Section 7.5, no Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower; provided, however, that the Note Parties and their Subsidiaries may enter into or permit to exist any such transaction if the terms of such transaction are not less favorable to such Note Party or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not an Affiliate; provided further that the foregoing restrictions shall not apply to:

- (A) any transaction among any two or more Note Parties;
- (B) reasonable and customary fees paid to members of the board of directors (or similar governing body) of the Note Parties and their Subsidiaries that are not employees of any of the Note Parties or their Subsidiaries; and
- (C) transactions described in Schedule 7.8.

7.9. Conduct of Business. From and after the Third A&R Effective Date, the Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than businesses of the type engaged in by the Borrower and its Subsidiaries on the Third A&R Effective Date, other businesses reasonably related thereto.

7.10. Tax Consolidations. No Note Party will file or consent to the filing of any consolidated income tax return with any Person other than the Borrower, the Note Parties and their Subsidiaries unless required by Applicable Law.

7.11. TS Acquisition Documents. No Note Party will amend, modify or change the terms of any TS Acquisition Document without the prior written consent of the Agent. No Note Party will deliver any Joint Release Instruction under (and as defined in) the TS Escrow Agreement without the prior written consent of the Agent; provided however, in the event that such Joint Release Instructions are being delivered to release the escrowed funds solely to pay the consideration under the TS Acquisition Agreement after the occurrence of the Effective Time pursuant to (and as defined in) the TS Acquisition Agreement, (i) the prior written consent of the Agent shall not be required to deliver such Joint Release Escrow Instructions and (ii) the Borrower shall promptly deliver a copy of such Joint Release Escrow Instructions to the Agent.

7.12. Changes to Indebtedness Documents. No Note Party will amend, modify or change the terms of any Subordinated Indebtedness Document, the SLR Indebtedness Documents or any documents related to the Public Offering Indebtedness without the prior written consent of the Agent.

7.13. Sales and Lease-Backs. No Note Party shall, 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 the Borrower 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 (other than the Borrower or any of its Subsidiaries) in connection with such lease.

7.14. Anti-Terrorism Laws. No Note Party shall, nor shall any Note Party permit any Subsidiary or any Person that, directly or indirectly, is in control of a Note Party to:

(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;

(B) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224;

(C) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order No. 13224, the USA PATRIOT Act, or any other Anti-Terrorism Law. The Note Parties shall deliver to the Purchasers any certification or other evidence requested from time to time by any Purchaser in its sole discretion, confirming such Note Party's compliance with this Section; or

(D) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or any Person that is the target of sanctions imposed by the United Nations or the European Union including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person.

7.15. Trading with the Enemy Act. No Note Party shall, nor shall any Note Party permit any Subsidiary or any Person that, directly or indirectly, is in control of a Note Party to engage in any business or activity in violation of the Trading with the Enemy Act.

7.16. Fiscal Year. No Note Party will change its Fiscal Year, unless approved in writing by Agent.

7.17. ABG License. No Note Party will amend, modify or change the terms of the ABG License or the other documents related thereto in any material respect without the prior written consent of the Agent.

7.18. MJ Acquisition Documents. No Note Party will amend, modify or change the terms of any MJ Acquisition Document without the prior written consent of the Agent.

## SECTION 8. DEFAULT, RIGHTS AND REMEDIES

8.1. Event of Default. "Event of Default" means the occurrence or existence of any one or more of the following:

(A) Payment. Failure to pay any amount of principal, interest, fees, or any other amount payable hereunder or pursuant to any other Note Document after the same shall become due; or

(B) Breach of Warranty. Any representation, warranty, certification or other statement made by any Note Party in any Note Document or in any statement or certificate at any time given by such Person in writing pursuant or in connection with any Note Document is false

in any material respect on the date made (without duplication of other materiality qualifiers contained therein); or

(C) Breach of Certain Provisions. Failure of any Note Party to perform or comply with any term or condition contained in Section 5.1, Section 5.4, Section 5.5 (with respect to each Note Party's corporate existence only), Section 5.6, Section 5.7, Section 5.8, or Section 7; or

(D) Other Defaults Under Note Documents. The Borrower or any of its Subsidiaries defaults in the performance of or compliance with any term contained in this Agreement other than those otherwise set forth in this Section 8.1, or defaults in the performance of or compliance with any term contained in any other Note Document and such default, in any such case, is not remedied within ten (10) days; or

(E) Default in Other Agreements. (1) Failure of any Note Party to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) any principal or interest on any Indebtedness (other than the Obligations) having a principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) in excess of \$500,000 individually or \$1,000,000 in the aggregate for all such Indebtedness and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto on the date of such failure, (2) any breach or default with respect to any Indebtedness of any Note Party (other than the Obligations) having a principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) in excess of \$500,000 individually or \$1,000,000 in the aggregate for all such Indebtedness and such breach or default continues beyond any applicable grace period, if such breach or default entitles the holder of such Indebtedness to cause such Indebtedness to become or be declared due prior to its stated maturity (without regard to any subordination terms with respect thereto); (3) a breach or default occurs under the ABG License, which breach or default has a material adverse effect on the Borrower's rights thereunder; (4) an amendment, breach or default occurs under the ABG-SI License, which amendment, breach or default has a material adverse effect on the Borrower's rights under the ABG License; (5) a breach or default occurs under the New York Lease, which breach or default has a material adverse effect on the applicable Note Party's rights thereunder; (6) a breach or default occurs under any SLR Indebtedness Document and such breach or default continues beyond any applicable grace period, if such breach or default entitles SLR Digital Finance LLC (or its successors or assigns as lender under the SLR Indebtedness Documents) to cause such Indebtedness to become or be declared due prior to its stated maturity (without regard to any subordination terms with respect thereto); or (7) a breach or default occurs under any Subordinated Debenture; or

(F) Change in Control. A Change In Control occurs; or

(G) Involuntary Bankruptcy; Appointment of Receiver, etc. (1) A court enters a decree or order for relief with respect to any Note Party in an involuntary case under any applicable bankruptcy, winding-up, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed or other similar relief is not granted under any applicable



federal, provincial or state law; or (2) the continuance of any of the following events for thirty (30) days unless dismissed, bonded or discharged: (a) an involuntary case is commenced against any Note Party, under any applicable bankruptcy, insolvency winding-up, or other similar law now or hereafter in effect; or (b) a receiver, liquidator, sequestrator, trustee, custodian or other fiduciary having similar powers over any Note Party, or over all or a substantial part of their respective property, is appointed; or

(H) Voluntary Bankruptcy; Appointment of Receiver, etc. (1) Any Note Party commences a voluntary case under any applicable bankruptcy, winding-up, insolvency or other similar law now or hereafter in effect, or consents 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 consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (2) any Note Party makes any assignment for the benefit of creditors; or (3) any Note Party voluntarily ceases to conduct its business in the ordinary course; or (4) the board of directors (or similar governing body) of any Note Party adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this Section 8.1(H); or

(I) ERISA. A Termination Event shall have occurred that has resulted in liability to the Borrower and its Subsidiaries in an aggregate amount in excess of \$500,000 individually or \$1,000,000 in the aggregate with respect to all Termination Events and such liability remains unpaid for a period of two (2) Business Days; provided, that, no Lien is imposed on the Borrower, any of its Subsidiaries or their respective assets with respect to such liability; or

(J) Judgment, Attachments and Litigation. Any (i) money judgment, writ or warrant of attachment, or similar process involving an amount in any individual case in excess of \$500,000 individually or \$1,000,000 in the aggregate for all judgments (in any case not adequately covered by insurance as to which the insurance company has acknowledged coverage) is entered or filed against any Note Party or any of its respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or (ii) non-monetary judgment which could reasonably be expected to have a Material Adverse Effect is entered or filed against any Note Party or any of its respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(K) Invalidity of Subordination Provisions. The subordination and/or intercreditor provisions (if any) of any agreement or instrument governing the Subordinated Indebtedness or the SLR Indebtedness (if any) shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect (other than in accordance with its terms), or any Note Party shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations, for any reason shall not have the priority contemplated by this Agreement or such subordination and/or intercreditor provisions; or

(L) Solvency. Any Note Party admits in writing its present or prospective inability to pay its debts as they become due; or

(M) Injunction. Any Note Party is enjoined, restrained or in any way prevented by the order of any court or any administrative or regulatory agency from conducting all or any

material part of its business and such order continues for thirty (30) days or more and such order could reasonably be expected to have a Material Adverse Effect; or

(N) Invalidity of Note Documents. Any material provision of any of the Note Documents for any reason, other than a partial or full release in accordance with the terms thereof, ceases to be in full force and effect or is declared to be null and void, or any Note Party denies that it has any further liability under any Note Documents to which it is party, or gives notice to such effect; or

(O) Failure of Security. Agent, on behalf of itself and the other Secured Parties, does not have or ceases to have a valid, perfected security interest in any material portion of the Collateral (after giving effect to any releases permitted hereunder), in each case, for any reason other than (x) the failure of Agent or any other Secured Party to take any action within its control, or (y) as expressly contemplated by the Note Documents; or

(P) Damage, Strike, Casualty. Any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days beyond the coverage period of any applicable business interruption insurance, the cessation or substantial curtailment of revenue producing activities at any facility of the Borrower or any of its Subsidiaries if any such event or circumstance could reasonably be expected to have a Material Adverse Effect; or

(Q) Licenses and Permits. The loss, termination, suspension or revocation of, or failure to renew, (i) the ABG License or (ii) any other license or permit now held or hereafter acquired by any Note Party or any of their respective Subsidiaries, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect; or

(R) Material Adverse Effect. A Material Adverse Effect shall occur; or

(S) Forfeiture. There is filed against any Note Party or any of its Subsidiaries any civil or criminal action, suit or proceeding under any federal, state or foreign racketeering statute (including, without limitation, the Racketeer Influenced and Corrupt Organization Act of 1970), which action, suit or proceeding (1) is not dismissed within one hundred twenty (120) days; and (2) could reasonably be expected to result in the confiscation or forfeiture of any material portion of the Collateral.

8.2. Acceleration. Upon the occurrence of any Event of Default described in the foregoing Sections 8.1(G) or 8.1(H), all Obligations shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Note Party. Upon the occurrence and during the continuance of any other Event of Default, Agent may, and upon demand by Requisite Purchasers shall, by written notice to Borrower, declare all or any portion of the Obligations to be, and the same shall forthwith become, immediately due and payable.

8.3. Remedies. If any Event of Default shall have occurred and be continuing, in addition to and not in limitation of any other rights or remedies available to Agent and the other



Secured Parties at law or in equity, Agent may, and shall upon the request of Requisite Purchasers, exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and other Applicable Law and may also (a) require Note Parties to, and each Note Party hereby agrees that it will, at its expense and upon request of Agent forthwith, assemble all or part of the Collateral as directed by Agent and make it available to Agent at a place to be designated by Agent which is reasonably convenient to both parties; (b) withdraw all cash in any Deposit Account subject to a Control Agreement and apply such monies in payment of the Obligations in the manner provided in Section 8.6; and (c) without notice or demand or legal process, enter upon any premises of any Note Party and take possession of the Collateral. Each Note Party agrees that, to the extent notice of sale of the Collateral or any part thereof shall be required by law, at least ten (10) days' notice to Borrower of the time and place of any public disposition or the time after which any private disposition (which notice shall include any other information required by law) is to be made shall constitute reasonable notification. At any disposition of the Collateral (whether public or private), if permitted by law, Agent (at the direction of the Requisite Purchasers) may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness, credit bid or set-off) for the purchase, lease, or licensing of the Collateral or any portion thereof for the account of the Secured Parties. Agent shall not be obligated to make any disposition of Collateral regardless of notice of disposition having been given. Each Note Party shall remain liable for any deficiency. Agent may adjourn any public or private disposition from time to time by announcement at the time and place fixed therefor, and such disposition may, without further notice, be made at the time and place to which it was so adjourned. Agent is not obligated to make any representations or warranties in connection with any disposition of the Collateral. To the extent permitted by law, each Note Party hereby specifically waives all rights of redemption, stay or appraisal, which it has or may have under any law now existing or hereafter, enacted. Agent shall not be required to proceed against any Collateral and may proceed against one or more Note Parties directly.

