

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2023

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

For the transition period from [ ] to [ ]

Commission file number 333-177463



audioeye™

AudioEye, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

5210 E. Williams Circle, Suite 750, Tucson, Arizona  
(Address of principal executive offices)

85711  
(Zip Code)

20-2939845

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

(866) 331-5324  
(Registrant's telephone number, including area code)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$0.00001 per share	AEYE	The Nasdaq Capital Market

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

None

(Title of class)

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

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

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

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

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

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

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

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

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

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant's most recently completed second quarter ended as of June 30, 2023 was \$35,807,812.

As of February 29, 2024, 11,695,373 shares of the registrant's common stock were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the close of its fiscal year ended December 31, 2023 are incorporated by reference in Part III of this annual report on Form 10-K.

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report contains forward-looking statements within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In some cases, you may be able to identify forward-looking statements by terms such as "may," "should," "will," "forecasts," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "projects," "potential" or "continue," the negative of these terms and other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements relate to our future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements, and are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions and speak only as of the date on which they are made.

Because these forward-looking statements involve known and unknown risks and uncertainties, there are important factors that could cause actual results, events or developments to differ materially from those expressed or implied by these forward-looking statements, including our plans, objectives, expectations and intentions and other factors discussed in "Part I, Item 1A. Risk Factors" contained in this Annual Report. Risk factors that could cause actual results to differ from those contained in the forward-looking statements include but are not limited to risks related to:

- the uncertain market acceptance of our existing and future products;
- our need for, and the availability of, additional capital in the future to fund our operations and the development of new products;
- the success, timing and financial consequences of new strategic relationships or licensing agreements we may enter into;
- rapid changes in Internet-based applications that may affect the utility and commercial viability of our products;
- the timing and magnitude of expenditures we may incur in connection with our ongoing product development activities;
- judicial applications of accessibility laws to the internet;
- the level of competition from our existing competitors and from new competitors in our marketplace; and
- the regulatory environment for our products and services.

Readers of this report are cautioned not to rely on these forward-looking statements, since there can be no assurance that these forward-looking statements will prove to be accurate. Forward-looking statements speak only as of the date they are made, and we expressly disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. This cautionary note is applicable to all forward-looking statements contained in this report.

*As used in this annual report, the terms "we," "us," "our," "AudioEye," the "Company" and similar references refer to AudioEye, Inc. and its wholly-owned subsidiary, Springtime, Inc.*

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## PART I

### Item 1. Business

#### Overview

AudioEye is an industry-leading digital accessibility platform delivering website accessibility compliance at all price points to businesses of all sizes. Our solutions advance accessibility with patented technology that reduces barriers, expands access for individuals with disabilities, and enhances the user experience for a broader audience. We believe that, when implemented, our solution offers businesses and organizations the opportunity to reach more customers, improve brand image, build additional brand loyalty, and, most importantly, provide an accessible and usable web experience to the expansive and ever-growing global population of individuals with disabilities.

AudioEye primarily generates revenue through the sale of subscriptions for our software-as-a-service ("SaaS") accessibility solutions. Our solutions are backed by machine-learning/AI-driven technology that finds and fixes common accessibility errors. Our core and supplemental solutions are designed to help websites and applications achieve and sustain substantial conformance with AudioEye's interpretation of the Web Content Accessibility Guidelines ("WCAG") which are web accessibility standards published by the Web Accessibility Initiative of the World Wide Web Consortium, the main international standards organization for the internet. Our solutions help mitigate a customer's risk of costly digital accessibility-related legal action. AudioEye customers may purchase solutions directly through the AudioEye Marketplace, through a platform partner or an agency, such as Duda, that integrates our solutions into their marketplace, through a vertical Content Management System ("CMS") partner, through an authorized reseller, or by working directly with the AudioEye sales team.

AudioEye stands out among its competitors because it offers automated and human assisted technological remediations and continuous monitoring of accessibility issues without fundamental changes to the website architecture. We also recognize that automation alone cannot fix all accessibility issues, which is why we also offer certified accessibility experts, who can provide human assisted technological testing and remediations. Our solution is trusted by some of the largest and most influential companies in the world, including Samsung, Landry's, Calvin Klein and others. Government agencies, such as the Federal Communications Commission, use our software with their digital platforms. We also work with government agencies at the state and local level.

#### Industry Background

If not coded properly, a website or application may not offer full access to content or functionality for individuals with disabilities, including users of assistive technology ("AT"), such as a screen reader. As a result, those sites may exclude potential users and customers. As discussed in more detail below, these sites also may not comply with U.S. and foreign laws requiring accessibility and digital inclusion, such as Title III of the Americans with Disabilities Act, Section 508 of the Rehabilitation Act, and California's Unruh Civil Rights Act.

Traditional solutions addressing web accessibility may be costly and difficult to implement. Historically, the process for achieving compliance has been driven by costly consulting services and has not fully utilized emerging technologies to reduce the compliance cost burden or keep up with the fast pace of new content creation. At the same time, web accessibility efforts have generally focused on a limited number of disability use cases, leaving many users' accessibility needs for digital inclusion unaddressed. Businesses may have been reluctant to invest further in web accessibility solutions due to a perceived lack of return on the significant investment required to design and implement a thorough and usable compliance solution.

Other solutions have been developed to help users access websites, but these often require the installation of a plug-in or software on the user's computer. Similarly, some are tailored to either single or a limited number of use cases and lack a holistic approach for addressing compliance and accessibility.

#### AudioEye Solutions

At its core, AudioEye's offering provides an always-on testing, remediation, and monitoring solution that continually improves conformance with WCAG. This in turn helps businesses and organizations comply with WCAG standards as well as applicable U.S. and foreign accessibility laws. Our technology is capable of immediately identifying and fixing most of the common accessibility errors and addresses a wide range of disabilities including dyslexia, color blindness, epilepsy and more. AudioEye also offers additional solutions to provide for enhanced compliance and accessibility, including periodic auditing, human assisted technological remediations

and legal support services. Our solutions may be purchased through a subscription service on a month-to-month basis or with one or multi-year terms. We also offer PDF remediation services and Native Mobile App and Audit reports to help our customers with their digital accessibility needs.

#### ***AudioEye Customers***

Our current and potential customer base includes a very broad range of private and public sector customers, including:

- Small- and medium-sized businesses;
- Corporate enterprises;
- Non-profit organizations;
- Federal government agencies, whose electronic and information technology must be accessible to people with disabilities, including employees and members of the public, pursuant to Section 508 of the Rehabilitation Act of 1973; and
- Federal, state, and local governments and agencies, which often have laws and regulations that require accessibility for people with disabilities.

#### ***AudioEye Channels / Go-to-market:***

We manage customers through two primary channels, Enterprise and Partner and Marketplace. Enterprise channel consists of our larger customers and organizations, including those with non-platform custom websites, who generally engage directly with AudioEye sales personnel for custom pricing and solutions. This channel also includes federal, state, and local government agencies. The Partner and Marketplace channel consists of our CMS partners, platform & agency partners, authorized resellers and the Marketplace. This channel serves small and medium sized businesses that are on a partner or reseller's web-hosting platform or that purchase an AudioEye solution from our Marketplace.

We had one major customer (including the customer's affiliates reflecting multiple contracts and a partnership with the Company) which accounted for approximately 17% of our revenue in each of the years ended December 31, 2023 and 2022.

Our typical market sectors include, but are not limited to:

- Finance and banking institutions;
- Travel and hospitality companies;
- Public and private transportation companies;
- Retail and ecommerce companies;
- Educational institutions;
- Food services companies; and
- SaaS service or solution providers.

#### **Intellectual Property**

Our intellectual property is primarily comprised of copyrights, trademarks, trade secrets, issued patents and pending patent applications. We have a patent portfolio comprised of twenty-two (22) issued patents in the United States and two (2) pending US patent applications. The commercial value of these patents is unknown.

We plan to continue to invest in research and development and expand our portfolio of proprietary intellectual property.

## **Competition**

Most of our competition falls within the following categories:

- There are a small number of web accessibility audit and tracking platform providers that purport to analyze websites for accessibility concerns. While these providers may sometimes identify issues for remediation, they typically do not provide remediation.
- Currently, other technology providers attempt to apply compliance remediation strictly through automation technology and accessibility toolbars.
- There are a substantial number of consulting service providers offering website and application accessibility. Each generally provides an analysis of the various compliance issues associated with its clients' websites. They ultimately provide resources and assistance in applying fixes and changes at the source.

## *Competitive Strengths*

Our management believes the following competitive strengths will enable our success in the accessibility marketplace:

- Unique patented technology. AudioEye builds all its products with the primary goal of enhancing the user experience regardless of the end-user's ability. AudioEye is a marketplace technology leader providing a comprehensive accessibility solution that addresses every aspect of accessibility.
- AudioEye's software automatically removes digital access barriers every day and has over 400 accessibility test outcomes for real-world users as they navigate websites. AudioEye's Issue Reporting dashboard allows non-technical users to easily understand accessibility issues on their websites and the impact these issues have on site visitor experiences.
- Broad price points and offerings. With a free 14-day trial for our base offering, AudioEye allows website owners to test our solution before choosing their preferred option. Our offerings range from low-cost to standard plans, to our customized, enterprise-wide solutions.
- Unique combination of advanced technology and expert-driven services. Our management believes that AudioEye addresses the problem of web accessibility holistically and provides a combination of leading-edge technology and high-quality specialized expertise, both offered as subscription services. Our solutions are designed to provide our customers with reliable and sustainable website accessibility compliance solutions; which lead to cost-savings and reduced time-to-market. We believe that the AudioEye solution allows our customers to focus not only on achieving compliance, but also helping maintain compliance and building inclusive digital experiences for their users throughout the life of the subscription.
- We offer greater transparency in marketing our offerings. We believe there is no fully automated solution on the market that can provide 100% compliance. Our offerings provide automated remediations with additional human assisted technologically driven enhancements. We think that as the industry develops, opaque products with unsubstantiated claims will ultimately fail.
- Highly experienced inventors, technologists, and product development team. Our team comprises experienced software and SaaS developers and technologists.

## **Legal and Regulatory Framework**

Many courts and the U.S. Department of Justice ("DOJ") hold that Titles II and III of the Americans with Disabilities Act ("ADA"), together with Sections 504 and 508 of the Rehabilitation Act of 1973, require public and private websites and mobile applications to be accessible to people with disabilities. In 2023, the DOJ proposed regulations to add specific requirements about web

and mobile application accessibility under Title II of the ADA that would apply to state and local governments, although those regulations have not been finalized.

Title III of the ADA governs private businesses and prohibits discrimination on the basis of disability in the provision of services, programs, and activities by public accommodations. While the law governing website and mobile application accessibility is still developing, many courts have held that websites and mobile applications fall within Title III's scope. Some courts hold that Title III applies to all customer-facing websites and mobile applications, while others apply a "nexus" approach, which requires websites and mobile applications to comply with Title III if the website or mobile application is associated with a physical location. The U.S. Supreme Court has yet to articulate a unified approach, so some degree of uncertainty remains. Similarly, while the DOJ has taken the position that Title III applies to websites and mobile applications, the DOJ has not promulgated regulations laying out compliance standards for websites and mobile applications under Title III of the ADA. In the absence of clear guidance, litigants generally measure accessibility using the Web Content Accessibility Guidelines ("WCAG"), which are promulgated by the World Wide Web Consortium.

This growing focus on website and mobile application accessibility is also reflected by other federal and state laws. The California Unruh Civil Right Act also prohibits discrimination on the basis of disability, and California Government code Section 11546.7 requires state agency directors to certify that their websites comply with the WCAG. In 2010, Congress enacted the 21st Century Communications and Video Accessibility Act in an effort to update telecommunications protections for people with disabilities. Furthermore, the Department of Transportation has issued rules interpreting and implementing the Air Carrier Access Act and setting forth website accessibility standards for air carriers. This focus on website accessibility is growing internationally as well, with over 100 countries having ratified the U.N. Convention on the Rights of Persons with Disabilities.

Although the WCAG does not carry force of law, courts may order defendants to substantially comply with the WCAG as a remedy for accessibility violations. Settlements and consent decrees generally require the same. We therefore design our products and services to help customer websites and mobile applications achieve and sustain substantial conformance with our interpretation of the informative guidance supplied through the WCAG, and we continue to improve and update our products and services as new guidance emerges.

Lawsuits alleging website or mobile application accessibility claims typically follow a similar pattern. Both private commercial businesses and governmental agencies are regularly targeted for alleged violations. With an increasing amount of business taking place remotely, ensuring compliance with the relevant accessibility statutes is becoming increasingly important.

### **Employees**

AudioEye is comprised of highly talented, empathic, and effective individuals working to make the web more accessible.

AudioEye provides employees with the technology and resources required to have a high-quality remote work experience while remaining connected to teams in other locations. We expect to continue a hybrid of virtual and in-person work in the future.

As of December 31, 2023, we had 114 full-time employees. We use a variety of methods for recruiting including in-house recruiting resources, employee referrals and third-party agencies, when required, and we believe our mission allows us to recruit and retain high-quality talent.

We utilize independent contractors to supplement our staff, as needed. None of our employees are represented by a labor union or subject to a collective bargaining agreement. The Company has never experienced a work stoppage and believes that its employee relations are positive.

### **Corporate Information**

AudioEye, Inc. was formed as a Delaware corporation on May 20, 2005. We file reports with the Securities and Exchange Commission ("SEC") and make available, free of charge, on or through our website at [www.audioeye.com](http://www.audioeye.com), our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy and information statements and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. In addition, the SEC maintains a website at [www.sec.gov](http://www.sec.gov) containing reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

## Item 1A. Risk Factors

Investing in our securities involves a variety of risks and uncertainties, known and unknown, including, among others, those discussed below. Each of the following risks should be carefully considered, together with all the other information included in this Form 10-K, including Management's Discussion and Analysis of Financial Condition and Results of Operations, our consolidated financial statements and the related notes and in our other filings with the SEC. Furthermore, additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business. Our business, financial condition, operating results, cash flow and prospects could be materially and adversely affected by any of these risks or uncertainties.

### Risks Relating to Our Business and Industry

***We have a history of generating significant losses and may not be able to achieve and sustain profitability.***

To date, we have not been profitable, and we may never achieve profitability on a full-year or consistent basis. We incurred net losses of \$5,872,000 for the year ended December 31, 2023. As of December 31, 2023, we had an accumulated deficit of \$89,476,000. If we continue to experience losses, we may not be able to continue our operations, and investors may lose their entire investment.

***We continue to pursue business through a variety of channels. These channels may result in the use of a significant amount of our management resources and costs, and we cannot guarantee we will fully realize the expected benefits.***

We continue to pursue business through a variety of channels. Although we may devote significant resources and costs to the development of these sales channels, we may struggle to successfully identify the channel partners, or to successfully conclude transactions with the channel partners. Should we be unable to identify or conclude important channel partnerships, or if our partners are unable to meet our expectations, our business prospects and operations could be adversely affected as a result of the devotion of significant managerial effort and Company costs required. In addition, there can be no assurance that we would fully realize the potential benefit of the relationships. If we cannot do so, we may be unable to meet future revenue expectations.

***Our future development will require additional capital, and we may be unable to obtain needed capital or financing on satisfactory terms, or at all, which would prevent us from fully developing our business and generating revenues.***

As of December 31, 2023, we had \$9.2 million in cash following a \$7.0 million loan acquired in November 2023, which will become due in November 2026. Our business plan will require additional capital expenditures, and our capital outlays could increase substantially over the next several years as we implement our business plan. As a result, we may need to raise additional capital through future private or public equity offerings, strategic alliances or debt financing. Our future capital requirements will depend on many factors, including, among others: market conditions, sales and marketing costs, mergers and acquisition activity, if any, costs of litigation in enforcing our intellectual property rights, and information technology development and acquisition costs. No assurance can be given that we can successfully raise additional equity or debt capital, or that such financing will be available to us on favorable terms, if at all.

***We have a \$7.0 million loan due in November 2026 that includes certain financial and liquidity covenants. We cannot guarantee we will meet these covenants, obtain sufficient capital to repay the loan on a timely basis or obtain refinancing of the loan on satisfactory terms, or at all, all of which could have a material adverse effect on our business.***

On November 30, 2023, we entered into a Loan and Security Agreement (the "Loan Agreement") with SG Credit Partners, Inc. (the "Lender") pursuant to which we acquired a \$7.0 million loan due in November 2026. Under the Loan Agreement, we provided the Lender a first priority security interest in all existing and future acquired assets owned by us. The Loan Agreement contains certain customary covenants that limit our ability to engage in certain transactions. In addition, we must maintain (i) at all times a minimum liquidity of not less than \$2.0 million (plus, prior to our payment in full of an earnout related to our BOIA acquisition, an amount equal to the greater of \$2.1 million and the expected amount of the earnout) and (ii) minimum monthly recurring revenue levels measured on a trailing three (3) month average basis as of the last day of each calendar month. The minimum monthly recurring revenue levels commence at \$2.3 million and increase for each month after the month ending November 30, 2024 to the greater of \$2.3 million and 105.00% of Borrowers' monthly recurring revenue for the applicable month in the prior year. We cannot guarantee that we will always meet these covenants or that we can obtain sufficient capital to repay the loan on a timely basis, or obtain refinancing of the loan on satisfactory terms, or at all.



***Weakened global economic conditions including current and ongoing microeconomic uncertainty may adversely affect our industry, business and results of operations.***

Our overall performance depends in part on worldwide economic and geopolitical conditions. The United States and other key international economies have experienced cyclical downturns from time to time in which economic activity was impacted by falling demand for a variety of goods and services, restricted credit, poor liquidity, reduced corporate profitability, volatility in credit, equity and foreign exchange markets, bankruptcies and overall uncertainty with respect to the economy. These economic conditions can arise suddenly, and the full impact of such conditions can remain uncertain. In addition, geopolitical developments can increase levels of political and economic unpredictability globally and increase the volatility of global financial markets. Moreover, these conditions can affect the rate of IT spending and could adversely affect our customers' ability or willingness to purchase our software, delay prospective customers' purchasing decisions, reduce the value or duration of their subscription contracts, affect attrition rates, or decrease our ability to collect on accounts receivable, all of which could adversely affect our future sales and operating results.

***We have been party to litigation and may in the future be party to additional litigation, which could have a material adverse effect on our financial position or results of operations.***

We are subject to disputes and allegations related to our business operations. Because we are in a technology industry, these disputes may involve claims of intellectual property infringement or misappropriation. We have also been involved in securities law litigation in the past. These and other types of litigation can be very expensive, and we cannot assure you that our insurance policies will cover the costs. Because it is not possible to determine when and whether these disputes and allegations may arise or the ultimate disposition of such matters, the resolution of any such matters, should they arise, could have a material adverse effect on our financial position or results of operations.

***Market interest rates could remain high or continue to increase our interest costs on future debt and could adversely affect our stock price.***

If interest rates remain high or continue to increase, so could our interest costs for any new debt. Our \$7.0 million term loan has an interest rate equal to 6.25% in excess of the base rate, which is defined as the greater of the prime rate and 7.00% per annum, payable in cash on a monthly basis. Consequently, our interest payment obligations are subject to fluctuations in market interest rates. This increased cost is outside of our control, and we can provide no assurance that we can refinance the indebtedness on favorable terms, or at all. We may also incur additional variable interest rate indebtedness in the future. Rising interest rates could limit our ability to refinance debt when it matures or cause us to pay higher interest rates upon refinancing and increased interest expense on refinanced indebtedness, assuming we can refinance the indebtedness.

***We may pursue new strategic opportunities, including acquisitions, which may result in the use of a significant amount of our management resources or significant costs, and we may not be able to consummate those opportunities or on beneficial terms.***

We are seeking strategic opportunities, which may include acquisitions, to help us pursue our business objectives. Although we may devote significant time and resources in pursuit of such transactions, we may struggle to successfully identify such opportunities, or to successfully conclude transactions. Should we be unable to identify or conclude important strategic transactions, our business prospects and operations could be adversely affected as a result of the devotion of significant managerial effort required, and the challenges of achieving our objectives in the absence of strategic opportunities. In addition, we may incur significant costs in connection with seeking acquisitions or other strategic opportunities regardless of whether the transaction is completed.

Should we be successful in consummating these opportunities, we may not be able to do so on terms that are beneficial to AudioEye. They may also impact our financial position and capital needs which, among other actions, could require us to raise additional capital, which could result in dilution to our stockholders or result in restrictions on our activities, and could cause substantial fluctuations in our results of operations.

***We may not be able to successfully integrate newly acquired businesses or other strategic relationships, and we may not be able to fully realize the potential benefit of such opportunities.***

If we do locate and consummate important acquisitions or strategic relationships, we may not be able to integrate those opportunities or successfully realize their full benefit. There are inherent risks in integrating these opportunities, which may include:

- the assumption of liabilities of the acquired businesses that could be greater than anticipated;

- incurring significantly higher than anticipated capital expenditures and operating expenses following the acquisition;
- failing to integrate the operations, customers and personnel of the acquired company or business;
- the diversion of financial and management resources from existing operations;
- the potential loss of key employees or existing customers or adverse effects on existing business relationships with suppliers and customers;
- incorrect estimates made in the accounting for acquisitions, incurrence of non-recurring charges, and write-off of significant amounts of goodwill or other assets that could adversely affect our operating results;
- unforeseen risks and liabilities associated with businesses acquired, including any unknown vulnerabilities in acquired technology or compromises of acquired data; and
- failing to achieve the anticipated benefits of the acquisition.

Fully integrating an acquired company or business into our operations may take a significant amount of time. We cannot assure you that we will be successful in overcoming these risks or any other problems encountered with acquisitions. To the extent we do not successfully avoid or overcome the risks or problems related to any acquisitions, our results of operations and financial condition could be adversely affected.

***Our business plan may not be realized. If our business plan proves to be unsuccessful, our business may fail, and you may lose your entire investment.***

Our operations are subject to all of the risks inherent in the establishment of a growing business enterprise with a limited operating history. The likelihood of our success must be considered in light of the problems, expenses, complications, and delays frequently encountered in connection with the development of a new business. Unanticipated events may occur that could affect the actual results achieved during the forecast periods. Consequently, the actual results of operations during the forecast periods will vary from the forecasts, and such variations may be material. In addition, the degree of uncertainty increases with each successive year presented in our business plan. We cannot assure you that we will succeed in the anticipated operation of our business plan. If our business plan proves to be unsuccessful, our business may fail, and you may lose some or all of your investment.

***We have experienced and will continue to experience competition as more companies seek to provide products and services similar to our products and services and seek to take advantage of changes in technologies. Because larger and better-financed competitors may affect our ability to compete in the marketplace and achieve profitability, our business may fail.***

Competition in our market is intense, and we expect competition for our products and services to become even more intense. We compete directly against other companies offering similar products and services that compete or will compete directly with our proposed products and services. We also compete against established vendors in our markets. These companies may incorporate other competitive technologies into their product offerings, whether developed internally or by third parties. There are also established consultants who offer services to help their customers obtain compliance with accessibility standards. In many cases these consultants compete for the same funding from our prospective customers. Furthermore, recent advances in different technologies, such as artificial intelligence, large language models, and multi-modal models, may impact our industry, and it is unclear whether we or our competitors will be able to take advantage of these advances.