8.4. Appointment of Attorney-in-Fact. Each Note Party hereby constitutes and appoints Agent as such Note Party's attorney-in-fact with full authority in the place and stead of such Note Party and in the name of such Note Party, Agent or otherwise, from time to time in Agent's discretion while an Event of Default is continuing to take any action and to execute any instrument that Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including: (a) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (b) to enforce the obligations of any Account Debtor or other Person obligated on the Collateral and enforce the rights of any Note Party with respect to such obligations and to any property that secures such obligations; (c) to file any claims or take any action or institute any proceedings that Agent may deem necessary or desirable for the collection of or to preserve the value of any of the Collateral or otherwise to enforce the rights of Agent and the other Secured Parties with respect to any of the Collateral; (d) to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Agent in its sole discretion, and such payments made by Agent to become Obligations, due and payable immediately without demand; (e) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts, Chattel Paper or

General Intangibles and other Documents relating to the Collateral; and (f) generally to take any act required of any Note Party under Section 4 or Section 5 of this Agreement or any Security Document, and to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Agent were the absolute owner thereof for all purposes, and to do, at Agent's option and Note Parties' expense, at any time or from time to time, all acts and things that Agent deems necessary to protect, preserve or realize upon the Collateral. Each Note Party hereby ratifies and approves all acts of Agent made or taken pursuant to this Section 8.4. The appointment of Agent as each Note Party's attorney and Agent's rights and powers are coupled with an interest and are irrevocable until payment in full, in cash, of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto).

8.5. Limitation on Duty of Agent and Purchasers with Respect to Collateral. Beyond the safe custody thereof, Agent and each other Secured Party shall have no duty with respect to any Collateral in its possession (or in the possession of any agent or bailee) or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which Agent accords its own property. Neither Agent nor any other Secured Party shall be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouse, carrier, forwarding agency, consignee, broker or other agent or bailee selected by Note Parties or selected by Agent in good faith.

8.6. Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) each Note Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of any Note Party, and Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received at any time or times after the occurrence and during the continuance of an Event of Default against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent, but in all events subject to Section 8.6(b), and (b) after the occurrence and during the continuance of an Event of Default, Agent may, and upon the direction of the Requisite Purchasers shall, apply all proceeds of the Collateral, and in any event Agent shall apply any proceeds of Collateral with respect to any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise in accordance with the terms of the Note Documents by Agent of its rights or remedies during an Event of Default or received in connection with an insolvency proceeding with respect to any Note Party, subject to the provisions of this Agreement, as follows: (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to Agent until paid in full; (ii) second, ratably to pay the Obligations in respect of any fees, expense reimbursements and indemnities then due and payable to the Purchasers until paid in full; (iii) third, ratably to pay interest then due and payable in respect of the Third A&R 2023 Notes until paid in full; (iv) fourth, ratably to pay principal then due and payable in respect of the Third A&R 2023 Notes until paid in full; (v) fifth, ratably to pay interest then due and payable in respect of the Delayed-Draw-Term-Notes-maturing-on-the-Delayed-Draw-Term Third A&R Notes First-Maturity-Date until paid in full; (vi) sixth, ratably to pay principal then due and payable in

respect of the ~~Delayed Draw Term~~ Third A&R Notes ~~maturing on the Delayed Draw Term Notes First Maturity Date~~ until paid in full; (vii) seventh, ratably to pay interest then due and payable in respect of the Delayed Draw Term Notes ~~maturing on the Delayed Draw Term Notes Second Maturity Date~~ until paid in full; (viii) eighth, ratably to pay principal then due and payable in respect of the Delayed Draw Term Notes ~~maturing on the Delayed Draw Term Notes Second Maturity Date~~ until paid in full; (ix) ninth, ratably to pay interest then due and payable in respect of the Existing Notes until paid in full; (x) tenth, ratably to pay principal of the Existing Notes (or, to the extent such Obligations are contingent, to provide cash collateral in respect of such Obligations in accordance with this Agreement) until paid in full; (xi) eleventh, to the ratable payment of all other Obligations then due and payable; and (xii) last, any balance remaining shall be delivered to the Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. All amounts allocated pursuant to the foregoing clauses (ii) through (x) to the Purchasers shall be allocated among and distributed to the Purchasers pro rata based on each Purchaser's share of the Obligations outstanding under the 2023 Notes, Third A&R Notes, Delayed Draw Term Notes or Existing Notes, as applicable.

8.7. Waivers; Non-Exclusive Remedies. No failure on the part of Agent or any other Secured Party to exercise, and no delay in exercising and no course of dealing with respect to, any right under this Agreement or the other Note Documents shall operate as a waiver thereof; nor shall any single or partial exercise by Agent or any other Secured Party of any right under this Agreement or any other Note Document preclude any other or further exercise thereof or the exercise of any other right. The rights in this Agreement and the other Note Documents are cumulative and shall in no way limit any other remedies provided by law.

## SECTION 9. AGENT

### 9.1. Agent.

(A) Appointment. Each Purchaser hereto and, upon obtaining an interest in any Note, any participant, transferee or other assignee of any Purchaser irrevocably appoints, designates and authorizes BRF Finance Co., LLC as Agent to take such actions or refrain from taking such action as its agent on its behalf and to exercise such powers hereunder and under the other Note Documents as are delegated by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Neither Agent nor any of its directors, officers, employees or agents shall be liable for any action so taken. The provisions of this Section 9.1 are solely for the benefit of Agent and Purchasers and neither the Borrower nor any other Note Party shall have any rights as a third party beneficiary of any of the provisions hereof (other than as set forth in Sections 9.1(G), (H) and (K)). In performing its functions and duties under this Agreement and the other Note Documents, Agent shall act solely as agent of Purchasers and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for the Borrower or any other Note Party. Agent may perform any of its duties hereunder, or under the Note Documents, by or through its agents or employees.

(B) Nature of Duties. Agent shall have no duties, obligations or responsibilities except those expressly set forth in this Agreement or in the other Note Documents. Agent shall not have by reason of this Agreement a fiduciary, trust or agency relationship with or in respect of any Purchaser, the Borrower or any other Note Party. Each



Purchaser shall make its own appraisal of the credit worthiness of each Note Party, and shall have independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of Note Parties, and Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Purchaser with any credit or other information with respect thereto (other than as expressly required herein), whether coming into its possession before the Closing Date or at any time or times thereafter.

(C) Rights, Exculpation, Etc. Neither Agent nor any of its officers, directors, employees or agents shall be liable to any Purchaser for any action taken or omitted by them hereunder or under any of the Note Documents, or in connection herewith or therewith, except that Agent shall be liable to the extent of its own gross negligence or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Purchaser to whom payment was due but not made, shall be to recover from other Purchasers any payment in excess of the amount to which they are determined to be entitled (and such other Purchasers hereby agree to return to such Purchaser any such erroneous payments received by them). Neither Agent nor any of its agents or representatives shall be responsible to any Purchaser for any recitals, statements, representations or warranties herein or for the execution, effectiveness, genuineness, validity, enforceability, collectability, or sufficiency of this Agreement or any of the other Note Documents or the transactions contemplated thereby, or for the financial condition of any Note Party. Agent shall not be responsible for or be required to make any inquiry concerning (i) the performance or observance of any of the terms, provisions or conditions of this Agreement or any of the other Note Documents, (ii) the financial condition of any Note Party, (iii) the contents of any certificate, report or other document delivered hereunder or any other Note Document or in connection herewith or therewith, (iv) the existence or possible existence of any Default or Event of Default or (v) the satisfaction of any condition set forth in Section 3 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Agent. Agent may at any time request instructions from Purchasers with respect to any actions or approvals which by the terms of this Agreement or of any of the other Note Documents Agent is permitted or required to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Note Documents until it shall have received such instructions from Requisite Purchasers or all or such other portion of the Purchasers as shall be prescribed by this Agreement. Without limiting the foregoing, no Purchaser shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Note Documents in accordance with the instructions of Requisite Purchasers in the absence of an express requirement for a greater percentage of Purchaser approval hereunder for such action.

(D) Reliance. Agent shall be under no duty to examine, inquire into, or pass upon the validity, effectiveness or genuineness of this Agreement, any other Note Document, or any instrument, document or communication furnished pursuant hereto or in connection herewith. Agent shall be entitled to rely, and shall be fully protected in relying, upon any written or oral notices, statements, certificates, orders or other documents or any telephone message or other communication (including any writing or fax) believed by it in good faith to be genuine and

correct and to have been signed, sent or made by the proper Person. With respect to all matters pertaining to this Agreement or any of the other Note Documents and its duties hereunder or thereunder, Agent shall be entitled to rely upon the advice of legal counsel, independent accountants, and other experts selected by Agent in its sole discretion.

(E) Indemnification. Purchasers will reimburse and indemnify Agent for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any of the other Note Documents or any action taken or omitted by Agent under this Agreement or any of the other Note Documents, in proportion to each Purchaser's pro rata share of the Obligations, but only to the extent that any of the foregoing is not promptly reimbursed by Note Parties; provided, however, no Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements resulting from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against, even if so directed by Purchasers or Requisite Purchasers, until such additional indemnity is furnished. The obligations of Purchasers under this Section 9.1(E) shall survive the payment in full of the Obligations and the termination of this Agreement.

(F) B. Riley Individually. With respect to the Notes purchased by it as a Purchaser, B. Riley shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Purchaser. The terms "Purchasers" or "Requisite Purchasers" or any similar terms shall, unless the context clearly otherwise indicates, include B. Riley in its individual capacity as a Purchaser or one of the Requisite Purchasers. B. Riley, either directly or through strategic affiliations, may lend money to, acquire equity or other ownership interests in, provide advisory services to and generally engage in any kind of banking, trust or other business with any Note Party as if it were not acting as Agent pursuant hereto and without any duty to account therefor to Purchasers. B. Riley, either directly or through strategic affiliations, may accept fees and other consideration from any Note Party for services in connection with this Agreement or otherwise without having to account for the same to Purchasers.

(G) Successor Agent.

(1) Resignation. Agent may resign from the performance of all its agency functions and duties hereunder at any time by giving at least five (5) Business Days' prior written notice to Borrower and the Purchasers. Such resignation shall take effect upon the acceptance by a successor Agent of appointment as provided below.

(2) Appointment of Successor. Upon any such notice of resignation pursuant to Section 9.1(G)(1) above, Requisite Purchasers shall appoint a successor Agent. If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring Agent, upon notice to Borrower, may then appoint a successor Agent who shall serve

as Agent until such time, if any, as Requisite Purchasers appoint a successor Agent as provided above.

(3) Successor Agent. Upon the acceptance of any appointment as Agent under the Note Documents by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under the Note Documents. After any retiring Agent's resignation as Agent, the provisions of this Section 9, Section 11.1 and Section 11.2 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

(H) Collateral and Guaranty Matters.

(1) Release of Collateral. Purchasers hereby irrevocably authorize and direct Agent to release (or, in the case of sub-clause (c) below, release or subordinate) any Lien granted to or held by Agent upon any Collateral (a) upon payment and satisfaction of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto) or (b) constituting property being sold or disposed of, if the applicable Note Party certifies to Agent that the sale, disposition or lien is made or granted in compliance with the provisions of this Agreement (and Agent may rely in good faith conclusively on any such certificate, without further inquiry); or (c) of any Subsidiary Guarantor being released pursuant to Section 9.1(H)(2).

(2) Release of Guaranty. Purchasers hereby irrevocably authorize and direct Agent to release any Subsidiary Guarantor from its obligations under its Guaranty and under the other Note Documents to which it is a party if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

(3) Confirmation of Authority; Execution of Releases. Without in any manner limiting Agent's authority to act without any specific or further authorization or consent by Purchasers (as set forth in Sections 9.1(H)(1) and 9.1(H)(2) above), each Purchaser agrees to confirm in writing, upon request by Agent or Borrower, the authority to release any (i) Collateral conferred upon Agent under Section 9.1(H)(1) and (ii) to release any Subsidiary Guarantor under Section 9.1(H)(2). To the extent any Note Party requests that Agent release (or subordinate) any Lien granted to or held by Agent as authorized under Section 9.1(H)(1) or release any Subsidiary Guarantor under Section 9.1(H)(2), (a) Agent shall, and is hereby irrevocably authorized by Purchasers to, execute such documents as may be necessary to evidence (I) the release of the Liens granted to Agent, for the benefit of Agent and Purchasers, upon such Collateral and (II) the release of such Subsidiary Guarantor; provided, however, that Agent shall not be required to execute any such document on terms which, in Agent's opinion, would expose Agent to liability or create upon Agent any obligation or entail any consequence other than the release of such Liens or the release of such Subsidiary Guarantor without recourse or warranty, and (b) Note Parties shall provide at least ten (10) Business Days (or such shorter period as agreed to by Agent in its reasonable discretion) prior written notice of any request for any document evidencing such release (or subordination) of the Liens or such release of the Subsidiary Guarantor and Note Parties agree that any such release (or subordination) shall not in any manner discharge, affect or impair the Obligations or any Liens or any Liens granted to Agent on behalf of Agent and



Purchasers upon (or obligations of any Note Party, in respect of) all interests retained by any Note Party, including, without limitation, the proceeds of any sale, all of which shall continue to constitute part of the property covered by this Agreement or the Note Documents.