For the foreseeable future, many of our competitors may be larger, better-financed companies that may develop products superior to our current and proposed products, which could create significant competitive advantages for those companies. Our future success depends on our ability to compete effectively with our competitors or other technologies. As a result, we may have difficulty competing with larger, established competitors. Generally, these competitors may have:

- substantially greater financial, technical, and marketing resources;
- a larger customer base;

- better name recognition;
- access to different and evolving technologies; and
- more expansive or different product offerings.

These competitors may command a larger market share than we do, which may enable them to establish a stronger competitive position, in part, through greater marketing opportunities. Further, our competitors may be able to respond more quickly than we are to new or emerging technologies and changes in user preferences and to devote greater resources to developing new products and offering new services. These competitors may develop products or services that are comparable or superior to ours. If we fail to address competitive developments quickly and effectively, we may not be able to remain a viable business.

***We acquired the Bureau of Internet Accessibility Inc. ("BOIA") on March 9, 2022, and we cannot assure you that will successfully integrate the business or that the acquisition will bring us the expected benefits.***

On March 9, 2022, we acquired Bureau of Internet Accessibility Inc. ("BOIA"). We cannot assure you that we will be able to successfully integrate the business or that we will receive the expected benefits from the acquisition. All of the risks from the prior paragraph apply to the integration of BOIA including the risk that we could fail to integrate the customers to new products and services over time. Further, while a significant portion of the aggregate consideration for BOIA is based on BOIA's revenues for 2022 and 2023, BOIA may ultimately not perform as we hope both during and subsequent to the earn-out period. If it does not, our results of operations and financial condition could be adversely affected.

***If we are not able to adequately protect our patented rights, our operations may be negatively impacted.***

Our ability to compete largely depends on the superiority, uniqueness and value of our technology and intellectual property. To protect our intellectual property rights, we rely on a combination of patent, trademark, copyright, and trade secret laws, confidentiality agreements with our employees and third parties, and protective contractual provisions. We cannot assure you that infringement or invalidity claims (or claims for indemnification resulting from infringement claims) will not be asserted or prosecuted against us or that any such assertions or prosecutions will not materially adversely affect our business.

Regardless of whether any future claims are valid or can be successfully asserted, defending against such claims could cause us to incur significant costs, could jeopardize or substantially delay a successful outcome in any future litigation, and could divert resources away from our other activities. In addition, assertion of infringement claims could result in injunctions that prevent us from distributing our products. In addition to challenges against our existing patents, any of the following could also reduce the value of our intellectual property now, or in the future:

- our applications for patents, trademarks, and copyrights relating to our business may not be granted and, if granted, may be challenged or invalidated;
- issued trademarks, copyrights or patents may not provide us with any competitive advantages;
- our efforts to protect our intellectual property rights may not be effective in preventing misappropriation of our technology; or
- our efforts may not prevent the development and design by others of products or technologies similar to, competitive with, or superior to those that we develop.

Also, we may not be able to effectively protect our intellectual property rights in certain foreign countries where we may do business in the future or from which competitors may operate. Obtaining patents will not necessarily protect our technology or prevent our international competitors from developing similar products or technologies. Our inability to adequately protect our patented rights may have a negative impact on our operations and revenues.

In addition, legal standards relating to the validity, enforceability, and scope of protection of intellectual property rights in Internet-related businesses are uncertain and still evolving. Because of the growth of the Internet and Internet-related businesses, patent applications are continuously and simultaneously being filed in connection with Internet-related technology. There are a significant

number of U.S. and foreign patents and patent applications in our areas of interest, and we believe that there has been, and is likely to continue to be, significant litigation in the industry regarding patent and other intellectual property rights.

***We may commence legal proceedings against third parties who we believe are infringing on our intellectual property rights, and if we are forced to litigate to defend our intellectual property rights, or to defend claims by third parties against us relating to intellectual property rights, legal fees and court injunctions could adversely affect our financial condition and potentially end our business.***

We expect an increase in the number of third parties who could violate our patents as the market develops new uses of similar products and consumers continue to increase their adoption of technology and integrate it into their daily lives. There may be the potential need to enter into additional active litigation to defend and enforce our patents. These legal proceedings could continue for several years and may require significant expenditures for legal fees and other expenses. In the event we are not successful through appeal and do not subsequently obtain monetary and injunctive relief, these litigation matters may significantly reduce our financial resources and have a material impact on our ability to continue our operations. The time and effort required of our management to effectively pursue or defend these litigation matters may adversely affect our ability to operate our business, since time spent on matters related to the lawsuits would take away from the time spent on managing and operating the business. We cannot assure you any such potential lawsuits will result in an outcome that is favorable to our stockholders or the Company.

***The current legal environment for our products and services remains unclear.***

We cannot assure you that our existing or planned product and service offerings will be in compliance with local, state, and/or federal U.S. laws or the laws of any foreign jurisdiction where we operate or may operate in the future. Further, the legal, regulatory and judicial framework relating to the accessibility of websites may change. We cannot assure you that we will not unintentionally violate new laws or that existing laws will not be modified, that new laws and regulations will not be enacted in the future, or that judicial application of existing laws and regulations might change, which may cause us to be in violation of such laws or render our product and service offerings less needed. More aggressive domestic or international regulation of the Internet may materially and adversely affect our business, financial condition, operating results, and future prospects.

***Our business greatly depends on the growth of online services, Internet of Things ("IOT"), kiosks, streaming, and other next-generation Internet-based applications, and there is a risk that such growth may not occur as expected, or at all, which would harm our business.***

The Internet may ultimately prove not to be a viable commercial marketplace for such applications for several reasons, including:

- unwillingness of consumers to shift to and use other such next-generation Internet-based applications;
- refusal to purchase our products and services;
- perception by end-users with respect to product and service quality and performance;
- limitations on access and ease of use;
- congestion leading to delayed or extended response times;
- inadequate development of Internet infrastructure to keep pace with increased levels of use; and
- increased government regulations.

Because of these and other factors, the growth of online services, IOT, kiosks, streaming, and other next-generation Internet-based applications may be impeded or not occur as expected. As a result, our business and operations could be adversely impacted.

***If the market for our online services does not grow as anticipated, our business would be adversely affected.***

While other next-generation Internet-based applications have grown rapidly in personal and professional use, we cannot assure you that the adoption of our products and services will grow at a comparable rate or grow at all.

***Our success is dependent on our employees, many of whom are relatively new in their positions with the Company.***

Our success has depended, and continues to depend, on the efforts and talents of our senior management team and employees, including our engineers, product managers, sales and marketing personnel, and professional services personnel. Many of our employees are relatively new to their positions, and we can provide no assurance that our management team will be able to effectively work together or with all of our employees. If they are unable to do so or our new employees do not work effectively, there may be delays in execution of our business and operating strategies.

***Our expansion into new products, services, technologies, and geographic regions subjects us to additional business, legal, financial, and competitive risks.***

We may have limited or no experience in our newer market segments, and our customers may not adopt our new offerings. These offerings may present new and difficult technology challenges, and we may be subject to claims if customers of these offerings experience service disruptions or failures or other quality issues. In addition, profitability, if any, in our newer activities may be lower than in our older activities, and we may not be successful enough in these newer activities to recoup our investments in them. If any of this were to occur, it could damage our reputation, limit our growth, and negatively affect our operating results.

***We face risks related to system interruption and lack of redundancy.***

We experience occasional system interruptions and delays that make our websites and services unavailable or slow to respond and prevent us from efficiently providing services to third parties, which may reduce our net sales and the attractiveness of our products and services. If we are unable to continually add software and hardware, effectively upgrade our systems and network infrastructure, and take other steps to improve the efficiency of our systems, it could cause system interruptions or delays and adversely affect our operating results.

Our computer and communications systems and operations could be damaged or interrupted by fire, flood, power loss, telecommunications failure, earthquakes, acts of war or terrorism, acts of God, computer viruses, physical or electronic break-ins, and similar events or disruptions. Any of these events could cause system interruption, delays, and loss of critical data, and could prevent us from providing services, which could make our product and service offerings less attractive and subject us to liability. Our systems are not fully redundant, and our disaster recovery planning may not be sufficient. In addition, we may have inadequate insurance coverage to compensate for any related losses. Any of these events could damage our reputation and be expensive to remedy.

***Government regulation is evolving, and unfavorable changes could harm our business.***

We are subject to general business regulations and laws, as well as regulations and laws specifically governing the Internet, e-commerce, electronic devices, and other services. Existing and future laws and regulations may impede our growth. These regulations and laws may cover website accessibility, taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, web services, the provision of online payment services, information reporting requirements, unencumbered Internet access to our services, the design and operation of websites, and the characteristics and quality of products and services. It is not clear how existing laws governing issues such as property ownership, libel, and personal privacy apply to the Internet, e-commerce, digital content, and web services. Unfavorable regulations and laws could diminish the demand for our products and services and increase our cost of doing business.

***We may be subject to risks related to government contracts and related procurement regulations.***

Our contracts with U.S., as well as state, local, and foreign, government entities are subject to various procurement regulations and other requirements relating to their formation, administration, and performance. We may be subject to audits and investigations relating to our government contracts, and any violations could result in various civil and criminal penalties and administrative sanctions, including termination of contracts, refunding or suspending of payments, forfeiture of profits, payment of fines, and suspension or debarment from future government business. In addition, such contracts may provide for termination by the government at any time, without cause.

***If we do not successfully adapt, enhance or develop new products and services in a cost-effective manner to meet customer demand in the rapidly evolving market for next-generation Internet-based applications and services, our business may fail.***

The market for next-generation Internet-based applications and services is characterized by rapidly changing technology, evolving industry standards, changes in customer needs, and frequent new service and product introductions. Our future success will depend, in part, on our ability to use new technologies effectively, to continue to develop our technical expertise and proprietary technology, to enhance our existing products and services, and to develop new products and services that meet changing customer needs on a timely and cost-effective basis. We may not be able to adapt quickly enough to changing technology, customer requirements, and industry standards. If we fail to use new technologies effectively, to develop our technical expertise and new products and services, or to enhance existing products and services on a timely basis, either internally or through arrangements with third parties, our product and service offerings may fail to meet customer needs, which would adversely affect our revenues and prospects for growth.

In addition, if we are unable to, for technological, legal, financial, or other reasons, adapt in a timely manner to changing market conditions or customer requirements, we could lose customers, strategic alliances, and market share. Sudden changes in user and customer requirements and preferences, the frequent introduction of new products and services embodying new technologies, and the emergence of new industry standards and practices could render our existing products, services and systems obsolete. The emerging nature of products and services in the technology and communications industry and their rapid evolution will require that we continually improve the performance, features, and reliability of our products and services. Our survival and success will depend, in part, on our ability to:

- design, develop, launch and/or license our planned products, services, and technologies that address the increasingly sophisticated and varied needs of our prospective customers; and
- respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis.

The development of products and services and other patented technology involves significant technological and business risks and requires substantial expenditures and lead time. We may be unable to use new technologies effectively. Updating our technology internally and licensing new technology from third parties may also require us to incur significant additional expenditures.

***If our products and services do not continue to gain market acceptance, we may not be able to fund future operations.***

A number of factors may affect the market acceptance of our products or services or any other products or services we develop or acquire, including, among others:

- the price of our products or services relative to other competitive products and services;
- the perception by users of the effectiveness of our products and services;
- our ability to fund our sales and marketing efforts; and
- the effectiveness of our sales and marketing efforts.