(4) Absence of Duty. Agent shall have no obligation whatsoever to any Purchaser or any other Person to assure that the property covered by this Agreement or the Note Documents exists or is owned by any Note Party or is cared for, protected or insured or has been encumbered or that the Liens granted to Agent on behalf of Agent and Purchasers herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent in this Agreement or in any of the other Note Documents.

(I) Agency for Perfection. Agent and each Purchaser hereby appoint each other Purchaser as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Purchaser (other than Agent) obtain possession of any such assets, such Purchaser shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions. Agent may file such proofs of claim or documents as may be necessary or advisable in order to have the claims of Agent and the Purchasers (including any claim for the reasonable compensation, expenses, disbursements and advances of Agent and the Purchasers, their respective agents, financial advisors and counsel), allowed in any judicial proceedings relative to any Note Party and/or its Subsidiaries, or any of their respective creditors or property, and shall be entitled and empowered to collect, receive and distribute any monies, securities or other property payable or deliverable on any such claims. Any custodian in any judicial proceedings relative to any Note Party and/or its Subsidiaries is hereby authorized by each Purchaser to make payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Purchasers, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent, its agents, financial advisors and counsel, and any other amounts due Agent. Nothing contained in this Agreement or the other Note Documents shall be deemed to authorize Agent to authorize or consent to or accept or adopt on behalf of any Purchaser any plan of reorganization, arrangement, adjustment or composition affecting the Notes, or the rights of any holder thereof, or to authorize Agent to vote in respect of the claim of any Purchaser in any such proceeding, except as specifically permitted herein.

(J) Exercise of Remedies. Each Purchaser agrees that it will not have any right individually to enforce or seek to enforce this Agreement or any other Note Document or to realize upon any collateral security for the Obligations, unless instructed to do so by Agent, it being understood and agreed that such rights and remedies may be exercised only by Agent. Without limiting the generality of the foregoing, neither Agent nor Purchasers may exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, uniform commercial code sales or other similar sales or dispositions of any of the Collateral except as authorized by the Requisite Purchasers.

9.2. Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Purchasers, unless Agent shall have received written notice from a Purchaser or Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Purchaser of its receipt of any such notice.

9.3. Action by Agent. Agent shall take such action with respect to any Default or Event of Default as may be requested by Requisite Purchasers in accordance with Section 8. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any Default or Event of Default as it shall deem advisable or in the best interests of Purchasers.

9.4. Amendments, Waivers and Consents.

(A) Percentage of Purchasers Required. Except as otherwise provided herein or in any of the other Note Documents, no amendment, modification, termination or waiver of any provision of this Agreement or any other Note Document, or consent to any departure by any Note Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Requisite Purchasers (or, Agent, if expressly set forth herein or in any of the other Note Documents) and the applicable Note Party; provided however, no amendment, modification, termination, waiver or consent shall:

(1) subject any Purchaser to any additional obligation or reduce the principal of or the rate of interest on any Note (other than as a result of any waiver of the applicability of any post-default increase) or reduce the fees payable with respect to any Note or postpone or extend any scheduled date fixed for any payment of principal of, or interest, fees, or premium on, the Notes payable to any Purchaser, in each case, without the consent of each Purchaser directly and adversely affected thereby;

(2) amend the definition of Requisite Purchasers without the consent of each Purchaser directly and adversely affected thereby;

(3) amend, modify or waive any provision of this Section 9.4 without the consent of each Purchaser directly and adversely affected thereby;

(4) release all or substantially all of the Collateral or all or substantially all of the value of the Guaranties (except as expressly provided in the Note Documents), without the consent of each Purchaser;

(5) consent to the assignment, delegation or other transfer by any Note Party of any of its rights and obligations under any Note Document, without the consent of each Purchaser;

(6) without the consent of Agent, amend, modify or waive any provision of this Agreement or any other Note Document as same applies to Agent or as same relates to the rights or obligations of such Agent;

(7) amend, modify or waive any provision hereof in any manner that would alter the order of treatment or the pro rata sharing of payments required thereby without the consent of each Purchaser directly and adversely affected thereby; or

(8) subordinate (x) all or substantially all of the Liens granted pursuant to the Note Documents or (y) the Obligations, in each case other than as otherwise expressly permitted hereunder.

Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9 shall be binding upon each Purchaser or future Purchaser and, if signed by a Note Party, on such Note Party.

(B) Specific Purpose or Intent. Each amendment, modification, termination, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination, waiver or consent shall be required for Agent to take additional Collateral.

Notwithstanding anything in this Section 9.4, Agent and the Borrower, without the consent of either Requisite Purchasers or all Purchasers, may execute amendments to this Agreement and the other Note Documents, to (1) cure any ambiguity, omission, defect or inconsistency therein, or (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional property for the benefit of the Secured Parties or join additional Persons as Note Parties.

9.5. Set-Off and Sharing of Payments.

(A) 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 and during the continuance of any Event of Default, each Purchaser is hereby authorized by each Note Party at any time or from time to time, without notice or demand (each of which is hereby waived by each Note Party) to set-off and to appropriate and to apply any and all (a) balances held by such Purchaser at any of its offices for the account of Note Parties (regardless of whether such balances are then due to Note Parties), and (b) other property at any time held or owing by such Purchaser to or for the credit or for the account of Note Parties, against and on account of any of the Obligations; except that no Purchaser shall exercise any such right without the prior written consent of Agent.

(B) If any Purchaser shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Notes or other obligations hereunder resulting in such Purchaser receiving a payment or payment of a proportion of the aggregate amount of its Notes and accrued interest thereon or other such obligations greater than what it was entitled to received or its pro rata share thereof as provided herein, then the Purchaser receiving such payment or greater proportion shall (a) notify Agent of such fact, and (b) purchase (for cash at face value) participations in the Notes and such other obligations of the other Purchasers, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be applied in accordance with the terms of this Agreement; provided that:



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

(2) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Purchaser as consideration for the assignment of any of its Notes to any assignee, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

(C) Each Note Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Purchaser acquiring a participation pursuant to the foregoing arrangements may exercise against each Note Party rights of setoff and counterclaim with respect to such participation as fully as if such Purchaser were a direct creditor of each Note Party in the amount of such participation.

9.6. Intercreditor and Subordination Agreements. Each Purchaser and each other holder of Obligations irrevocably (a) authorizes and directs the Agent to execute and deliver the SLR Intercreditor Agreement and each Subordination Agreement on behalf of such Purchaser or such holder and to take all actions (and execute all documents) required (or deemed advisable) by it in accordance with the terms of such agreements, in each case without any further consent, authorization or other action by such Purchaser or holder, (b) agrees that, upon the execution and delivery thereof, such Purchaser and holder will be bound by the provisions of the SLR Intercreditor Agreement and each Subordination Agreement as if it were a signatory thereto and will take no actions contrary to the provisions of the Intercreditor Agreement, and (c) agrees that no such Purchaser or holder shall have any right of action whatsoever against the Agent as a result of any action taken by Agent pursuant to this Section or in accordance with the terms of the SLR Intercreditor Agreement and each Subordination Agreement.

#### SECTION 10. GUARANTY.

10.1. Unconditional Guaranty. Each Guarantor hereby unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the due and punctual performance of all Obligations. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Obligations and would be owed by any Note Party to Agent or the other Secured Parties under any Note Document but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any Note Party. Each payment made by any Guarantor pursuant to the guaranty contained in this Section 10 (the "Guaranty") shall be made in lawful money of the United States in immediately available funds, (a) without set-off or counterclaim and (b) free and clear of and without deduction or withholding for or on account of any present and future Charges and any conditions or restrictions resulting in Charges unless Guarantor is compelled by law to make payment subject to such Charges.

10.2. Charges. All Charges in respect of the Guaranty or any amounts payable or paid under the Guaranty shall be paid by Guarantors when due and in any event prior to the date on

which penalties attach thereto. Each Guarantor will indemnify Agent and each of the other Secured Parties against and in respect of all such Charges. Without limiting the generality of the foregoing, if any Charges or amounts in respect thereof must be deducted or withheld from any amounts payable or paid by any Guarantor hereunder, such Guarantor shall pay such additional amounts as may be necessary to ensure that Agent and each of the other Secured Parties receives a net amount equal to the full amount which it would have received had payment (including any additional amounts payable under this [Section 10.2](#)) not been made subject to such Charges. Within thirty (30) days of each payment by any Guarantor of Charges or in respect of Charges, such Guarantor shall deliver to Agent satisfactory evidence (including originals, or certified copies, of all relevant receipts) that such Charges have been duly remitted to the appropriate authority or authorities.

10.3. Waivers of Notice, Demand, etc. Each Guarantor hereby absolutely, unconditionally and irrevocably waives (a) promptness, diligence, notice of acceptance, notice of presentment of payment and any other notice hereunder, (b) demand of payment, protest, notice of dishonor or nonpayment, notice of the present and future amount of the Obligations and any other notice with respect to the Obligations, (c) any requirement that Agent or any other Secured Party protect, secure, perfect or insure any security interest or Lien or any property subject thereto or exhaust any right or take any action against any other Note Party, or any Person or any Collateral, (d) any other action, event or precondition to the enforcement hereof or the performance by each such Guarantor of the Obligations, and (e) any defense arising by any lack of capacity or authority or any other defense of any Note Party or any notice, demand or defense by reason of cessation from any cause of Obligations (other than payment and performance in full in cash of the Obligations by the Note Parties) and any defense that any other guarantee or security was or was to be obtained by Agent.

10.4. No Invalidity, Irregularity, etc. No invalidity, irregularity, voidableness, voidness or unenforceability of this Agreement or any other Note Document or any other agreement or instrument relating thereto, or of all or any part of the Obligations or of any collateral security therefor shall affect, impair or be a defense hereunder.

10.5. Independent Liability. The Guaranty is one of payment and performance, not collection, and the obligations of each Guarantor under this Guaranty are independent of the Obligations of the other Note Parties, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce the terms and conditions of this [Section 10](#), irrespective of whether any action is brought against any other Note Party or other Persons or whether any other Note Party or other Persons are joined in any such action or actions. Each Guarantor waives any right to require that any resort be had by Agent or any other Secured Party to any security held for payment of the Obligations or to any balance of any deposit account or credit on the books of any Agent or any other Secured Party in favor of any Note Party or any other Person. No election to proceed in one form of action or proceedings, or against any Person, or on any Obligations, shall constitute a waiver of Agent's right to proceed in any other form of action or proceeding or against any other Person unless Agent has expressed any such waiver in writing. Without limiting the generality of the foregoing, no action or proceeding by Agent against any Note Party under any document evidencing or securing indebtedness of any Note Party to Agent shall diminish the liability of any Guarantor hereunder, except to the extent Agent receives actual payment on account of Obligations by such action or proceeding, notwithstanding

the effect of any such election, action or proceeding upon the right of subrogation of any Guarantor in respect of any Note Party.

10.6. Liability Absolute. The liability of each Guarantor under the Guaranty shall be absolute, unlimited and unconditional and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any claim, defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any other Obligation or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor shall not be discharged or impaired, released, limited or otherwise affected by:

(i) any change in the manner, place or terms of payment or performance, and/or any change or extension of the time of payment or performance of, release, renewal or alteration of, or any new agreements relating to any Obligation, any security therefor, or any liability incurred directly or indirectly in respect thereof, or any rescission of, or amendment, waiver or other modification of, or any consent to departure from, this Agreement or any other Note Document, including any increase in the Obligations resulting from the extension of additional credit to the Borrower or otherwise;

(ii) any sale, exchange, release, surrender, loss, abandonment, realization upon any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, all or any of the Obligations, and/or any offset there against, or failure to perfect, or continue the perfection of, any Lien in any such property, or delay in the perfection of any such Lien, or any amendment or waiver of or consent to departure from any other guaranty for all or any of the Obligations;

(iii) the failure of Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Note Party or any other Person under the provisions of this Agreement or any Note Document or any other document or instrument executed and delivered in connection herewith or therewith;

(iv) any settlement or compromise of any Obligation, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and any subordination of the payment of all or any part thereof to the payment of any obligation (whether due or not) of any Note Party to creditors of any Note Party other than any other Note Party;

(v) any manner of application of Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Obligations or any other assets of any Note Party; and

(vi) other than payment and performance in full in cash of the Obligations by the Note Parties, any other agreements or circumstance (including any statute of limitations) of any nature whatsoever that may or might in any manner or to any extent vary the risk of any Guarantor, or that might otherwise at law or in equity constitute a defense available to, or a discharge of, the Guaranty and/or the obligations of any Guarantor, or a defense to, or



discharge of, any Note Party or any other Person or party hereto or the Obligations or otherwise with respect to the Notes or other financial accommodations to the Borrower pursuant to this Agreement and/or the Note Documents.

10.7. Action by Agent Without Notice. Agent shall have the right to take any action set forth in Section 8.3 or any other Security Document without notice to or the consent of any Guarantor and each Guarantor expressly waives any right to notice of, consent to, knowledge of and participation in any agreements relating to any of the above or any other present or future event relating to Obligations whether under this Agreement or otherwise or any right to challenge or question any of the above and waives any defenses of such Guarantor which might arise as a result of such actions.

10.8. Application of Proceeds. Agent may at any time and from time to time (whether prior to or after the revocation or termination of this Agreement) without the consent of, or notice to, any Guarantor, and without incurring responsibility to any Guarantor or impairing or releasing the Obligations, apply any sums by whomsoever paid or howsoever realized to any Obligations regardless of what Obligations remain unpaid.

10.9. Continuing Effectiveness.

(A) Reinstatement. The Guaranty provisions herein contained shall continue to be effective or be reinstated, as the case may be, if claim is ever made upon Agent or any other Secured Party for repayment or recovery of any amount or amounts received by such Person in payment or on account of any of the Obligations and such Person repays all or part of said amount for any reason whatsoever, including, without limitation, by reason of any judgment, decree or order of any court or administrative body having jurisdiction over such Person or the respective property of each, or any settlement or compromise of any claim effected by such Person with any such claimant (including any Note Party); and in such event each Guarantor hereby agrees that any such judgment, decree, order, settlement or compromise or other circumstances shall be binding upon such Guarantor, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any Obligation, and each Guarantor shall be and remain liable to Agent and/or the other Secured Parties for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Person(s).

(B) No Marshalling. Agent shall not be required to marshal any assets in favor of any Guarantor, or against or in payment of Obligations.

(C) Priority of Claims. No Guarantor shall be entitled to claim against any present or future security held by Agent from any Person for Obligations in priority to or equally with any claim of Agent, or assert any claim for any liability of any Note Party to any Guarantor in priority to or equally with claims of Agent for Obligations, and no Guarantor shall be entitled to compete with Agent with respect to, or to advance any equal or prior claim to any security held by Agent for Obligations.

(D) Invalidated Payments. If any Note Party makes any payment to Agent, which payment is wholly or partly subsequently invalidated, declared to be fraudulent or

preferential, set aside or required to be repaid to any Person under any federal or provincial statute or at common law or under equitable principles, then to the extent of such payment, the Obligation intended to be paid shall be revived and continued in full force and effect as if the payment had not been made, and the resulting revived Obligation shall continue to be guaranteed, uninterrupted, by each Guarantor hereunder.

(E) Assignment and Waiver. All present and future monies payable by any Note Party to any Guarantor, whether arising out of a right of subrogation or otherwise, are assigned to Agent for its benefit and for the ratable benefit of the other Secured Parties as security for such Guarantor's liability to Agent and the other Secured Parties hereunder and, after the occurrence and during the continuance of any Event of Default, each Guarantor waives any right to demand any and all present and future monies payable by any Note Party to such Guarantor, whether arising out of a right of subrogation or otherwise. This assignment and waiver shall only terminate upon payment in full in cash of the Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto).

(F) Payments to Guarantors. Each Note Party acknowledges the assignment and waiver contained in sub-clause (E) above, and agrees to make no payments to any Guarantor after the occurrence and during the continuance of an Event of Default without the prior written consent of Agent. Each Note Party agrees to give full effect to the provisions hereof.

(G) Limitation of Liability. Agent, other Secured Parties, and each Guarantor hereby confirm that it is the intention of all such Persons that the Guaranty and the obligations of each Guarantor thereunder not constitute a fraudulent transfer or conveyance under any federal, state, provincial or foreign bankruptcy, insolvency, receivership or similar law to the extent applicable to the Guaranty and the obligations of each Guarantor thereunder. To effectuate the foregoing intention, Agent, other Secured Parties and each Guarantor hereby irrevocably agree that the obligations of each Guarantor under the Guaranty at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor under the Guaranty not constituting a fraudulent transfer or conveyance.

(H) Right of Contribution. Each Subsidiary Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder in respect of the Obligations of such Guarantor under the Guaranty contained in this Section 10, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other applicable Subsidiary Guarantor hereunder which has not paid its proportionate share of such payment in respect of the Obligations of such Guarantor under the Guaranty contained in this Section 10. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 10.9(E). The provisions of this Section 10.9 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Secured Parties, and each Subsidiary Guarantor shall remain liable to the Secured Parties, for the full amount guaranteed by such Subsidiary Guarantor hereunder.

10.10. Enforcement. Upon the occurrence and during the continuance of any Event of Default, Agent may, and upon written request of the Requisite Purchasers shall, without notice to or demand upon any Note Party or any other Person, declare any obligations of such Guarantor

hereunder immediately due and payable, and shall be entitled to enforce the obligations of each Guarantor. Upon such declaration by Agent, and subject to Section 9.5, Agent and the other Secured Parties are hereby authorized at any time and from time to time to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Agent or the other Secured Parties to or for the credit or the account of any Guarantor against any and all of the obligations of each Guarantor now or hereafter existing hereunder, whether or not Agent or the other Secured Parties shall have made any demand hereunder against any other Note Party and although such obligations may be contingent and unmatured. The rights of Agent and the other Secured Parties hereunder are in addition to other rights and remedies (including other rights of set-off) which Agent and the other Secured Parties may have. Upon such declaration by Agent, with respect to any claims (other than those claims referred to in the immediately preceding paragraph) of any Guarantor against any Note Party (the "Claims"), Agent shall have the full right on the part of Agent in its own name or in the name of such Guarantor to collect and enforce such Claims by legal action, proof of debt in bankruptcy or other liquidation proceedings, vote in any proceeding for the arrangement of debts at any time proposed, or otherwise, Agent and each of its officers being hereby irrevocably constituted attorneys-in-fact for each Guarantor for the purpose of such enforcement and for the purpose of endorsing in the name of each Guarantor any instrument for the payment of money. Upon such declaration by Agent, each Guarantor will receive as trustee for Agent and will pay to Agent forthwith upon receipt thereof any amounts which such Guarantor may receive from any Note Party on account of the Claims. Each Guarantor agrees that no payment on account of the Claims or any security interest therein shall be created, received, accepted or retained during the continuance of any Event of Default nor shall any financing statement be filed with respect thereto by any Guarantor.

10.11. Statute of Limitations. Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by any Note Party or others with respect to any of the Obligations shall, if the statute of limitations in favor of any Guarantor against Agent or the Purchasers shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

10.12. Interest. All amounts due, owing and unpaid from time to time by any Guarantor hereunder shall bear interest at the interest rate per annum then chargeable with respect to the Notes.

10.13. Acknowledgement. Each Guarantor acknowledges receipt of a copy of each of this Agreement and the other Note Documents. Each Guarantor has made an independent investigation of the Note Parties and of the financial condition of the Note Parties. Neither Agent nor any other Secured Party has made and neither Agent nor any other Secured Party does make any representations or warranties as to the income, expense, operation, finances or any other matter or thing affecting any Note Party nor has Agent or any other Secured Party made any representations or warranties as to the amount or nature of the Obligations of any Note Party to which this Section 10 applies as specifically herein set forth, nor has Agent or any other Secured Party or any officer, agent or employee of Agent or any other Secured Party or any representative thereof, made any other oral representations, agreements or commitments of any kind or nature, and each Guarantor hereby expressly acknowledges that no such representations or warranties



have been made and such Guarantor expressly disclaims reliance on any such representations or warranties.

10.14. Continuing Effectiveness. The provisions of this Section 10 shall remain in effect until the payment in full in cash of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto) and shall be subject to reinstatement as set forth in Section 10.9. Payments received from Guarantors pursuant to this Section 10 shall be applied in accordance with Section 8.7.

#### SECTION 11. MISCELLANEOUS

11.1. Expenses and Attorneys' Fees. Whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees to promptly pay all reasonable and documented: (a) fees, costs and expenses incurred by Agent and the Purchasers (including reasonable attorneys' fees and expenses) in connection with the examination, review, due diligence investigation, documentation and closing of the financing arrangements evidenced by the Note Documents; (b) fees, costs and expenses incurred by Agent and the Purchasers (including reasonable attorneys' fees and expenses) incurred in connection with the review, negotiation, preparation, documentation, execution and administration of the Note Documents, the Notes, and any amendments, waivers, consents, forbearances and other modifications relating thereto or any subordination or intercreditor agreements, including reasonable documentation charges assessed by Agent and the Purchasers for amendments, waivers, consents and any other related documentation; (c) fees, costs and expenses (including reasonable attorneys' fees and expenses) incurred by Agent and any Purchaser in creating, perfecting and maintaining perfection of Liens in favor of Agent, on behalf of Agent and Secured Parties; (d) fees, costs and expenses incurred by Agent in connection with forwarding to the Borrower the proceeds of the Notes including Agent's or any Purchasers' standard wire transfer fee; (e) fees, costs, expenses and bank charges, including bank charges for returned checks, incurred by Agent and any Purchaser in establishing, maintaining and handling lock box accounts, blocked accounts or other accounts for collection of the Collateral; and (f) fees, costs, expenses (including reasonable attorneys' fees and expenses) of Agent and any Purchaser and costs of settlement incurred in collecting upon or enforcing rights against the Collateral or incurred in any action to enforce this Agreement or the other Note Documents or to collect any payments due from the Borrower or any other Note Party under this Agreement or any other Note Document or incurred in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement, whether in the nature of a "workout" or in connection with any insolvency or bankruptcy proceedings or otherwise. All such fees, costs and expenses shall be part of the Obligations, payable on demand and secured by the Collateral.

11.2. Indemnity. In addition to the payment of expenses pursuant to Section 11.1, whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees to indemnify, pay and hold Agent, each Purchaser, and the officers, directors, employees, agents, consultants, auditors, persons engaged by Agent or any Purchaser, to evaluate or monitor the Collateral, Affiliates and attorneys of Agent, each Purchaser and such holders (collectively called the "Indemnitees") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such

Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Agreement or the other Note Documents, the consummation of the transactions contemplated by this Agreement, the statements contained in the commitment letters, if any, delivered by Agent or any Purchaser, Agent's and each Purchaser's agreement to purchase the Notes hereunder, the use or intended use of the proceeds of any of the Notes or the exercise of any right or remedy hereunder or under the other Note Documents, including, without limitation any actual or alleged presence or release of Hazardous Materials on or from any property owned, occupied or operated by the Borrower or any of its Subsidiaries, or any environmental liability related in any way to the Borrower or any of its Subsidiaries or any of their respective properties (the "Indemnified Liabilities"); provided that no Note Party shall have any obligation to any Indemnitee hereunder with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of that Indemnitee as determined by a final non-appealable judgment by a court of competent jurisdiction. For the avoidance of doubt, this Section 11.2 shall not apply with respect to Charges (which, solely for the purpose of this Section 11.2, shall include Excluded Taxes) other than Charges that represent losses, liabilities, damages, etc. with respect to indemnity payments on a non-Charge claim. Payments under this Section 11.2 shall be made by the Borrower to the Agent for the benefit of the relevant Indemnitee.

11.3. Notices. Unless otherwise specifically provided herein, all notices shall be in writing addressed to the respective party as set forth on Schedule 11.3 (or (i) with any respect to any Purchaser not party hereto on the Third A&R Effective Date, in an Assignment and Assumption Agreement or in a notice to Agent and Borrower or (ii) to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 11.3) and may be personally served, faxed, sent by overnight courier service or United States mail, or, to the extent acceptable to the Agent, e-mail; and notices shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by fax, upon sender's receipt of confirmation of proper transmission on the date of transmission if transmitted on a Business Day before 4:00 p.m. New York City time or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, two (2) days after delivery to such courier properly addressed; (d) if delivered by U.S. Mail, four (4) Business Days after depositing in the United States mail, with postage prepaid and properly addressed; or (e) if delivered by e-mail, 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).

11.4. Survival of Representations and Warranties and Certain Agreements. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the purchase of the Notes hereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of each Note Party, Agent, and Purchasers set forth in Sections 2.7, 9.1(E), 10.9(A), 10.9(D), 11.1, 11.2, 11.6, 11.13, 11.14, and 11.15 shall survive the payment of the Notes and the termination of this Agreement.

11.5. Indulgence Not Waiver. No failure or delay on the part of Agent, any Purchaser or any holder of any Note in the exercise of any power, right or privilege hereunder or under any



Note 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 right, power or privilege.