If our products and services do not continue to gain market acceptance, we may not be able to fund future operations, including the development of new products and services and/or our sales and marketing efforts for our current products and services, which inability would have a material adverse effect on our business, financial condition, and operating results.

***We continually develop new products and product enhancements and actively capitalize software development costs, while making educated assumptions to anticipate the attributed revenue to be derived from each development or enhancement. If our assumptions are incorrect or if we are unable to accurately attribute revenue to each respective product or product enhancement, we may have to account for impairment, thus causing us to reverse the capitalized expenditures.***

Our product developers are consistently programming new products and enhancements to existing products. Under applicable accounting guidance, we make determinations to estimate the useful life of each of these products and enhancements. Based on these determinations, we amortize software expenses over a pre-determined period of time. Should our estimates turn out to be inaccurate or

should the business fail to attract new revenue in relation to each respective product or product enhancement, we may have to reverse or write off the related capitalized expenses.

***Our products and services are highly technical and may contain undetected errors, which could cause harm to our reputation and adversely affect our business.***

Our products and services are highly technical and complex and, when deployed, may contain errors or defects. Despite testing, some errors in our products and services may only be discovered after they have been installed and used by customers. Any errors or defects discovered in our products and services after commercial release could result in failure to achieve market acceptance, loss of revenue or delay in revenue recognition, loss of customers, and increased service and warranty cost, any of which could adversely affect our business, operating results and financial condition. In addition, we could face claims for product liability, tort, or breach of warranty. The performance of our products and services could have unforeseen or unknown adverse effects on the networks over which they are delivered as well as on third-party applications and services that utilize our products and services, which could result in legal claims against us, harming our business. Furthermore, we expect to provide implementation, consulting, and other technical services in connection with the implementation and ongoing maintenance of our products and services, which typically involves working with sophisticated software, computing systems, and communications systems. Many of our contracts with customers contain provisions relating to warranty disclaimers and liability limitations, but such provisions may not be upheld. Defending a lawsuit, regardless of its merit, is costly and may divert our management's attention and adversely affect the market's perception of us and our products and services. In addition, if our business liability insurance coverage proves inadequate or future coverage is unavailable on acceptable terms or at all, our business, operating results and financial condition could be adversely impacted.

***Malfunctions of third-party communications infrastructure, hardware and software expose us to a variety of risks we cannot control, and those risks could result in harm to our business.***

Our business depends upon the capacity, reliability and security of the infrastructure owned by third parties over which our product offerings are deployed. We have no control over the operation, quality or maintenance of a significant portion of that infrastructure or over whether those third parties will upgrade or improve their equipment. We do depend on these companies to maintain the operational integrity of our integrated connections. If one or more of these companies is unable or unwilling to supply or expand its levels of service in the future, our operations could be adversely impacted. System interruptions or increases in response time could result in a loss of potential or existing users and, if sustained or repeated, could reduce the appeal of the networks to users. In addition, users depend on real-time communications; outages caused by increased traffic could result in delays and system failures. These types of occurrences could cause users to perceive that our products and services do not function properly and could therefore adversely affect our ability to attract and retain strategic partners and customers.

***Security and privacy breaches, computer viruses, and cyber-attacks could harm our business, financial condition, results of operations, or reputation.***

Security and privacy breaches, computer malware and cyber-attacks have become more prevalent, including in our industry. In addition, security and privacy laws are becoming more prevalent and pervasive. Our corporate systems, third-party systems and security measures may be breached due to the actions of outside parties, employee or company error, malfeasance, a combination of these, or otherwise, and, as a result, an unauthorized party may obtain access to our data or any third-party data we may possess, including privacy data. Any such security breach could require us to comply with various breach notification laws and may expose us to litigation, remediation and investigation costs, increased costs for security measures, loss of revenue, damage to our reputation, and potential liability.

***System failure or interruption or our failure to meet increasing demands on our systems could harm our business.***

The success of our product and service offerings depends on the uninterrupted operation of various systems, secure data centers, and other computer and communication networks that we use or establish. To the extent the number of users of networks utilizing our future products and services suddenly increases, the technology platform and hosting services which will be required to accommodate a higher volume of traffic may result in slower response times, service interruptions or delays or system failures. The deployment of our products, services, systems and operations will also be vulnerable to damage or interruption from

- power loss, transmission cable cuts and other telecommunications failures;
- damage or interruption caused by fire, earthquake and other natural disasters;

- computer viruses or software defects; and
- physical or electronic break-ins, sabotage, intentional acts of vandalism, terrorist attacks and other events beyond our control.

System interruptions or failures and increases or delays in response time could result in a loss of potential or existing users and, if sustained or repeated, could reduce the appeal of our products and services to users. These types of occurrences could cause users to perceive that our products and services do not function properly and could therefore adversely affect our ability to attract and retain strategic partners and customers.

***We do not expect to pay any dividends to holders of our common stock for the foreseeable future, which will affect the extent to which our investors realize any future gains on their investment.***

We do not anticipate that we will pay any dividends to holders of our common stock in the foreseeable future. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment.

***We will need to recruit and retain additional qualified personnel to successfully grow our business.***

Our future success will depend in part on our ability to attract and retain qualified operations, marketing and sales personnel as well as technical personnel. Inability to attract and retain such personnel could adversely affect our business. Competition for technical, sales, marketing and executive personnel is intense, particularly in the technology and Internet sectors. We cannot assure you that we will be able to attract or retain such personnel.

***Our new technology platform may not function as expected or may not be accepted by our clients.***

In 2022, we completed the migration of all customers to our new platform for our digital accessibility product. We cannot guarantee that our platform will continue to operate as expected or that our new platform will be fully accepted by our customers. If our new platform does not operate as expected or is not accepted, our ability to pursue and retain business may be damaged and our business and results of operations may be materially and adversely affected.

***If we fail to maintain effective internal control over financial reporting and effective disclosure controls and procedures, we may not be able to report financial results accurately or on a timely basis, or to detect fraud, which could have a material adverse effect on our business and stock price.***

In connection with this annual report, our management carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures and of the effectiveness of our internal control over financial reporting. Based on that evaluation, our Principal Executive Officer and Principal Financial Officer have concluded that our disclosure controls and procedures and our internal control over financial reporting were effective as of December 31, 2023.

Nonetheless, failure to maintain established internal control over financial reporting or to maintain effective disclosure controls and procedures could adversely impact our public disclosures regarding our business, financial condition or results of operations. Upon review of the required internal control over financial reporting, our management and/or our auditors have in the past and may in the future identify material weaknesses and/or significant deficiencies that need to be addressed. Any actual or perceived weaknesses or conditions that need to be addressed in our internal control over financial reporting and disclosure of management's assessment of the Company's internal control over financial reporting could adversely impact the price of and our ability to list our common stock and may lead to stockholder claims and regulatory action against us. Failure to maintain effective internal controls in the future could also result in a material misstatement of our annual or quarterly consolidated financial statements that would not be prevented or detected on a timely basis and that could cause us to restate our consolidated financial statements for a prior period, cause investors to lose confidence in our consolidated financial statements and/or limit our ability to raise capital.

Additionally, any such failure may also negatively impact our operating results and financial condition, impair our ability to timely file our periodic and other reports with the SEC, consume a significant amount of management's time, and cause us to incur substantial additional costs relating to the implementation of remedial measures.



## Risks Related to the Market for Our Common Stock

*Although our shares of common stock are listed on the Nasdaq Capital Market, historically we have had a limited trading volume and a higher price volatility. This may result in reduced liquidity of our common stock.*

Although our shares of common stock are listed on the Nasdaq Capital Market under the symbol "AEYE," historically trading volume in our common stock has been limited. In addition, our stock has also historically seen significant price volatility, which may reduce the liquidity of our common stock. The sale of a significant number of shares of common stock at any particular time could be difficult to achieve at the market prices prevailing immediately before such shares are offered and may limit your liquidity options.

*If we cannot continue to satisfy the continuing listing criteria of the Nasdaq Capital Market, the exchange may subsequently delist our common stock.*

The Nasdaq Capital Market requires us to meet certain financial, public float, bid price and liquidity standards on an ongoing basis in order to continue the listing of our common stock. Generally, we must maintain a minimum amount of stockholders' equity and a minimum number of holders of our securities, as well as meet certain disclosure and corporate governance requirements. If we fail to meet any of the continuing listing requirements, our common stock may be subject to delisting. If our common stock is delisted and we are not able to list our common stock on another national securities exchange, we expect our securities would be quoted on an over-the-counter market. If this were to occur, our stockholders could face significant material adverse consequences, including limited availability of market quotations for our common stock and reduced liquidity for the trading of our securities. In addition, we could experience a decreased ability to issue additional securities and obtain additional financing in the future.

*The market price for our common stock may fluctuate significantly, which could result in substantial losses by our investors.*

The market price of our common stock may fluctuate significantly in response to numerous factors, some of which are beyond our control, such as:

- the outcomes of potential future patent litigation;
- our ability to monetize our future patents;
- changes in our industry;
- announcements of technological innovations, new products or product enhancements by us or others;
- announcements by us or others of significant strategic partnerships, out-licensing, in-licensing, joint ventures, acquisitions or capital commitments;
- changes in laws or regulations or judicial interpretation of the application of accessibility-related laws and regulations to the internet;
- our failure to meet any financial covenants, to have sufficient liquidity to repay any of our indebtedness, or to refinance our indebtedness on favorable terms, or at all;
- changes in earnings estimates or recommendations by security analysts, if our common stock is covered by analysts;
- investors' general perception of us;
- future issuances of common stock;
- investors' future resales of our securities;
- the addition or departure of key personnel;

- general market conditions, including the volatility of market prices for shares of technology companies, generally, and other factors, including factors unrelated to our operating performance; and
- the other factors described in this "Risk Factors" section.

These factors and any corresponding price fluctuations may materially and adversely affect the market price of our common stock and result in substantial losses by our investors.

Further, the stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations in the past. Continued market fluctuations could result in extreme volatility in the price of our common stock, which could cause a decline in the value of our common stock.

Price volatility of our common stock might be worse if the trading volume of our common stock is low. In the past, following periods of market volatility, stockholders have often instituted securities class action litigation. We have previously been the target of securities litigation and may in the future be subject to additional securities litigation, which could result in substantial costs to us and divert resources and attention of management from our business, even if we are successful in any such litigation. Future sales of our common stock could also reduce the market price of such stock.

Moreover, the liquidity of our common stock is limited, not only in terms of the number of shares that can be bought and sold at a given price, but by delays in the timing of transactions and reduction in security analysts' and the media's coverage of us, if any. These factors may result in lower prices for our common stock than might otherwise be obtained and could also result in a larger spread between the bid and ask prices for our common stock. In addition, without a large float, our common stock is less liquid than the stock of companies with broader public ownership and, as a result, the trading price of our common stock may be more volatile. In the absence of an active public trading market, an investor may be unable to liquidate its investment in our common stock. Trading of a relatively small volume of our common stock may have a greater impact on the trading price of our stock than would be the case if our public float were larger. We cannot predict the prices at which our common stock will trade in the future.

***Sales or the availability for sale of a substantial number of shares of our common stock may cause the price of our common stock to decline and adversely affect our ability to raise capital.***

If our stockholders sell substantial amounts of our common stock in the public market, including pursuant to our currently effective Registration Statement on Form S-3, such sales or the anticipation of such sales could cause the market price of our common stock to fall. Such circumstances, whether or not sales have occurred or are occurring, also could make more difficult our ability to raise additional financing through the sale of equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate.