11.6. Marshaling; Payments Set Aside. Neither Agent nor any Purchaser shall be under any obligation to marshal any assets in favor of any Note Party or any other party 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 Agent and/or any Purchaser or Agent and/or any Purchaser enforces its security interests or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off 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 law, state, provincial or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

11.7. Entire Agreement. This Agreement and the other Note Documents embody the entire agreement among the parties hereto and supersede all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof, and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto.

11.8. Severability. The invalidity, illegality or unenforceability in any jurisdiction of any provision in or obligation under this Agreement or the other Note Documents shall not affect or impair the validity, legality or enforceability of the remaining provisions or obligations under this Agreement or the other Note Documents. In the event of any such invalidity, illegality, or unenforceability, the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.9. Purchasers' Obligations Several; Independent Nature of Purchasers' Rights. The obligation of each Purchaser hereunder is several and not joint and neither Agent nor any Purchaser shall be responsible for the obligation of any other Purchaser hereunder. Nothing contained in any Note Document and no action taken by Agent or any Purchaser pursuant hereto or thereto shall be deemed to constitute Purchasers to be a partnership, an association, a joint venture or any other kind of entity.

11.10. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

11.11. APPLICABLE LAW. THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT ANY SUCH OTHER NOTE DOCUMENT EXPRESSLY

SELECTS THE LAW OF ANOTHER JURISDICTION AS GOVERNING LAW THEREOF, IN WHICH CASE THE LAW OF SUCH OTHER JURISDICTION SHALL GOVERN.

11.12. Successors and Assigns.

(A) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Note Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Agent and each Purchaser. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(B) Assignments by Purchasers. Any Purchaser may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Notes at the time owing to it) with the prior written consent of B. Riley. The parties to each assignment shall execute and deliver to Agent an Assignment and Assumption Agreement. The assignment shall have been recorded in the Register in accordance with paragraph (C) of this subsection.

Subject to acceptance and recording thereof by Agent pursuant to paragraph (C) of this subsection, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Purchaser under this Agreement, and the assigning Purchaser thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 11.1 and 11.2 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Purchaser of rights or obligations under this Agreement that does not comply with this paragraph shall be null and void.

(C) Register. Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Purchasers and principal amounts (and related interest amounts) of the Notes owing to, each Purchaser pursuant to the terms hereof from time to time (the "Register"). Notwithstanding anything to the contrary herein or in the Note Documents, the entries in the Register shall be conclusive absent manifest error, and each Note Party, Agent and the Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser and the owner of the amounts owing to it under the Note Documents as reflected in the Register for all purposes of the Note Documents. The Register shall be available for inspection by the Borrower and any Purchaser, at any reasonable time and from time to time upon reasonable prior notice. This Section 11.12 shall be construed so that the Notes are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the IRC.

(D) Security Interests. Notwithstanding any other provision set forth in this Agreement, any Purchaser may at any time following written notice to Agent pledge the Obligations held by it or create a security interest in all or any portion of its rights under this Agreement or the other Note Documents in favor of any Person; provided, however (a) no such pledge or grant of security interest to any Person shall release such Purchaser from its obligations hereunder or under any other Note Document and (b) the acquisition of title to such Purchaser's Obligations pursuant to any foreclosure or other exercise of remedies by such Person shall be subject to the provisions of this Agreement and the other Note Documents in all respects including, without limitation, any consent required by this Section 11.12.

11.13. No Fiduciary Relationship; No Duty; Limitation of Liabilities.

(A) No Fiduciary Relationship. No provision in this Agreement or in any of the other Note Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty by Agent or any Purchaser to any Note Party.

(B) No Duty. All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Agent or any Purchaser shall have the right to act exclusively in the interest of Agent or such Purchaser and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to any Note Party or any of any Note Party's shareholders or any other Person.

(C) Limitation of Liabilities. Neither Agent nor any Purchaser, nor any Affiliate, officer, director, shareholder, employee, attorney, or agent of Agent or any Purchaser shall have any liability with respect to, and each Note Party hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by each Note Party in connection with, arising out of, or in any way related to, this Agreement or any of the other Note Documents, or any of the transactions contemplated by this Agreement or any of the other Note Documents. Each Note Party hereby waives, releases, and agrees not to sue Agent or any Purchaser or any of Agent's or any Purchaser's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Note Documents, or any of the transactions contemplated by this Agreement or any of the transactions contemplated hereby.

11.14. CONSENT TO JURISDICTION. EACH NOTE PARTY, AGENT AND EACH PURCHASER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER NOTE DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH NOTE PARTY, AGENT AND EACH PURCHASER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH NOTE PARTY, AGENT AND EACH PURCHASER



HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PERSON BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PERSON, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

11.15. WAIVER OF JURY TRIAL. EACH NOTE PARTY, AGENT AND EACH PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS. EACH NOTE PARTY, AGENT AND EACH PURCHASER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH NOTE PARTY, AGENT AND EACH PURCHASER WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

11.16. Construction. Each Note Party, Agent and each Purchaser each acknowledge that it has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Note Documents with its legal counsel. This Agreement and the other Note Documents shall be construed as if jointly drafted by Note Parties, Agent and each Purchaser.

11.17. Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents, or supplements may be executed via facsimile or other electronic method of transmission in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

11.18. Confidentiality. Agent and each Purchaser agree to use commercially reasonable efforts to keep confidential any non-public information delivered pursuant to the Note Documents and identified as such by Note Parties and not to disclose such information to Persons other than to: its respective Affiliates, officers, directors and employees; or its potential assignees or financing sources (subject to an agreement containing provisions substantially the same as those of this Section 11.18); or Persons employed by or engaged by Agent, a Purchaser or a Purchaser's assignees, financing sources including, without limitation, attorneys, auditors, professional consultants, rating agencies, and portfolio management services (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). The confidentiality provisions contained in this subsection shall not apply to disclosures (a) required to be made by Agent or any Purchaser to, or requested to be made by, any regulatory or governmental agency or pursuant to legal process, (b) to effect compliance with any law, rule, regulation or order applicable to the Agent or such Purchaser, (c) consisting of general portfolio

information that does not identify any Note Party, (d) with the Borrower's prior written consent, (e) to the extent such information presently is or hereafter becomes (i) publicly available other than as a result of a breach of this [Section 11.18](#) or (ii) available to Agent, Purchaser, or any of their respective Affiliates, officers, or directors, as the case may be, from a source (other than any Note Party) not known by them to be subject to disclosure restrictions, (f) to any other party hereto, and (g) in connection with the exercise or enforcement of any right or remedy under any Note Document, in connection with any litigation or other proceeding to which such Agent or Purchaser is a party or bound, or to the extent necessary to respond to public statements or disclosures by the Note Parties referring to Agent, a Purchaser, or any of their Affiliates, officers, or directors. The obligations of Agent and Purchasers under this [Section 11.18](#) shall supersede and replace the obligations of Agent and Purchasers under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Purchaser prior to the date hereof. In no event shall Agent or any Purchaser be obligated or required to return any materials furnished by Note Parties; provided, however, each potential assignee shall be required to agree that if it does not become an assignee it shall return all materials furnished to it by Note Parties in connection herewith.

Notwithstanding the foregoing, and notwithstanding any other express or implied agreement or understanding to the contrary, each of the parties hereto and their respective employees, representatives, and other agents are authorized to disclose the tax treatment and tax structure of these transactions to any and all persons, without limitation of any kind. Each of the parties hereto may disclose all materials of any kind (including opinions or other tax analyses) insofar as they relate to the tax treatment and tax structure of the transactions contemplated by the Note Documents. This authorization does not extend to disclosure of any other information including (without limitation) (a) the identities of participants or potential participants in the transactions; (b) the existence or status of any negotiations; (c) any pricing or other financial information; or (d) any other term or detail not related to the tax treatment and tax structure of the transactions contemplated by the Note Documents.

11.19. [Publication](#). Each Note Party consents to the publication by Agent of a tombstone or similar advertising material relating to the financing transactions contemplated by this Agreement. Agent and Purchasers reserve the right to provide industry trade organizations information necessary and customary for inclusion in league table measurements.

11.20. [USA PATRIOT Act Notice](#). Each Purchaser and Agent (for itself and not on behalf of any Purchaser) hereby notifies each Note Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Note Party and each of its Subsidiaries, which information includes the names and addresses of each Note Party and each of its Subsidiaries and other information that will allow such Purchaser or Agent, as applicable, to identify each Note Party and each of its Subsidiaries in accordance with the USA PATRIOT Act.

11.21. [Agent for Service of Process](#). Each Note Party hereby appoints Borrower (the "[Process Agent](#)") as its agent to receive and forward on its behalf, and in respect of its property, service of any and all legal process, summons, notices and documents which may be served in any action or proceeding in the state courts sitting in the city of New York, New York, United States of America or the United States District Court for the Southern District of New York and



agrees that (x) service in such manner shall, to the fullest extent permitted by law, be deemed effective service of process upon it in any such suit, action or proceeding and (y) the failure of the Process Agent to give any notice of any such service of process to it shall not impair or affect the validity of such service or, to the extent permitted by applicable law, the enforcement of any judgment based thereon. If for any reason such Process Agent shall cease to be available to act as such, each Note Party agrees to designate a new Process Agent in the city of New York (and notify the Agent of such designation), on the terms and for the purposes of this provision, provided, however, that the new Process Agent shall have accepted such designation in writing before the termination of the appointment of the prior Process Agent. Each Note Party further consents to the service of process or summons by certified or registered mail, postage prepaid, return receipt requested, directed to it at its address specified in Section 11.3 hereof. Nothing herein shall in any way be deemed to limit the ability of the Agent to serve legal process in any other manner permitted by applicable law or to obtain jurisdiction over any other Person in such other jurisdictions, and in such manner, as may be permitted by applicable law.

#### 11.22. Purchase for Investment; ERISA.

(A) Each Purchaser, severally and not jointly, represents and warrants (i) that it has received all information necessary or appropriate to decide whether to acquire the Notes to be issued to it pursuant hereto, (ii) that it will acquire such Notes for its own account for investment and not for resale or distribution in any manner that would violate applicable securities laws, but without prejudice to its rights to dispose of such Notes or a portion thereof to a transferee or transferees, in accordance with such laws and Section 11.12 if at some future time it deems it advisable to do so, (iii) that it is an “accredited investor” as such term is defined in Regulation D of the Commission under the Securities Act and has such knowledge, skill and experience in business and financial matters, based on actual participation, that it is capable of evaluating the merits and risks of an investment in the Notes and the suitability thereof as an investment for such Purchaser, and can bear the economic risk of its investment in the Notes, and (iv) neither it nor anyone authorized by it to do so on its behalf (A) has directly or indirectly offered any beneficial interest or security (as defined in Section 2(a)(1) of the Securities Act) relating to the Notes for sale to, or solicited any offer to acquire any such interest or security from, or has sold any such interest or security to, any Person in violation of the registration provisions of the Securities Act, (B) has taken any action that would subject any such interest or security to the registration requirements of Section 5 thereof, or the registration or qualification provisions of any applicable blue sky or other securities law, and (C) will directly or indirectly make any such offer, solicitation or sale in violation of such registration provisions of the Securities Act, or the registration or qualification provisions of any applicable blue sky or other securities law. The acquisition of such Notes by each Purchaser at each purchase of notes hereunder shall constitute its confirmation of the foregoing representations and warranties. Each Purchaser understands that such Notes are being sold to it in a transaction which is exempt from the registration requirements of the Securities Act, and that, in making the representations and warranties contained in Section 4.13, the Borrower is relying, to the extent applicable, upon such Purchaser’s representations and warranties contained herein.

(B) Each Purchaser represents that at least one of the following statements is an accurate representation as to each source of funds (a “Source”) used by such Purchaser to pay the purchase price of the Notes purchased by such Purchaser hereunder:

(1) the Source is an “insurance company general account” as defined in Section V(e) of Prohibited Transaction Exemption (“PTE”) 95-60 (issued July 12, 1995) and, except as such Purchaser has disclosed to the Borrower in writing pursuant to this subsection (1), the amount of reserves and liabilities for the general account contract(s) held by or on behalf of any employee benefit plan or group of plans maintained by the same employer or employee organization do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with the state of domicile of the insurer; or

(2) the Source is a separate account of an insurance company maintained by such Purchaser in which an employee benefit plan (or its related trust) has an interest, which separate account is maintained solely in connection with its fixed contractual obligations under which the amounts payable, or credited, to such plan and to any participant or beneficiary of such plan (including any annuitant) are not affected in any manner by the investment performance of the separate account; or

(3) the Source is either (A) an insurance company pooled separate account, within the meaning of PTE 90-1 (issued January 29, 1990), or (B) a bank collective investment fund, within the meaning of the PTE 91-38 (issued July 12, 1991) and, except as such Purchaser has disclosed to the Borrower in writing pursuant to this subsection (3), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(4) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “QPAM Exemption”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Borrower that would cause the QPAM and such Borrower to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Borrower in writing pursuant to this clause (4); or

(5) the Source constitutes assets of a “plans(s) (within the meaning of Part IV(h) of PTE 96-23 (the “INHAM Exemption”) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d)(3) of

the INHAM Exemption) owns a 10% or more interest in the Companies and (A) the identity of such INHAM and (B) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Companies in writing pursuant to this Section 11.25(B)(5); or

(6) the Source is a governmental plan; or

(7) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Borrower in writing pursuant to this Section 11.25(B)(7); or

(8) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 11.22, the terms “employee benefit plan”, “governmental plan” and “separate account” shall have the respective meanings assigned to such terms in Section 3 of ERISA, and the term “QPAM Exemption” means PTE 84-14 (issued March 13, 1984, as amended).

11.23. Amendment and Restatement. Effective immediately upon the Third A&R Effective Date, the terms and conditions of the Existing Note Purchase Agreement shall be amended and restated as set forth herein and the Existing Note Purchase Agreement shall be superseded by this Agreement. On the Third A&R Effective Date, the rights and obligations of the parties evidenced by the Existing Note Purchase Agreement shall be evidenced by this Agreement and the other Note Documents and the grant of security interests and Liens in the Collateral under the Existing Note Purchase Agreement and the other “Note Documents” (as defined in the Existing Note Purchase Agreement) by the Borrower and the Guarantors party thereto shall continue under this Agreement and the other Note Documents, and shall not in any event be terminated, extinguished or annulled but shall hereafter continue to be in full force and effect and be governed by this Agreement and the other Note Documents. All Obligations (as defined in the Existing Note Purchase Agreement) under the Existing Note Purchase Agreement and the other “Note Documents” (as defined in the Existing Note Purchase Agreement) shall continue to be outstanding except as expressly modified by this Agreement and shall be governed in all respects by this Agreement and the other Note Documents, it being agreed and understood that this Agreement does not constitute a novation, satisfaction, payment or reborrowing of any Obligation (as defined in the Existing Note Purchase Agreement) under the Existing Note Purchase Agreement or any other “Note Document” (as defined in the Existing Note Purchase Agreement), nor does it operate as a waiver of any right, power or remedy of any Purchaser under any “Note Document” (as defined in the Existing Note Purchase Agreement). All references to the Existing Note Purchase Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Agreement and the provisions hereof.

*[Signature pages follow]*

**ANNEX B**

Schedule I to the Note Purchase Agreement

Purchaser	Original Principal Amount of Original Notes	Original Principal Amount of A&R Notes	Original Principal Amount of First Amendment Notes	Aggregate Outstanding Principal Amount of Existing Notes	BR Finance Co. Letter of Credit Commitment	Delayed Draw Term Note Option	Aggregate Principal Amount of Delayed Draw Term Notes on the Third A&R Effective Date	Original Principal Amount of Third A&R Notes	2023 Note Commitments	2023 Notes Outstanding on the 2023 Note Effective Date
BRF Finance Co., LLC 299 Park Avenue 21 <sup>st</sup> Floor New York, NY 10171	\$2,692,634.91	\$48,000,000	\$3,000,000	\$62,690,753	\$3,024,232	\$12,000,000	\$9,928,001	\$36,000,000	\$5,000,000	\$5,000,000



**AMENDMENT NO. 3 TO  
SECOND AMENDED & RESTATED EXECUTIVE EMPLOYMENT AGREEMENT**

This Amendment No. 3 to Second Amended & Restated Executive Employment Agreement, dated as of September 6, 2023 (the "*Third Amendment*"), between The Arena Group Holdings, Inc., a Delaware Corporation ("Company"), and Ross Levinsohn (the "*Executive*" and, together with the Company, the "*Parties*" and each, a "*Party*").

WHEREAS, the Parties have entered into a Second Amended & Restated Executive Employment Agreement dated as of August 26, 2020 (the "*Existing Agreement*").

WHEREAS, the Parties have entered into Amendment No. 1 to the Second Amended & Restated Executive Employment Agreement dated as of December 22, 2021 (the "*First Amendment*").

WHEREAS, the Parties have entered into Amendment No. 2 to the Second Amended & Restated Executive Employment Agreement dated as of November 23, 2022 (the "*Second Amendment*").

WHEREAS, the Parties desire to further amend the Existing Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Third Amendment have the respective meanings assigned to them in the Existing Agreement.
2. Section 1.3(c)(ii) of the Existing Agreement is hereby removed in its entirety and replaced with the following new Section 1.3(c)(ii):

In addition, the Executive shall be entitled: (A) if no Change in Control has occurred, to receive the greater of salary continuation through December 31, 2026 or 12 consecutive months of salary continuation and to reimbursement on a month-to-month basis of continued health insurance under the Consolidated Omnibus Reconciliation Act of 1985 for no fewer than 18 months ("*COBRA Costs*"); or (B) if a Change in Control has occurred, to receive the greater of salary continuation through December 31, 2026 or 36 consecutive months of salary continuation ("*Post Change in Control Severance*") and to the COBRA Costs; or (C) if a Change in Control has occurred and if the Executive's employment is terminated by Executive for Good Reason specifically on the grounds of a Change in Control, the Post Change in Control Severance and COBRA Costs shall be accelerated and due and payable to the Executive in full no later than 10 days following the consummation of the transaction constituting the Change in Control.

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3. Date of Effectiveness; Limited Effect. This Third Amendment will be deemed effective as of the date first written above (the "*Effective Date*"). Except as expressly provided in this Third Amendment, all of the terms and provisions of the Existing Agreement (as modified by the First Amendment and Second Amendment) are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import will mean and be a reference to the Existing Agreement as modified by this Third Amendment.

4. Miscellaneous.

(a) This Third Amendment is governed by and construed in accordance with the laws of the State of California, without regard to the conflict of laws provision of such State.

(b) This Third Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective permitted successors and permitted assigns.

(c) The headings in this Third Amendment are for reference only and do not affect the interpretation of this Third Amendment.

(d) This Third Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Third Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Third Amendment.

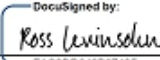
(e) This Third Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(f) Each Party shall pay its own costs and expenses in connection with this Third Amendment (including the fees and expenses of its advisors, accountants, and legal counsel).

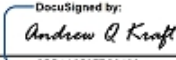
**[Signature page on next page]**

IN WITNESS WHEREOF, the Parties have executed this Third Amendment as of the date first written above.

**ROSS LEVINSOHN**

By:  \_\_\_\_\_ Date: 9/7/2023  
DocuSigned by:  
Ross Levinsohn  
EA49D20643907495

**THE ARENA GROUP HOLDINGS, INC.**

By:  \_\_\_\_\_ Date: 9/7/2023  
DocuSigned by:  
Andrew Q Kraft  
CB81A25972D0A09  
Name: Andrew Q Kraft  
Title: chief operating officer

**FIRST AMENDMENT TO  
EXECUTIVE EMPLOYMENT AGREEMENT**

This First Amendment to Executive Employment Agreement (“**Amendment**”) is hereby entered into by and between Robertson Barrett (“**Executive**”) and The Arena Group Holdings, Inc. (“**Company**”). This First Amendment amends the Executive Employment Agreement between Executive and Company (the “**Agreement**”). The Effective Date of this Amendment shall be August 1, 2023 (“**Effective Date**”). Until the Effective Date, the Agreement shall remain in full force and effect in its current form. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to such terms in the Agreement.

In consideration of the mutual covenants and agreements set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Executive and Company agree as follows.

**Amendments.**

1. The first sentence of Section 1.2(a) shall be removed and replaced in its entirety with the following new sentence:

From the Effective Date, the Executive shall receive an annualized salary of \$500,000 (“**Annual Salary**”).

2. A new Section 1.2(b)(iv) shall be added as follows:

**Signing Bonus.** The Executive shall receive a signing bonus in the amount of \$150,000 (less applicable taxes and withholdings), which \$100,000 shall be paid on or before August 15, 2023 and the balance of \$50,000 shall be paid on or before October 15, 2023.

3. Section 1.2(c) shall be removed and replaced in its entirety with the following new Section 1.2(c):

**Stock Option Grant.** Company will grant to Executive options to purchase shares of Company’s Common Stock, restricted stock units or restricted stock awards (collectively, “**New Options**”) pursuant to Company’s 2019 Equity Incentive Plan (the “**Plan**”) subject to the conditions described therein. The type and number of New Options and the terms associated with vesting and accelerated vesting of the New Options shall be upon agreement by the Board and CEO.

**No Other Modifications.**

Except as expressly provided in this Amendment, each of the terms and provisions of the Agreement shall remain in full force and effect. The Amendment set forth herein is limited precisely as written and shall not be deemed to be an amendment or waiver to any other term or condition of the Agreement or any of the documents referred to therein. From and after the Effective Date, all references in the Agreement to this “**Agreement**” shall be deemed to be references to the Agreement, as amended.

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**Counterparts.**

This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one instrument.

Please sign below to indicate the parties' agreement with the terms and conditions set forth in this Amendment.

**ROBERTSON BARRETT**

By: /s/ Robertson Barrett Date: \_\_\_\_\_  
Robertson Barrett

**THE ARENA GROUP HOLDINGS, INC.**

By: /s/ Ross Levinsohn Date: \_\_\_\_\_  
Ross Levinsohn  
Chief Executive Officer

**AGREEMENT**

This Agreement is hereby entered into by and between Robertson Barrett (“**Executive**”) and The Arena Group Holdings, Inc. (“**Company**”). In consideration of the mutual covenants and agreements set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Executive and Company agree as follows:

1. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings given to such terms in the Executive Employment Agreement between Executive and Company (the “**Employment Agreement**”).
2. In the event Executive’s employment is terminated by the Company without Cause or by the Executive for Good Reason within 24 months following a Change in Control (as defined in the Stock Plan), Executive shall be entitled to receive an amount equal to 12 months’ Annual Salary (“**Severance Payment**”). The Severance Payment shall be payable as salary continuation (less all applicable tax withholdings and deductions) over a 12-month period in accordance with the Company’s regular payroll schedule. Any right of Executive to the Severance Payment shall be contingent on the Executive signing, not revoking and complying with a standard form of release agreement with the Company (which release shall not include any restrictions on post-termination activities other than those referenced within this Agreement).
3. Executive shall waive any right to resign for Good Reason under Sections 1.5(i)(ii) and 1.5(i)(iv) of the Employment Agreement for any actions that occurred prior to and including the date of any Change in Control.
4. For purposes of clarity, the Severance Payment shall be in addition to any payments and benefits to which Executive is eligible under Section 1.3(c) of Executive’s Employment Agreement.
5. This offer shall expire on August 31, 2023. Any Agreement signed after August 31, 2023 shall be null and void.
6. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one instrument.
7. This Agreement sets forth the entire understanding of the parties hereto relating to the subject matter hereof and supersedes all prior agreements, term sheets and understandings between the parties relating to the subject matter hereof.
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns (if any).

**[Signature page on next page]**

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Please sign below to indicate the parties' agreement with the terms and conditions set forth in this Amendment.

**ROBERTSON BARRETT**

By: <sup>DocuSigned by:</sup> Rob Barrett Date: \_\_\_\_\_  
Robertson Barrett

**THE ARENA GROUP HOLDINGS, INC.**

By: <sup>DocuSigned by:</sup> Ross Levinsohn Date: \_\_\_\_\_  
Ross Levinsohn  
Chief Executive Officer

**AGREEMENT**

This Agreement is hereby entered into by and between Douglas Smith (“**Executive**”) and The Arena Group Holdings, Inc. (“**Company**”). In consideration of the mutual covenants and agreements set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Executive and Company agree as follows:

1. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings given to such terms in the Amended & Restated Executive Employment Agreement between Executive and Company, dated January 1, 2021 (the “**Employment Agreement**”).
2. In the event Executive’s employment is terminated by the Company without Cause or by the Executive for Good Reason within 24 months following a Change in Control (as defined in the Stock Plan), Executive shall be entitled to receive an amount equal to 12 months’ Annual Salary (“**Severance Payment**”). The Severance Payment shall be payable as salary continuation (less all applicable tax withholdings and deductions) over a 12-month period in accordance with the Company’s regular payroll schedule. Any right of Executive to the Severance Payment shall be contingent on the Executive signing, not revoking and complying with a standard form of release agreement with the Company (which release shall not include any restrictions on post-termination activities other than those referenced within this Agreement).
3. Executive shall waive any right to resign for Good Reason under Sections 1.5(j)(ii) and 1.5(i)(iv) of the Employment Agreement for any actions that occurred prior to and including the date of any Change in Control.
4. For purposes of clarity, the Severance Payment shall be in addition to any payments and benefits to which Executive is eligible under Section 1.3(c) of Executive’s Employment Agreement.
5. This offer shall expire on August 31, 2023. Any Agreement signed after August 31, 2023 shall be null and void.
6. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one instrument.
7. This Agreement sets forth the entire understanding of the parties hereto relating to the subject matter hereof and supersedes all prior agreements, term sheets and understandings between the parties relating to the subject matter hereof.
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns (if any).