***Issuance of additional shares of common stock in future financings will result in the dilution of our existing stockholders and may also result in a reduction in the market price of our common stock.***

Our Certificate of Incorporation authorizes the issuance of up to 50,000,000 shares of common stock with a \$0.00001 par value per share and 10,000,000 shares of preferred stock with a \$0.00001 par value per share, of which, as of December 31, 2023, approximately 11,711,000 shares of common stock were issued and outstanding. As of December 31, 2023, we also had outstanding options to purchase an aggregate of approximately 112,000 shares of our common stock, and unvested, or vested but not yet settled, restricted stock units covering an aggregate of approximately 1,707,000 shares of common stock. The exercise of such options and the settlement of such restricted stock units would further increase the number of our outstanding shares of common stock.

From time to time, we may adopt new equity compensation plans or increase the number of shares available for issuance in connection with our existing equity compensation plans. Our board of directors may also choose to issue some or all of our available shares to provide additional financing or acquire businesses.

The issuance of any shares under our equity compensation plans, for acquisition, licensing or financing efforts, upon exercise of options, or settlement of restricted stock units, will dilute the interests of our holders of common stock and cause a reduction in the proportionate ownership and voting power of all then current stockholders. Any such issuances may also result in a reduction in the market price of our common stock.

***The interests of our controlling stockholders may not coincide with yours and such controlling stockholders may make decisions with which you may disagree.***

As of December 31, 2023, four of our stockholders, two of whom are our Executive Chairman and our Chief Executive Officer, and another of whom is a director, beneficially owned in the aggregate over 45% of the voting power of our outstanding shares of common stock. As a result, these stockholders may be able to influence the outcome of matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. In addition, this concentration of ownership may delay or prevent a change in control of our company and make some future transactions more difficult or impossible without the support of our controlling stockholders. The interests of our controlling stockholders may not coincide with our interests or the interests of other stockholders.

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

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. We currently have new research coverage by securities and industry analysts. If one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

***We are subject to financial reporting and other requirements that place significant demands on our resources.***

We are subject to reporting and other obligations under the Securities Exchange Act of 1934, as amended, including the requirements of Section 404 of the Sarbanes-Oxley Act of 2002. Section 404 requires us to conduct an annual management assessment of the effectiveness of our internal control over financial reporting. These reporting and other obligations place significant demands on our management, administrative, operational, internal audit and accounting resources. Any failure to maintain effective internal controls could have a material adverse effect on our business, operating results and stock price. Moreover, effective internal control is necessary for us to provide reliable financial reports and prevent fraud. If we cannot provide reliable financial reports or prevent fraud, we may not be able to manage our business as effectively as we would if an effective control environment existed, and our business and reputation with investors may be harmed. We may also face claims by our investors, which could harm our business and financial condition.

#### **Risks Relating to Our Charter Documents and Capital Structure**

***We are close to being controlled by a small number of "insider" stockholders, which could determine corporate and stockholder action on significant matters.***

As of January 31, 2024, our directors and executive officers beneficially owned an aggregate of 4,718,606 of our outstanding shares of common stock, which represents approximately 40% of the aggregate voting power of our outstanding shares of common stock. As of January 31, 2024, our Chief Executive Officer alone beneficially owned over 29% of the voting power of our outstanding shares of common stock. Through their collective ownership of our outstanding stock, such holders, if they were to act together, would be close to controlling the voting of our shares at all meetings of stockholders and, because the common stock does not have cumulative voting rights, to determining the outcome of the election of all of our directors and determining corporate and stockholder action on other matters.

***Provisions of our Certificate of Incorporation and bylaws could discourage potential acquisition proposals and could deter or prevent a change in control.***

Some provisions in our Certificate of Incorporation and bylaws, as well as statutes, may have the effect of delaying, deterring or preventing a change in control. These provisions, including those providing for the possible issuance of shares of our preferred stock, which may be divided into series and with the preferences, limitations and relative rights to be determined by our board of directors, and the right of the board of directors to amend the bylaws, may make it more difficult for other persons, without the approval of our board of directors, to make a tender offer or otherwise acquire a substantial number of shares of our common stock or to launch other takeover attempts that a stockholder might consider to be in his or her best interest. These provisions could limit the price that some investors might be willing to pay in the future for shares of our common stock.

***Delaware law may delay or prevent takeover attempts by third parties and therefore inhibit our stockholders from realizing a premium on their stock.***

We are subject to the anti-takeover provisions of Section 203 of the Delaware General Corporation Law. These provisions prevent any stockholder who owns 15% or more of our outstanding shares of common stock from engaging in certain business combinations with us for a period of three years following the time that the stockholder acquired such stock ownership unless certain approvals were or are obtained from our board of directors or from the holders of 66 2/3% of our outstanding shares of common stock (excluding the shares of our common stock owned by the 15% or more stockholder). Our board of directors can use these and other provisions to discourage, delay or prevent a change in the control of our company or a change in our management. Any delay or prevention of a change of control transaction or a change in our board of directors or management could deter potential acquirers or prevent the completion of a transaction in which our stockholders could receive a substantial premium over the then current market price of our shares. These provisions could also limit the price that investors might be willing to pay for shares of our common stock.

**Item 1B. Unresolved Staff Comments**

Not applicable.

**Item 1C. Cybersecurity**

Cybersecurity Risk Management and Strategy

We recognize the importance of assessing, identifying, and managing material risks associated with cybersecurity threats, as such term is defined in Item 106(a) of Regulation S-K. These risks include, among other things: operational risks, intellectual property theft, fraud, extortion, harm to employees or customers and violation of data privacy or security laws.

Identifying and assessing cybersecurity risk is integrated into our overall risk management systems and processes. Cybersecurity risks related to our business, technical operations, privacy and compliance issues are identified and addressed through an internal IT Audit, IT security, governance, risk and compliance reviews. To defend, detect and respond to cybersecurity incidents, we, among other things: conduct proactive privacy and cybersecurity reviews of systems and applications, audit applicable data policies, perform penetration testing using external third-party tools and techniques to test security controls, conduct employee training, monitor emerging laws and regulations related to data protection and information security (including our products) and implement appropriate changes.

We have implemented incident response processes in the event of a cybersecurity threat. Such incident responses are overseen by functional leaders and internal experts. In the event of a cybersecurity threat, security events and data incidents are evaluated, ranked by severity and prioritized for response and remediation. Incidents are evaluated to determine materiality as well as operational and business impact and reviewed for potential privacy impact. As part of the above processes, we have engaged external auditors and consultants to assess our internal cybersecurity programs and compliance with applicable practices and standards, and we are in the process of obtaining a SOC 2 Type II report.

We describe whether and how risks from identified cybersecurity threats are reasonably likely to materially affect us, including our business strategy, results of operations, or financial condition, under the heading "Security and privacy breaches, computer viruses, and cyber-attacks could harm our business, financial condition, results of operations, or reputation." included as part of our risk factor disclosures at Item 1A of this Annual Report on Form 10-K.

Cybersecurity Governance

Cybersecurity is an important part of our risk management processes and an area of focus for our Board and management. Our Audit Committee is responsible for the oversight of risks from cyber and data security threats. Members of the Board or Audit Committee receive periodic updates from senior management regarding our cybersecurity processes and risks. Members of management that comprise our incident response team include the following officers (or those with similar responsibility): Senior Director of Information Technology, Vice President of Engineering, Chief Financial Officer, General Counsel, Customer Success (if customer data is affected), and Vice President of Human Resources (if employee data is affected). As part of our internal response policy, upon confirmation of a breach, a remediation process is initiated, led by our Principal Privacy Officer who chairs an incident response team. This team may include members from relevant departments such as Product Development, Information Technology, Finance, Legal, Marketing,

Client/Customer Services and Human Resources, any other relevant units or departments affected by the breach and any additional personnel as deemed necessary.

The Principal Privacy Officer is responsible for overseeing the determination of whether a breach occurred, coordinating with third parties handling protected information, and ensuring compliance with legal obligations. Forensic investigators, provided through AudioEye's cyber insurance or as deemed necessary by the Principal Privacy Officer, will analyze the breach to understand its cause and extent. A communication plan will be developed by Marketing, Legal, and Human Resources to inform internal employees, the public, those directly affected, and regulatory authorities, as necessary to help ensure all notifications comply with relevant laws and regulations.

**Item 2. Properties**

The Company's principal offices are located at 5210 E. Williams Circle, Suite 750, Tucson, Arizona 85711, consisting of approximately 627 square feet under a lease agreement that expires in October 2024.

The Company also leases office space in Marietta, Georgia, Miami, Florida, and New York City, New York, and occupies shared office space in Portland, Oregon, Seattle, Washington, and Lehi, Utah, under membership agreements which provide for membership fees based on the number of contracted seats.

The Company believes that its space is adequate for its current needs and that suitable alternative space is available to accommodate expansion of the Company's operations.

**Item 3. Legal Proceedings**

In the normal course of business, we are subject to proceedings, lawsuits, regulatory agency inquiries, and other claims. All such matters are subject to uncertainties and outcomes that are not predictable with assurance. While these matters could materially affect operating results when resolved in future periods, management believes that, after final disposition, including anticipated insurance recoveries in certain cases, any monetary liability or financial impact to the Company beyond that provided for in the consolidated balance sheet as of December 31, 2023, would not be material to our financial position or annual results of operations.

**Item 4. Mine Safety Disclosures**

Not applicable.

**PART II**

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

**Common Stock Information**

AudioEye, Inc. was formed as a Delaware corporation on May 20, 2005. Our common stock has been listed on The Nasdaq Capital Market under the symbol "AEYE" since September 4, 2018.

In June 2022, the Board of Directors adopted a share repurchase program authorizing the repurchase of up to \$3 million of our common stock through June 30, 2024. Shares repurchased under the program were subsequently retired. In August 2023, the share repurchase program was terminated.

In November 2023, the Board of Directors adopted a share repurchase program authorizing the repurchase of up to \$5 million of our common stock through December 31, 2025. The stock repurchase program may be suspended or discontinued at any time and does not commit the Company to repurchase any dollar amount or particular number of shares of stock. Shares repurchased under the program are subsequently retired and restored to the status of authorized but unissued shares of common stock. As of December 31, 2023, we had \$3.88 million remaining for the repurchase of shares.

On January 31, 2024, there were 148 holders of record of our common stock, and a greater number of beneficial holders of our common stock for whom shares were held in a "nominee" or "street" name.

The following table sets forth information with respect to our repurchases of common stock during the three months ended December 31, 2023:

	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Number of Shares (or Approximate Dollar Value) that May Yet Be Purchased under the Plans or Programs (2)</u>
October 1 - October 31:				
Employee transactions (1)	3,438	\$ 4.99	—	\$ —
November 1 - November 30:				
Employee transactions (1)	8,675	4.44	—	—
December 1 - December 31:				
Employee transactions (1)	8,983	4.36	—	—
Share repurchase program (2)	248,205	4.52	—	3,878,000
Total:				
Employee transactions (1)	21,096	\$ 4.49	—	\$ —
Share repurchase program (2)	248,205	\$ 4.52	—	\$ 3,878,000

- (1) Includes shares surrendered by employees to satisfy tax withholding obligations in connection with the settlement restricted stock units or the issuance of unrestricted shares of common stock.
- (2) In November 2023, the Board of Directors adopted a share repurchase program authorizing the repurchase of up to \$5 million of our common stock through December 31, 2025. Shares repurchased under the program are subsequently retired. The average price paid per share includes any broker commissions.

The transfer agent of our common stock is Equiniti Trust Company. Its address is 1100 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120-4100, and its telephone number is 1-800-468-9716.