**[Signature page on next page]**

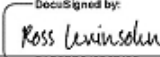
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Please sign below to indicate the parties' agreement with the terms and conditions set forth in this Amendment.

**DOUGLAS SMITH**

By:  \_\_\_\_\_ Date: 8/16/2023  
Douglas Smith

**THE ARENA GROUP HOLDINGS, INC.**

By:  \_\_\_\_\_ Date: 8/17/2023  
Ross Levinsohn  
Chief Executive Officer

**SEVENTH AMENDMENT TO FINANCING AND SECURITY AGREEMENT**

This SEVENTH AMENDMENT TO FINANCING AND SECURITY AGREEMENT (this “Joinder and Amendment”) is made and entered into as of August 31, 2023, by and among THE ARENA PLATFORM, INC., a Delaware corporation (“Platform”), THE ARENA GROUP HOLDINGS, INC., a Delaware corporation (“Holdings”), THE ARENA MEDIA BRANDS, LLC, a Delaware limited liability company (“Brands”), THE STREET, INC., a Delaware corporation, COLLEGE SPUN MEDIA INCORPORATED, a New Jersey corporation (“Spun”), ATHLON HOLDINGS, INC., a Tennessee corporation (“AHI”), and ATHLON SPORTS COMMUNICATIONS, INC., a Tennessee corporation (“ASC” and together with Platform, Holdings, Brands, Spun, and AHI, collectively, jointly and severally, “Borrowers”), and SLR DIGITAL FINANCE LLC (“Lender”).

WHEREAS, pursuant to that certain Financing and Security Agreement, made and entered into on February 6, 2020, by and among Initial Borrowers and Lender, as successor in interest to FPP Finance LLC (as amended, restated, supplemented or otherwise modified from time to time, the “FSA”); capitalized terms used herein without definition shall have the respective meanings assigned to such terms in the FSA;

WHEREAS, pursuant to the FSA, Lender has extended credit to Borrowers upon the terms and subject to the conditions set forth therein; and

WHEREAS, Borrowers have requested that Lender amend the FSA in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. All capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the FSA. This Amendment and the terms and provisions hereof, are incorporated in their entirety into the FSA by reference. In the event of any conflict between this Amendment and the FSA, the terms of this Amendment shall prevail.

2. Amendments to the Financing Agreement.

a. The *General Rates and Fees* box on the first page of the FSA is hereby amended by deleting such box in its entirety and replacing it with the following:

<b>GENERAL RATES AND FEES</b>	
The items referenced below are subject to and defined within the provisions of this Agreement:	
(a)	<u>Maximum Line Amount</u> : Forty Million Dollars (\$40,000,000)
(b)	<u>Advance Rate</u> : 85% of gross value of Invoices
(c)	<u>Minimum Invoice Size</u> : Five thousand dollars (\$5,000)
(d)	<u>Initial Financing Fee</u> : A flat fee equal to 1/12 multiplied by the Facility Rate, based on the net amount Advanced with respect to any Invoice for a Financed Account (or the net amount Advanced for Advances not tied to any Invoice), for the initial 30-day period
(e)	<u>Additional Financing Fee</u> : A monthly rate equivalent to 1/12 multiplied by the Facility Rate, prorated daily on the net amount Advanced outstanding with respect to any Invoice for a Financed Account (or the net amount Advanced outstanding for Advances not tied to any Invoice), commencing on day 31. For the purposes of this Agreement, “ <b>Facility Rate</b> ” means the sum of: (x) the <b>Prime Rate</b> plus (y) <b>4.00%</b> per annum.

- (f) Misdirected Payment Fee: Repayment of all Advances must be paid by the Account Debtor directly to Lender. In the event an Account Debtor fails to pay Lender directly, Lender will provide Borrower a grace period of five (5) business days to notify Lender of any Misdirected Payment and to forward the full amount of the Misdirected Payment to Lender otherwise Borrower may be assessed a Misdirected Payment Fee equaling 20% of the amount of such payment.
- (g) Concentration Limit: The percentage of any debt from a single Account Debtor over the total amount outstanding from Borrower's Financed Accounts must remain below 25%. In the event the percentage exceeds the foregoing limit, Lender may exercise its right not to finance more Accounts of said Account Debtor.
- (h) Diligence Fee: \$50,000. Lender acknowledges prior receipt of such Diligence Fee.
- (i) Wire Fee: An amount equal to Thirty-Five Dollars (\$35.00) to cover fees and costs associated with incoming and outgoing wire transfers to/from the Lockbox or as between Lender/Borrower.
- (j) Termination: Subject to a fee equal to 2.25% of the Maximum Line Amount (the "Early Termination Fee") with respect to any termination of this Agreement prior to December 31, 2025 (inclusive of any termination after an Event of Default and acceleration of the Obligations), Borrower may terminate this Agreement at any time upon 60 days prior written notice to Lender whereupon this Agreement shall terminate upon successful repayment of all outstanding Obligations inclusive of the Early Termination Fee and any amounts due under clauses (k) and (m) below for any period prior to the payment in full of the Obligations.
- (k) Minimum Utilization: Borrower shall at all times utilize at least 10% of the Maximum Line Amount. The Financing Fees otherwise set forth herein shall be adjusted to reflect such minimum utilization.
- (l) Maturity Date: Is December 31, 2025 (the "Maturity Date").
- (m) Facility Fee: In consideration of Lender's entering into this Agreement, Borrower shall pay to Lender an annual facility fee (the "Facility Fee") in the amount of 0.5% of the Maximum Line Amount per annum, which Facility Fee shall be calculated on the period from the Sixth Amendment Effective Date through and including December 31, 2025. This Facility Fee is fully earned on the Seventh Amendment Effective Date. As accommodation to Borrower, the Facility Fee shall be due and payable in monthly installments of \$16,666.67 on the last day of the month through the Maturity Date until paid in full. Lender acknowledges that Borrower has paid 9 of the 37 total monthly installments as of the Seventh Amendment Effective Date. Notwithstanding the foregoing, the unpaid balance of the Facility Fee shall be payable in full on the earlier of (a) the termination of this Agreement, (b) the last day of the then effective Term, and (c) at Lender's option, upon Lender's declaration of an Event of Default.
- (n) Performance Fee: Borrower shall pay to Lender a performance fee (the "Performance Fee") in the amount equal to 2.25% of the Maximum Line Amount, if on or before the SI Deal Deadline an SI Deal Failure has occurred or if this Agreement is terminated prior to the earlier of: (i) the SI Deal Deadline or (ii) the occurrence of a SI Deal Failure. Such Performance Fee will be fully earned and due and payable on the earlier of (y) the SI Deal Deadline if the Approved SI Deal has not closed by such date or (z) the date of the occurrence of an SI Deal Failure. It is understood and agreed that Borrower's obligation to pay this Performance Fee will survive the termination of this Agreement.
- (o) Success Fee: If the Approved SI Deal is consummated, Borrower will pay Lender a success fee (the "Success Fee") in an amount of (i) 0.30% (30 basis points) of Maximum Line Amount if consummation occurs on or before December 31, 2023, (ii) 0.60% (60 basis points) of Maximum Line Amount if consummation occurs after December 31, 2023 but on or before the SI Deal Deadline, and (iii) \$0 if consummation occurs after the SI Deal Deadline. The Success Fee will be fully earned and due and payable on the date the Approved SI Deal is consummated.



a. Section 5. Section 5 of the Financing and Security Agreement is hereby amended by adding the following new Section 5.6:

“5.6. Success Fee. The Success Fee shall be fully earned and due and payable as set forth in the General Rates and Fees.”

b. Section 12.5. Section 12.5 of the Financing and Security Agreement is hereby amended to read as follows:

12.5. Borrower shall not: (a) create, incur, assume or permit to exist, any lien upon or with respect to any assets in which Lender now or hereafter holds as a security interest; or (b) incur any indebtedness for borrowed money (provided that the payment of interest by the non-cash capitalization thereof or the accretion of principal in lieu of the payment of cash interest shall not be deemed to constitute the incurrence of indebtedness for purposes of this Section 12.5), in the case of clause (a) or clause (b), other than as set forth on Schedule 12.5 attached hereto. With respect to indebtedness not otherwise prohibited by the above-referenced clause (b), Borrower may enter into a Permitted Refinancing. Borrower shall not pay any dividends in respect of the Series L Preferred Stock other than payment in kind dividends. Notwithstanding Borrower’s obligation to pay the Misdirected Payment Fee, Borrower shall pay to Lender on the next banking day following the date of receipt by Borrower, the amount of any payment on account of a Financed Account.

c. Section 12. Clause (e) of Section 12.11 of the Financing and Security Agreement is hereby amended to read as follows and a new clause (f) is hereby added thereafter as follows:

“(e) In the event Borrower is to make any payment in respect of the BRF Indebtedness, Borrower will provide to Lender three (3) business days prior to the date of such payment, a certificate signed by Administrative Borrower’s Chief Financial Officer, certifying the amount of such payment, the effective date of such payment and demonstrating compliance with Section 2.02(d) of the Intercreditor Agreement.

(f) Within five (5) business day of its occurrence, Borrower will notify Lender of any material changes in the terms of the Approved SI Deal and of any communication from SI or any other party involved in the negotiation of the Approved SI Deal requesting or detailing material changes to the Approved SI Deal or discussing or informing of any potential SI Deal Failure.”

d. Section 17. Clause (k) of Section 17.1 of the Financing and Security Agreement is hereby amended to read as follows:

“, or (k) an SI Deal Failure occurs.”

e. Section 36. The definitions of “BRF Obligations” and “Change of Control” in Section 36 of the Financing and Security Agreement is amended by replacing such definition in its entirety with the following:

“BRF Obligations” means the “Obligations” as such term is defined in the BRF Loan Agreement as in effect of the Seventh Amendment Effective Date.

“Change of Control” – means the person or entity constituting the majority ultimate beneficial owner of the voting equity interests of Borrower (or having the ability to elect a majority of the board of directors of Borrower) as of the date hereof (or the effective date of the Approved SI Deal if the same is consummated) no longer constituting the majority ultimate beneficial owner of the voting equity interests of Borrower (or having the ability to elect a majority of the board of directors of Borrower).

f. Section 36. The definition of “Performance Milestone” in Section 36 of the Financing and Security Agreement is hereby deleted.

g. Section 36. Section 36 of the Financing and Security Agreement is hereby amended by adding the following definitions in the appropriate alphabetical order:

““Approved SI Deal” means the transactions contemplated by that certain Binding Letter of Intent, dated as of August 14, 2023, by and between the Borrower and SI which transaction must be consummated on or prior to the SI Deal Deadline upon terms reasonably acceptable to Lender.

“Series L Preferred Stock” means the Borrower’s contemplated Series L Preferred Stock which will mature on or about the date that is five years from the closing date of the Approved SI Deal and upon maturity will require a repayment by the Borrower of \$25.0 million in cash and all accrued PIK payments thereon.

“Seventh Amendment Effective Date” means August 31, 2023.

“SI” means Simplify Inventions, LLC.

“SI Deal Deadline” means March 31, 2024, provided that if the deadline for the consummation of the Approved SI Deal (as defined in the BRF Loan Agreement) is extended in accordance with the terms of the BRF Loan Agreement to March 31, 2024 or thereafter, then “SI Deal Deadline” will mean June 30, 2024.

“SI Deal Failure” means the failure of the Approved SI Deal to close on or before SI Deal Deadline or if prior to the SI Deal Deadline, Lender has determined in its reasonable discretion that the Approved SI Deal will not close: (i) based on a public announcement by Borrower or SI, any of their affiliates, their officers, employees, agents or advisors, or other information obtained by Lender, or (ii) as a result of the occurrence of an Event of Default under the BRF Loan Documents as a result of Borrower’s failure to consummate the Approved SI Deal.