#### Dividend Policy

Dividends to preferred stockholders take precedence over any dividends to common stockholders. Holders of our common stock are entitled to receive ratably such dividends, if any, as may be declared by our board of directors out of funds legally available therefor. We have not declared or paid any dividends on our preferred or common stock since our inception, and we presently anticipate that earnings, if any, will be retained for development of our business. There are no restrictions in our Certificate of Incorporation or By-laws that prevent us from declaring dividends. Any future declaration of dividends will be at the discretion of our board of directors and will depend upon, among other things, our future earnings, operating and financial condition, and capital requirements.

#### Item 6. [RESERVED]

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

*The following discussion should be read in conjunction with our audited consolidated financial statements and the related notes for the years ended December 31, 2023 and 2022 that appear elsewhere in this annual report on Form 10-K. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to such differences include but are not limited to those discussed below and elsewhere in this annual report on Form 10-K, particularly in "Risk Factors." The forward-looking statements included in this annual report on Form 10-K are made only as of the date hereof.*

#### Executive Overview

AudioEye is an industry-leading digital accessibility platform delivering website accessibility compliance at all price points to businesses of all sizes. Our solutions advance accessibility with patented technology that reduces barriers, expands access for individuals with disabilities, and enhances the user experience for a broader audience. In 2023, we continued to focus on product innovation, expanding revenue and managing expenses.

We have two sales channels to deliver our product, the Partner and Marketplace channel and the Enterprise channel. AudioEye continues to focus on recurring revenue growth in both channels, while still offering our Website and Native Mobile App report services and PDF services that provide non-recurring revenue. For the year ended December 31, 2023, total revenue increased by 5% over the prior year. As of December 31, 2023, Annual Recurring Revenue ("ARR") was approximately \$31.2 million, which represented an increase of 7% from December 31, 2022. Refer to Other Key Operating Metrics below for details on how we calculate ARR.

As of December 31, 2023, AudioEye had approximately 110,000 customers, an increase from 86,000 customers at December 31, 2022. The increase in customer count was driven by additions in the Partner and Marketplace channel.

In the twelve months ended December 31, 2023, revenue from our Partner and Marketplace grew 13% from prior year comparable period. This channel represented about 60% of ARR at the end of December 2023. In the twelve months ended December 31, 2023, total Enterprise revenue, inclusive of revenue from the acquisition of BOIA in March 2022, decreased by 5% due to the reduction in revenue from one large customer. The Enterprise channel represented about 40% of ARR at the end of December 2023.

We had one major customer (including the customer's affiliates reflecting multiple contracts and a partnership with the Company) which accounted for approximately 17% of our revenue in each of the years ended December 31, 2023 and 2022.

The Company continued to invest in Research and Development in 2023. Total Research and Development cost, as defined under Research and Development section in the Results of Operations below, was 29% of total revenue in 2023. Total research and development cost increased primarily due to additional investments in engineering and product talent.

With revenue for the twelve months ended 2023 increasing 5% from prior year comparable period, both Sales and Marketing expense and General and Administrative expense decreased from 2022. This decrease was mainly driven by efficiencies implemented during the year in these areas and lower stock compensation expense and litigation expense.

We provide further commentary on our Results of Operation below.

### Results of Operations

Our consolidated financial statements are stated in United States Dollars and are prepared in accordance with United States Generally Accepted Accounting Principles ("U.S. GAAP" or "GAAP"). The discussion of the results of our operations compares the year ended December 31, 2023 with the year ended December 31, 2022. Our results of operations in these periods are not necessarily indicative of the results which may be expected for any subsequent period. Due to rounding, numbers presented throughout this document may not add up precisely to the totals provided and percentages may not precisely reflect the absolute figures.

(in thousands)	Year ended December 31,		Change	
	2023	2022	\$	%
Revenue	\$ 31,316	\$ 29,913	\$ 1,403	5 %
Cost of revenue	(6,974)	(7,219)	245	(3)%
Gross profit	24,342	22,694	1,648	7 %
Operating expenses:				
Selling and marketing	11,781	13,657	(1,876)	(14)%
Research and development	6,989	6,085	904	15 %
General and administrative	11,537	13,381	(1,844)	(14)%
Total operating expenses	30,307	33,123	(2,816)	(9)%
Operating loss	(5,965)	(10,429)	4,464	(43)%
Interest income (expense), net	93	(4)	97	(2,425)%
Net loss	\$ (5,872)	\$ (10,433)	\$ 4,561	(44)%

Revenue

The following table presents our revenues disaggregated by sales channel:

(in thousands)	Year ended December 31,		Change	
	2023	2022	\$	%
Partner and Marketplace	\$ 18,027	\$ 15,972	\$ 2,055	13 %
Enterprise	13,289	13,941	(652)	(5)%
Total revenues	\$ 31,316	\$ 29,913	\$ 1,403	5 %

Partner and Marketplace channel consists of our CMS partners, platform & agency partners, authorized resellers and the Marketplace. This channel serves small & medium sized businesses that are on a partner or reseller's web-hosting platform or that purchase our solutions from our Marketplace.

Enterprise channel consists of our larger customers and organizations, including those with non-platform custom websites, who generally engage directly with AudioEye sales personnel for custom pricing and solutions. This channel also includes federal, state and local government agencies.

For the year ended December 31, 2023, total revenue increased by 5% over the prior year. The increase in Partner and Marketplace channel revenue was the result of continued expansion with existing partners and execution of new partnerships agreements in the period. The decrease in Enterprise channel revenue was driven primarily by the reduction in revenue from one large customer.

Cost of Revenue and Gross Profit

(in thousands)	Year ended December 31,		Change	
	2023	2022	\$	%
Revenue	\$ 31,316	\$ 29,913	\$ 1,403	5 %
Cost of revenue	(6,974)	(7,219)	245	(3)%
Gross profit	\$ 24,342	\$ 22,694	\$ 1,648	7 %

Cost of revenue consists primarily of compensation and related benefits costs for our customer experience team, as well as a portion of our technology operations team that supports the delivery of our services, fees paid to our managed hosting and other third-party service providers, amortization of capitalized software development costs and patent costs, and allocated overhead costs.

For the year ended December 31, 2023, cost of revenue decreased by 3% over the prior year. The decrease in cost of revenue is primarily due to efficiencies achieved from infrastructure platform improvements and lower overhead costs from facilities.

For the year ended December 31, 2023, gross profit increased by 7% over the prior year. The increase in gross profit was a result of increased revenue with a corresponding decrease to cost of revenue.

Selling and Marketing Expenses

(in thousands)	Year ended December 31,		Change	
	2023	2022	\$	%
Selling and marketing	\$ 11,781	\$ 13,657	\$ (1,876)	(14)%

Selling and marketing expenses consist primarily of compensation and benefits related to our sales and marketing staff, as well as third-party advertising and marketing expenses.

For the year ended December 31, 2023, selling and marketing expenses decreased by 14% over the prior year. The decrease in selling and marketing expenses resulted primarily from a reduction in online media and third-party marketing expenses and a reduction to stock compensation expense which was partially offset by higher personnel costs.



Research and Development

(in thousands)	Year ended		Change	
	December 31,		\$	%
	2023	2022		
Research and development expense	\$ 6,989	\$ 6,085	\$ 904	15 %
Plus: Capitalized research and development cost	1,946	1,160	786	68 %
Total research and development cost	\$ 8,935	\$ 7,245	\$ 1,690	23 %

Research and development ("R&D") expenses consist primarily of compensation and related benefits, independent contractor costs, and an allocated portion of general overhead costs, including occupancy costs related to our employees involved in research and development activities. Total research and development cost includes the amount of research and development expense reported within operating expenses as well as development cost that was capitalized during the fiscal period.

For the year ended December 31, 2023, research and development expenses increased by 15% over the prior year. This increase was driven by higher personnel cost. For the year ended December 31, 2023, capitalized research and development cost increased by 68% over the prior year. The increase to capitalized research cost was the result of engineering personnel spending more time on product development than in previous comparable periods. Total research and development cost, which includes both R&D expenses and capitalized R&D costs, increased 23% from 2022 to 2023.

General and Administrative Expenses

(in thousands)	Year ended		Change	
	December 31,		\$	%
	2023	2022		
General and administrative	\$ 11,537	\$ 13,381	\$ (1,844)	(14)%

General and administrative expenses consist primarily of compensation and benefits related to our executives, directors and corporate support functions, general corporate expenses including legal fees, and occupancy costs.

For the year ended December 31, 2023, general and administrative expenses decreased by 14% over the prior year. The decrease in general and administrative expenses was due primarily to lower legal expenses towards non-recurring litigation and lower stock compensation expense.

Interest Expense

(in thousands)	Year ended		Change	
	December 31,		\$	%
	2023	2022		
Interest income (expense), net	\$ 93	\$ (4)	\$ 97	(2,425)%

For the year ended December 31, 2023, interest income, net consisted primarily of income from investment in money market funds, which was partially offset by interest on our term loan acquired in the fourth quarter of 2023. For the year ended December 31, 2022, interest expense consisted of interest on our finance lease liabilities.

Other Key Operating Metrics

We consider annual recurring revenue ("ARR") as a key operating metric and a key indicator of our overall business. We also use ARR as one of the primary methods for planning and forecasting overall expectations and for evaluating, on at least a quarterly and annual basis, actual results against such expectations.

We define ARR as the sum of (i) for our Enterprise channel, the total of the annual recurring fee under each active contract at the date of determination, plus (ii) for our Partner and Marketplace channel, the monthly fee for all active customers at the date of determination, in each case, assuming no changes to the subscription, multiplied by 12. This determination includes both annual and monthly contracts for recurring products. Some of our contracts are cancelable, which may impact future ARR. ARR excludes revenue from our PDF remediation services business, one-time Website and Mobile App report services business and other miscellaneous non-

recurring services. As of December 31, 2023, ARR was \$31.2 million, which represents an increase of 7% year-over-year, driven by growth in our Partner and Marketplace channel.

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

From time to time, we review adjusted financial measures that assist us in comparing our operating performance consistently over time, as such measures remove the impact of certain items, as applicable, such as our capital structure (primarily interest charges), items outside the control of the management team (taxes), and expenses that do not relate to our core operations, including transaction and litigation-related expenses and other costs that are expected to be non-recurring. In order to provide investors with greater insight and allow for a more comprehensive understanding of the information used in our financial and operational decision-making, the Company has supplemented the consolidated financial statements presented on a GAAP basis in this Annual Report on Form 10-K with the following non-GAAP financial measures: Adjusted EBITDA, Adjusted EBITDA margin, and Adjusted earnings (loss) per diluted share.

These non-GAAP financial measures have limitations as analytical tools and should not be considered in isolation or as a substitute for analysis of Company results as reported under GAAP. The Company compensates for such limitations by relying primarily on our GAAP results and using non-GAAP financial measures only as supplemental data. We also provide a reconciliation of non-GAAP to GAAP measures used. Investors are encouraged to carefully review this reconciliation. In addition, because these non-GAAP measures are not measures of financial performance under GAAP and are susceptible to varying calculations, these measures, as defined by us, may differ from and may not be comparable to similarly titled measures used by other companies.

#### *Adjusted EBITDA, Adjusted EBITDA Margin, and Adjusted Earnings (Loss) per Diluted Share*

We define: (i) Adjusted EBITDA as net income (loss), plus (less) interest expense (income), plus depreciation and amortization expense, plus stock-based compensation expense, plus non-cash valuation adjustment to contingent consideration, plus certain litigation expense, plus certain acquisition expense, plus executive team restructuring cost, and plus loss on disposal or impairment of long-lived assets; (ii) Adjusted EBITDA margin as Adjusted EBITDA as a percentage of GAAP revenue; and (iii) Adjusted earnings (loss) per diluted share as net income (loss) per diluted common share, plus (less) interest expense (income), plus depreciation and amortization expense, plus stock-based compensation expense, plus non-cash valuation adjustment to contingent consideration, plus certain litigation expense, plus certain acquisition expense, plus executive team restructuring cost, and plus loss on disposal or impairment of long-lived assets, each on a per share basis. Adjusted earnings per diluted share would include incremental shares in the share count that are considered anti-dilutive in a GAAP net loss position. However, no incremental shares apply when there is an Adjusted loss per diluted share, as is the case for one of the periods presented in this Annual Report on Form 10-K.