“Success Fee” – As stated within the General Rates and Fees.”

h. Schedule 12.5. Schedule 12.5 of the Financing and Security Agreement is hereby amended by (i) amending the column captioned “Maximum Principal Amount May Not Exceed” of the row for the document captioned “Third Amended and Restated Note Purchase Agreement, dated as of December 15, 2022” as set forth below and (ii) by adding the row captioned “Series L Preferred Stock” below at the end of said schedule as follows:

<u>Name of Loan Document</u>	<u>Date of Issuance/Document</u>	<u>Holder of Permitted Indebtedness</u>	<u>Maximum Principal Amount May Not Exceed</u>
Third Amended and	December 15, 2022: one or	BRF Finance Co., LLC and each	\$131,618,754 in principal

Restated Note Purchase Agreement, dated as of December 15, 2022. (as amended, amended and restated, refinanced, supplemented or otherwise modified of time to time).	more additional borrowings may be incurred from time to time thereafter.	person who becomes a purchaser under the BRF Loan Agreement.	amount plus any PIK interest incurred pursuant to the BRF Loan Agreement.
Series L Preferred Stock.	On or before the SI Deal Deadline.	Simplify Inventions, LLC or an affiliate of the same.	\$25,000,000 plus any accrued PIK dividends or interest.

3. CONDITIONS TO EFFECTIVENESS:

This Amendment shall become effective as of the first date upon which each of the following conditions is satisfied (the "Amendment Effective Date"):

a. Documents. Borrowers shall have delivered or caused to be delivered the following documents in form and substance reasonably satisfactory to Lender (and, as applicable, duly executed and dated the Amendment Effective Date or an earlier date satisfactory to Lender):

i. Amendment. A fully executed original of this Amendment.

ii. Payment of Amendment Fee. Payment of an amendment fee in the amount of \$25,000, which was fully earned and due and payable on the date Lender charged the same to the Reserve Account.

iii. Amendment Number One to Third Amended and Restated Note Purchase Agreement. A fully executed copy of Amendment No.1 to the BRF Loan Agreement.

iv. Amendment to Intercreditor Agreement. A fully executed copy of Amendment No. 3 to the Intercreditor Agreement.

v. Payment of Legal Fees. Payment of all legal fees incurred by Lender in connection with this Amendment, which shall be charged by Lender to the Reserve Account.

b. Representations and Warranties. The representations and warranties of each Borrower set forth in the FSA and the other Loan Documents to which such Borrower is a party shall be true and correct in all material respects (or in all respects with respect to any representation or warranty which by its terms is limited as to materiality, in each case, after giving effect to such qualification) on and as of Amendment Effective Date.

c. No Default. Both before and after giving effect to this Amendment and the transactions contemplated thereby, no event shall have occurred or be continuing or would result from the amendments contemplated hereby that would constitute an Event of Default or a default under the FSA or the other Loan Documents.

d. Fees and Expenses. Borrowers shall have paid all documented or invoiced fees, costs and expenses due and payable by Borrowers on or prior to the Amendment Effective Date under the FSA and the other Loan Documents.

4. [Reserved].



5. MISCELLANEOUS:

a. Ratification, Etc. Except as expressly amended hereby, the FSA and the other Loan Documents are hereby ratified and confirmed in all respects and shall continue in full force and effect. This Amendment and the FSA shall hereafter be read and construed together as a single document, and all references in the FSA or any other Loan Document shall hereafter refer to the FSA as amended by this Amendment.

b. Reaffirmation. Each Borrower hereby (a) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under FSA and any other Loan Document to which it is a party and (b) ratifies and reaffirms its grant of security interests and liens and confirms and agrees that such security interests and liens shall continue in full force and effect and ranks as continuing security for the payment and discharge of the obligations secured thereunder, including, without limitation, all of the Obligations.

c. No Waiver. Nothing contained in this Amendment shall be deemed to (a) constitute a waiver of any default or Event of Default that may hereafter occur or heretofore have occurred and be continuing, (b) except as a result of the amendments expressly set forth in Section I of this Amendment, otherwise modify any provision of the FSA or any other Loan Document, or (c) give rise to any defenses or counterclaims to Lender's right to compel payment of the Obligations when due or to otherwise enforce its rights and remedies under the FSA and the other Loan Documents.

d. Release.

i. Effective on the upon execution by Borrowers of this Amendment, each Borrower, for itself and on behalf of its successors, assigns, and officers, directors, employees, agents and attorneys, and any Person acting for or on behalf of, or claiming through it, hereby waives, releases, remises and forever discharges Lender, each of its affiliates, and each of their respective successors in title, past, present and future officers, directors, employees, limited partners, general partners, investors, attorneys, assigns, subsidiaries, shareholders, trustees, agents and other professionals and all other persons and entities to whom Lender would be liable if such persons or entities were found to be liable to any Borrower (each a "Releasee" and collectively, the "Releasees"), from any and all past, present and future claims, suits, liens, lawsuits, adverse consequences, amounts paid in settlement, debts, deficiencies, diminution in value, disbursements, demands, obligations, liabilities, causes of action, damages, losses, costs and expenses of any kind or character, whether based in equity, law, contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law (each a "Claim" and collectively, the "Claims"), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, matured or unmatured, foreseen or unforeseen, past or present, liquidated or unliquidated, suspected or unsuspected, which any Borrower ever had from the beginning of the world to the date hereof, now has, or might hereafter have against any such Releasee which relates, directly or indirectly to the FSA, any related document, or to any acts or omissions of any such Releasee with respect to the FSA or any related document, or to the lender-borrower relationship evidenced by the FSA or any related documents, except for the duties and obligations set forth in this Amendment, the FSA or any related documents from and after the date hereof. As to each and every claim released hereunder, each Borrower hereby represents that it has received the advice of legal counsel with regard to the releases contained herein, and having been so advised, specifically waives the benefit of the provisions of Section 1542 of the Civil Code of California which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

ii. As to each and every claim released hereunder, each Borrower also waives the benefit of each other similar provision of applicable federal or state law, if any, pertaining to general releases after having been advised by its legal counsel with respect thereto.

iii. Each Borrower acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to such claims, demands, or causes of action and agrees that this instrument shall be and remain effective in all respects notwithstanding any such differences or additional facts. Each Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

iv. Each Borrower, for itself and on behalf of its successors, assigns, and officers, directors, employees, agents and attorneys, and any Person acting for or on behalf of, or claiming through it, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee above that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any claim released, remised and discharged by such Person pursuant to the above release. Each Borrower further agrees that it shall not dispute the validity or enforceability of the FSA or any of related documents or any of its obligations thereunder, or the validity, priority, enforceability or the extent of Lender's lien on any item of Collateral under the FSA or the other related documents. If any Borrower or any of their respective successors, assigns, or officers, directors, employees, agents or attorneys, or any Person acting for or on behalf of, or claiming through it violate the foregoing covenant, such Borrower, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by such Releasee as a result of such violation.

e. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

f. Counterparts; Effectiveness. This Amendment may be executed via facsimile or other electronic method of transmission in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument.


*[Signature Pages Follow]*




**IN WITNESS WHEREOF**, each of the undersigned has duly executed this Seventh Amendment to Financing and Security Agreement as of the date first above written.

**BORROWERS:**


**THE ARENA PLATFORM, INC.,**  
a Delaware corporation

By:   
Name: Ross Levinsohn  
Title: Chief Executive Officer


**THE ARENA GROUP HOLDINGS, INC.,**  
a Delaware corporation

By:   
Name: Ross Levinsohn  
Title: Chief Executive Officer


**THE ARENA MEDIA BRANDS, LLC,**  
a Delaware limited liability company

By:   
Name: Ross Levinsohn  
Title: Chief Executive Officer


**THE STREET, INC.,**  
a Delaware corporation

By:   
Name: Ross Levinsohn  
Title: Chief Executive Officer


**COLLEGE SPUN MEDIA INCORPORATED,**  
a New Jersey corporation

By:   
Name: Ross Levinsohn  
Title: Chief Executive Officer

**ATHLON HOLDINGS, INC.,**  
a Tennessee corporation

By:   
Name: Ross Levinsohn  
Title: Chief Executive Officer

**ATHLON SPORTS COMMUNICATIONS,  
INC.,**  
a Tennessee corporation

By:   
Name: Ross Levinsohn  
Title: Chief Executive Officer

**LENDER:**

**SLR DIGITAL FINANCE LLC,**

By:   
Name: **Danielle Baldaro**  
Title: **SVP, DF Portfolio Manager**

**SEVENTH AMENDMENT TO FINANCING AND SECURITY AGREEMENT**

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CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [\*], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED

SIDE LETTER  
TO  
LICENSING AGREEMENT

THIS SIDE LETTER TO THE LICENSING AGREEMENT (this “**September 1<sup>st</sup> Letter**”) is effective as of September 1, 2023 (the “**Effective Date**”), and is entered into by and between ABG-SI LLC (“**Licensor**”) and The Arena Group Holdings, Inc. (f/k/a TheMaven, Inc., “**Licensee**”) concerning that certain Licensing Agreement dated as of June 14, 2019, as amended by Amendment No. 1 to the Licensing Agreement effective as of September 1, 2019, Amendment No. 2 to the Licensing Agreement effective as of April 1, 2020, Amendment No. 3 to the Licensing Agreement effective as of July 28, 2020, Amendment No. 4 to the Licensing Agreement effective as of June 4, 2021, that certain side letter agreement dated June 4, 2021 (the “**June 4<sup>th</sup> Letter**”), Amendment No. 5 to the Licensing Agreement effective as of September 16, 2022 (“**Amendment No. 5**”), and from time to time (collectively, the “**License Agreement**”). All capitalized terms used and not specifically defined herein shall have the meanings ascribed to them in the License Agreement.

In consideration of the mutual covenants and agreements hereinafter contained on the part of each of the parties hereto to be kept, observed and performed, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Payment Terms.**

- (a) Notwithstanding the terms of Section 7(a)(i) of the License Agreement, as of the payment that would otherwise be due on October 1, 2023, the GMR shall be payable by Licensee to Licensor in equal monthly payments of [\*] (\$[\*]), due upon the first day of October, November, and December (each a “**Monthly Payment**”) in 2023 only.
- (b) Should Licensee fail to timely make a Monthly Payment and such failure is not cured within ten (10) days, Licensor may, at its sole discretion, by written notice to Licensee accelerate the full amount of any remaining GMR payment for the applicable Contract Quarter, which shall become due and payable immediately, and Section 1(a) above will be of no further effect.
- (c) Licensor and Licensee acknowledge and agree that Licensee has signed a binding letter of intent with Simplify Inventions, LLC and its founder, Manoj Bhargava, to enter into that certain transaction that is described in greater detail in the ‘News Release’ attached hereto as Exhibit A of this September 1<sup>st</sup> Letter (the “**Transaction**”). Should the Transaction close at any time prior to any Monthly Payment becoming due under Section 1(a) above, then the full amount of any remaining GMR payment for the applicable Contract Quarter (e.g., each and every Monthly Payment that has not yet been paid by Licensee to Licensor), shall become due and payable immediately, and Section 1(a) above will be of no further effect.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have entered into this September 1<sup>st</sup> Letter effective as of the Effective Date.

**Licensor:**  
ABG-SI LLC

**Licensee:**  
The Arena Group Holdings, Inc.  
(f/k/a TheMaven, Inc.)

By: /s/ Jay Dubliner  
Print: Jay Dubliner  
Title: Chief Legal Officer  
Date: 10/1/2023

By: /s/ Andrew Q. Kraft  
Print: Andrew Q. Kraft  
Title: Chief Operating Officer  
Date: 9/30/2023



**Exhibit A**

See attached.

**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO EXCHANGE ACT RULE 13a-14(a) OR 15d-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-  
OXLEY ACT OF 2002**

I, Ross Levinsohn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Arena Group Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2023

/s/ Ross Levinsohn  
Ross Levinsohn  
Chief Executive Officer  
(Principal Executive Officer)

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**CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO EXCHANGE ACT RULE 13a-14(a) OR 15d-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-  
OXLEY ACT OF 2002**

I, Douglas B. Smith, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Arena Group Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2023

*/s/ Douglas B. Smith*  
\_\_\_\_\_  
Douglas B. Smith  
Chief Financial Officer  
(Principal Financial Officer)

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**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Ross Levinsohn, the Chief Executive Officer of The Arena Group Holdings, Inc. (the "Company") hereby certify, that, to my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2023

*/s/ Ross Levinsohn*

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Ross Levinsohn  
Chief Executive Officer  
(Principal Executive Officer)

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**CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Douglas B. Smith, the Chief Financial Officer of The Arena Group Holdings, Inc. (the "Company"), hereby certify, that, to my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2023

*/s/ Douglas B. Smith*

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Douglas B. Smith  
Chief Financial Officer  
(Principal Financial Officer)

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