Adjusted EBITDA, Adjusted EBITDA margin, and Adjusted earnings (loss) per diluted share are used to facilitate a comparison of our operating performance on a consistent basis from period to period and provide for a more complete understanding of factors and trends affecting our business than GAAP measures alone. All of the items adjusted in the Adjusted EBITDA to net loss and the Adjusted earnings (loss) per share calculations are either recurring non-cash items, or items that management does not consider in assessing our on-going operating performance. In the case of the non-cash items, such as stock-based compensation expense and valuation adjustments to assets and liabilities, management believes that investors may find it useful to assess our comparative operating performance because the measures without such items are expected to be less susceptible to variances in actual performance resulting from expenses that do not relate to our core operations and are more reflective of other factors that affect operating performance. In the case of items that do not relate to our core operations, management believes that investors may find it useful to assess our operating performance if the measures are presented without these items because their financial impact does not reflect ongoing operating performance.

Adjusted EBITDA is not a measure of liquidity under GAAP, or otherwise, and is not an alternative to cash flow from continuing operating activities, despite the advantages regarding the use and analysis of these measures as mentioned above. Adjusted EBITDA, Adjusted EBITDA margin, and Adjusted earnings (loss) per diluted share, as disclosed in this Annual Report on Form 10-K, have limitations as analytical tools, and you should not consider these measures in isolation or as a substitute for analysis of our results as reported under GAAP; nor are these measures intended to be measures of liquidity or free cash flow for our discretionary use.

To properly and prudently evaluate our business, we encourage readers to review the consolidated GAAP financial statements included elsewhere in this Annual Report on Form 10-K, and not rely on any single financial measure to evaluate our business. The following table sets forth reconciliations of Adjusted EBITDA to net loss, the most directly comparable GAAP-based measure, and Adjusted earnings (loss) per diluted share to net loss per diluted share, the most directly comparable GAAP-based measure.

<b>(in thousands, except per share data)</b>	<b>Year ended December 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>Adjusted EBITDA Reconciliation</b>		
Net loss (GAAP)	\$ (5,872)	\$ (10,433)
Non-cash valuation adjustment to contingent consideration	442	346
Interest (income) expense, net	(93)	4
Stock-based compensation expense	3,698	4,566
Acquisition expense (1)	—	247
Litigation expense (2)	415	1,916
Executive team restructuring cost (3)	247	246
Depreciation and amortization	2,268	2,111
Loss on disposal or impairment of long-lived assets	235	51
Adjusted EBITDA	<u>\$ 1,340</u>	<u>\$ (946)</u>
Adjusted EBITDA margin (4)	<u>4 %</u>	<u>(3)%</u>
<b>Adjusted Earnings (Loss) per Diluted Share Reconciliation</b>		
Net loss per common share (GAAP) — diluted	\$ (0.50)	\$ (0.91)
Non-cash valuation adjustment to contingent consideration	0.04	0.03
Interest (income) expense, net	(0.01)	—
Stock-based compensation expense	0.31	0.40
Acquisition expense (1)	—	0.02
Litigation expense (2)	0.04	0.17
Executive team restructuring cost (3)	0.02	0.02
Depreciation and amortization	0.19	0.18
Loss on disposal or impairment of long-lived assets	0.02	—
Adjusted earnings (loss) per diluted share (5)	<u>\$ 0.11</u>	<u>\$ (0.08)</u>
Diluted weighted average shares (GAAP)	11,766	11,477
Includable incremental shares (Non-GAAP) (5)	338	—
Adjusted diluted shares (Non-GAAP) (6)	<u>12,104</u>	<u>11,477</u>

(1) Represents legal and accounting fees associated with the BOIA acquisition.

(2) Represents legal expenses related primarily to non-recurring litigation pursued by the Company.

(3) Represents severance expense associated with the restructuring in executive roles.

(4) Net loss as a percentage of GAAP revenues, which is the GAAP-based measure most comparable to Adjusted EBITDA margin, was (19)% and (35)%, respectively, for the years ended December 31, 2023 and 2022. Adjusted EBITDA margin represents Adjusted EBITDA as a percentage of GAAP revenue.

(5) Adjusted earnings per adjusted diluted share for our common stock is computed using the treasury stock method.

(6) The number of diluted weighted average shares used for this calculation is the same as the weighted average common shares outstanding share count when the Company reports a GAAP net loss and a negative Adjusted EBITDA.

**Liquidity and Capital Resources**

Working Capital

As of December 31, 2023, we had \$9.2 million in cash and working capital of \$3.2 million. The increase in working capital in 2023 was primarily due to our \$7 million term loan acquired in the fourth quarter of 2023, and was partially offset by the \$1.4 million increase in current liability associated with the contingent consideration relating to the BOIA earn-out as the final payment is expected to be settled in the second quarter of 2024.

On February 11, 2021, we entered into an At The Market ("ATM") Sales Agreement with B. Riley Securities, Inc. ("Agent"), under which the Company may offer and sell, from time to time at its sole discretion, shares of its common stock to or through the Agent as its sales agent, having an aggregate offering price of up to \$30 million. In 2021, the Company issued 471,970 shares of its common stock under the ATM offering and raised \$16,534,000, net of transaction expenses. No shares of common stock were sold under the ATM offering in 2023 or 2022.

As of December 31, 2023, we had \$2.4 million in current contingent consideration liability recognized in connection with the acquisition of BOIA, and \$7.0 million in noncurrent term loan which matures on November 30, 2026. We have no off-balance sheet arrangements, and we believe that the Company has sufficient liquidity to continue as a going concern through the next twelve months.

While the Company has been successful in raising capital, there is no assurance that it will be successful at raising additional capital in the future. Additionally, if the Company's plans are not achieved and/or if significant unanticipated events occur, the Company may have to further modify its business plan, which may require us to raise additional capital or reduce expenses.

(in thousands)	At December 31,	
	2023	2022
Current assets	\$ 14,776	\$ 12,966
Current liabilities	(11,529)	(11,062)
Working capital	\$ 3,247	\$ 1,904

Cash Flows

(in thousands)	Year ended December 31,	
	2023	2022
Net cash provided by (used in) operating activities	\$ 318	\$ (4,999)
Net cash used in investing activities	(2,156)	(5,733)
Net cash provided by (used in) financing activities	4,170	(1,330)
Net increase (decrease) in cash	\$ 2,332	\$ (12,062)

For the year ended December 31, 2023, in relation to the prior year, cash provided by operating activities increased primarily due to lower patent litigation costs and a reduction in sales and marketing costs, driven mainly by lower digital, consulting and third-party costs.

For the year ended December 31, 2023, in relation to the prior year, cash used in investing activities decreased primarily due to the acquisition of BOIA in 2022, for which we paid \$4.5 million, net of cash acquired and receipts associated with net working capital adjustments. Cash used for investing activities in 2023 related primarily to cash outlays for software development costs.

For the year ended December 31, 2023, in relation to the prior year, cash provided by financing activities increased due to a \$7.0 million term loan obtained in November 2023. This increase was partially offset by a \$366,000 increase in stock repurchases in 2023, as well as \$974,000 payment towards our contingent consideration in the first quarter of 2023 in connection with the acquisition of BOIA, of which \$908,000 and \$66,000 are classified as cash used in financing and operating activities, respectively.

**Critical Accounting Policies and Estimates**

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with the accounting principles generally accepted in the United States. The preparation of consolidated financial statements requires management to make estimates and assumptions that affect the amounts

reported and disclosed in our consolidated financial statements and the accompanying notes. Actual results could differ materially from these estimates under different assumptions or conditions.

The critical accounting estimates discussed below are estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations.

#### *Stock-Based Compensation*

##### Awards with performance conditions

Compensation expense related to performance-based options and RSUs is recognized on a straight-line basis over the requisite service period, provided that it is probable that performance conditions will be achieved. Management periodically assesses the probability of achievement of each performance condition. Expense recognition only starts when achievement is deemed probable, and the amount recognized in each reporting period varies based on the expected timing of performance completion. Changes in expectations and outcomes different from estimates (such as the achievement or non-achievement of performance conditions) may cause a significant adjustment to earnings in a reporting period as timing and amount of expense recognition is highly dependent on management's estimate.

##### Awards with market conditions

We estimate the fair value and requisite service period of market-based restricted stock unit awards as of the grant date based on the Monte Carlo simulation model with the assistance of an independent third-party valuation specialist. The Monte Carlo simulation model is built on certain assumptions, including our stock volatility. We cannot predict the prices at which our common stock will trade in the future and achievement of market conditions may occur in period different that estimated. Compensation costs related to awards with market conditions are recognized on a straight-line basis over the requisite service period regardless of whether the market condition is satisfied and is not reversed provided that the requisite service period derived from the Monte-Carlo simulation has been completed.

#### *Goodwill, Intangible Assets and Contingent Consideration recognized in connection with a Business Combination*

We recognize intangible assets acquired in connection with business combinations based on their fair value at acquisition, which is determined by management with the assistance a third-party valuation specialist. Acquired intangible assets are amortized on a straight-line basis over their estimated useful.

We also recognize the contingent consideration liability resulting from a business combination based on its fair value, which is determined both initially and in each reporting period preceding the end of the measurement period using the Monte-Carlo simulation model. The model incorporates key assumptions, including non-recurring and recurring revenue metrics. Changes in estimated revenue and outcomes different from estimates could cause a significant adjustment to earnings in a reporting period as the fair value of the liability is highly dependent on management's estimate.

Goodwill is recorded based on the excess of purchase price over the estimated fair value of net assets acquired and is not amortized. The value of goodwill is highly dependent on the assessed fair value of intangible assets and contingent consideration liability at acquisition. Both intangible assets and goodwill are evaluated periodically for impairment.

Refer to Note 2 - Significant Accounting Policies to our consolidated financial statements for a complete discussion of the significant accounting policies and methods used in the preparation of our consolidated financial statements, including our accounting policies related to stock-based compensation and intangible assets.

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

Not applicable.

#### **Item 8. Financial Statements and Supplementary Data**

Our Financial Statements begin on page F-1 of this Annual Report on Form 10-K and are incorporated herein by reference.

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

Not applicable.

**Item 9A. Controls and Procedures**

**Conclusions of Management Regarding Effectiveness of Disclosure Controls and Procedures**

As of the end of the period covered by this report, an evaluation was performed under the supervision and with the participation of the Company's senior management, including the Chief Executive Officer (principal executive officer) and Chief Financial Officer (principal financial officer), of the effectiveness of the design and operation of the Company's disclosure controls and procedures to provide reasonable assurance of achieving the desired objectives of the disclosure controls and procedures. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 31, 2023.

**Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company and all related information appearing in our Annual Report on Form 10-K. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes those policies and procedures that:

1. pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
2. provide reasonable assurance that the transactions are recorded as necessary to permit preparation of consolidated financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with the authorization of management and/or of our Board of Directors; and
3. provide reasonable assurance regarding the prevention or timely detection of any unauthorized acquisition, use or disposition of our assets that could have a material effect on our consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness in 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. Our management (with the participation of our Chief Executive Officer and our Chief Financial Officer) conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2023 using the criteria established in Internal Control — 2013 Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, our management has concluded that our internal control over financial reporting was effective as of December 31, 2023.

This annual report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report is not subject to attestation by our registered, public accounting firm pursuant to the rules of the Securities and Exchange Commission that permit us to provide only management's report in this annual report.

**Changes in Internal Control over Financial Reporting**

During the quarter ended December 31, 2023, there were no changes to our internal control over financial reporting that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting, except as disclosed above.

**Item 9B. Other Information**

Rule 10b5-1 Trading Plans

During the three months ended December 31, 2023, no director or executive officer adopted, modified or terminated a "10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement", as each term is defined in Item 408(a) of Regulation S-K.

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

Not applicable.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this item is hereby incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders, which proxy statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after December 31, 2023.

We have adopted a Code of Business Conduct and Ethics, including provisions enumerated in Item 406 of Regulation S-K (the "finance code of ethics"). The finance code of ethics is publicly available in the Code of Business Conduct and Ethics on the Governance Documents section of our website, which may be accessed from our homepage at [www.audioeye.com](http://www.audioeye.com). If we make any substantive amendments to the finance code of ethics or grant any waiver, including any implicit waiver, from a provision of the code to our Chief Executive Officer, Chief Financial Officer, or Corporate Controller, we will disclose the nature of that amendment or that waiver in the Governance Documents section of our website.

**Item 11. Executive Compensation**

The information required by this item is hereby incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders, which proxy statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after December 31, 2023.

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

The information required by this item is hereby incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders, which proxy statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after December 31, 2023.

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

The information required by this item is hereby incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders, which proxy statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after December 31, 2023.

**Item 14. Principal Accounting Fees and Services**

The information required by this item is hereby incorporated by reference to the definitive proxy statement for our 2024 Annual Meeting of Stockholders, which proxy statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after December 31, 2023.

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules**

a) The following documents are filed as part of this report:

- (1) Financial Statements — See Index to Financial Statements on page F-1 below and the financial pages that follow.
- (2) Financial Statements Schedules — As a "smaller reporting company," as defined by Item 10 of Regulation S-K, we are not required to provide this information.
- (3) Exhibits — The following exhibits are either filed herewith or have previously been filed with the Securities and Exchange Commission and are referred to and incorporated herein by reference to such filings:

Exhibit No.	Description	Incorporation by Reference		
		Form	Date of Filing	Exhibit No. Filed Herewith
3.1	<a href="#">Restated Certificate of Incorporation of AudioEye, Inc., dated as of August 8, 2022</a>	10-Q	August 9, 2022	3.1
3.2	<a href="#">Certificate of Elimination of the Series A Convertible Preferred Stock, dated as of August 8, 2022</a>	10-Q	August 9, 2022	3.4
3.3	<a href="#">By-Laws of AudioEye, Inc. (as amended as of March 24, 2023)</a>	8-K	March 28, 2023	3.1
4.1	<a href="#">Description of Registered Securities</a>			X
4.2	<a href="#">Form of Senior Indenture</a>	S-3	February 7, 2024	4.2
4.3	<a href="#">Form of Subordinated Indenture</a>	S-3	February 7, 2024	4.3
10.1*	<a href="#">AudioEye, Inc. 2012 Incentive Compensation Plan effective December 19, 2012</a>	S-1/A	January 11, 2013	10.13
10.2*	<a href="#">AudioEye, Inc. 2013 Incentive Compensation Plan effective August 20, 2013</a>	S-8	August 28, 2013	4.2
10.3*	<a href="#">AudioEye, Inc. 2014 Incentive Compensation Plan effective January 27, 2014</a>	S-1/A	February 4, 2014	10.20
10.4*	<a href="#">AudioEye, Inc. 2015 Incentive Compensation Plan effective September 5, 2014</a>	10-Q	November 7, 2014	10.1
10.5*	<a href="#">AudioEye, Inc. 2016 Incentive Compensation Plan effective December 17, 2015</a>	10-K	March 27, 2019	10.13
10.6*	<a href="#">Form of Restricted Stock Unit Award Agreements for grants under the AudioEye, Inc. 2012, 2013, 2014, 2015 and 2016 Incentive Compensation Plans</a>	10-K	March 27, 2019	10.30
10.7*	<a href="#">Form of Performance Option Agreement for grants under the AudioEye, Inc. 2012, 2013, 2014, 2015 and 2016 Incentive Compensation Plans</a>	10-K	March 27, 2019	10.31



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10.8*	<a href="#">Form of Stock Option Agreement for grants under the AudioEye, Inc. 2012, 2013, 2014, 2015 and 2016 Incentive Compensation Plans</a>	10-K	March 27, 2019	10.32
10.9*	<a href="#">AudioEye, Inc. 2019 Equity Incentive Plan (as amended and restated on May 18, 2020)</a>	10-Q	August 13, 2020	10.1
10.10*	<a href="#">AudioEye, Inc. 2019 Equity Incentive Plan – Form of Incentive Stock Option Agreement</a>	8-K	May 14, 2019	10.3
10.11*	<a href="#">AudioEye, Inc. 2019 Equity Incentive Plan – Form of Nonqualified Stock Option Agreement</a>	8-K	May 14, 2019	10.4
10.12*	<a href="#">AudioEye, Inc. 2019 Equity Incentive Plan – Form of Restricted Stock Unit Agreement</a>	8-K	May 14, 2019	10.5
10.13*	<a href="#">AudioEye, Inc. 2020 Equity Incentive Plan, as amended through May 20, 2022</a>	8-K	May 24, 2022	10.1
10.14*	<a href="#">Form of Restricted Stock Unit Award Agreement (Time-Based) under the AudioEye, Inc. 2020 Equity Incentive Plan</a>	8-K	December 10, 2020	10.2
10.15*	<a href="#">Form of Restricted Stock Unit Award Agreement (Non-Employee Director Awards) under the AudioEye, Inc. 2020 Equity Incentive Plan</a>	8-K	December 10, 2020	10.3
10.16*	<a href="#">Form of Performance Stock Unit Award Agreement (Performance-Based) under the AudioEye, Inc. 2020 Equity Incentive Plan</a>	8-K	December 10, 2020	10.4
10.17*	<a href="#">Form of Incentive Stock Option Award Agreement under the AudioEye, Inc. 2020 Equity Incentive Plan</a>	8-K	December 10, 2020	10.5
10.18*	<a href="#">Form of Non-Qualified Stock Option Award Agreement under the AudioEye, Inc. 2020 Equity Incentive Plan</a>	8-K	December 10, 2020	10.6
10.19*	<a href="#">Form of Other Stock-Based Award Agreement under the AudioEye, Inc. 2020 Equity Incentive Plan</a>	8-K	December 10, 2020	10.7
10.20*	<a href="#">AudioEye, Inc. Employee Stock Purchase Plan</a>	8-K	May 24, 2022	10.2
10.21*	<a href="#">Executive Employment Agreement dated July 1, 2015 between Dr. Carr Bettis and AudioEye, Inc.</a>	8-K	July 8, 2015	10.1
10.22*	<a href="#">Amendment to Executive Employment Agreement dated May 18, 2021 between Dr. Carr Bettis and AudioEye, Inc.</a>	10-Q	August 11, 2021	10.1
10.23*	<a href="#">Second Amendment to Executive Employment Agreement by and between AudioEye, Inc. and Carr Bettis, dated March 25, 2023</a>	8-K	March 28, 2023	10.1
10.24*	<a href="#">Amended and Restated Employment Agreement by and between AudioEye, Inc. and David Moradi, dated April 5, 2022</a>	8-K	April 8, 2022	10.1

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10.25*	<a href="#">Amendment dated December 26, 2023 to the Amended and Restated Employment Agreement by and between AudioEye, Inc. and David Moradi, dated April 5, 2022</a>	8-K	December 28, 2023	10.1	
10.26*	<a href="#">Notice of Award of Performance Shares to David Moradi dated August 20, 2020 under the AudioEye, Inc. 2019 Equity Incentive Plan</a>	8-K	August 24, 2020	10.2	
10.27*	<a href="#">Performance Stock Unit Agreement, dated March 11, 2021 between the Company and David Moradi</a>	8-K	March 15, 2021	10.1	
10.28*	<a href="#">Executive Employment Agreement, dated June 10, 2021, between the Company and Kelly Georgevich</a>	8-K	June 23, 2021	10.1	
10.29	<a href="#">Loan and Security Agreement, dated as of November 30, 2023, by and between AudioEye, Inc., Springtime, Inc. and SG Credit Partners, Inc.</a>				X
10.30	<a href="#">Form of Securities Purchase Agreement by and between AudioEye, Inc. and each Purchaser dated August 6, 2018</a>	8-K	August 7, 2018	10.1	
10.31	<a href="#">Schedule of Certain Parties to Securities Purchase Agreements and Registration Rights Agreements dated as of August 6, 2018</a>	10-K	March 27, 2019	10.35	
10.32	<a href="#">Stock Purchase Agreement dated as of March 9, 2022, by and between AudioEye, Inc., Mark Shapiro, Kim Testa, Garry Harstad, Ken Berquist and Betaspring Fund 100, LLC, and Mark Shapiro, as Sellers' Representative</a>	8-K	March 11, 2022	10.1	
10.33*	<a href="#">Form of AudioEye, Inc. Indemnification Agreement (Directors and Executive Officers)</a>	8-K	December 16, 2019	10.1	
10.34*	<a href="#">Transition and Separation Agreement effective as of August 18, 2023 between the Company and Dominic Varacalli</a>	8-K	August 21, 2023	10.1	
10.35*	<a href="#">Consulting Agreement effective as of September 30, 2023 between the Company and Dominic Varacalli</a>	8-K	August 21, 2023	10.2	
14.1	<a href="#">Code of Business Conduct and Ethics</a>	10-K	March 27, 2019	14.1	
23.1	<a href="#">Consent of MaloneBailey LLP, Independent Registered Public Accounting Firm</a>				X
24.1	<a href="#">Power of Attorney (included in signature page)</a>				X
31.1	<a href="#">Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				X
31.2	<a href="#">Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				X
32.1	<a href="#">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</a>				X

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32.2	<a href="#">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</a>	X
97	<a href="#">AudioEye, Inc. Compensation Recovery Policy</a>	X
101.INS	XBRL Instance Document	
101.SCH	XBRL Taxonomy Extension Schema Document	X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	X
104	Cover Page Interactive Data File - The cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	
	*Constitutes a management contract or compensatory plan or arrangement.	

**Item 16. Form 10-K Summary**

None.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on the 7<sup>th</sup> day of March, 2024.

**AUDIOEYE, INC.**

By: /s/ David Moradi  
David Moradi  
Principal Executive Officer

By: /s/ Kelly Georgevich  
Kelly Georgevich  
Principal Financial and Accounting Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Dr. Carr Bettis, David Moradi and Kelly Georgevich, or either of them, his attorney-in-fact, with the power of substitution, for him in any and all capacities, to sign any amendments to this Annual Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or his substitute or substitutes, may do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ David Moradi</u> David Moradi	Chief Executive Officer, Director (Principal Executive Officer)	March 7, 2024
<u>/s/ Kelly Georgevich</u> Kelly Georgevich	Chief Financial Officer (Principal Financial and Accounting Officer)	March 7, 2024
<u>/s/ Dr. Carr Bettis</u> Dr. Carr Bettis	Executive Chairman, Director	March 7, 2024
<u>/s/ Anthony Coelho</u> Anthony Coelho	Director	March 7, 2024
<u>/s/ Jamil Tahir</u> Jamil Tahir	Director	March 7, 2024
<u>/s/ Dr. Katherine Fleming</u> Dr. Katherine Fleming	Director	March 7, 2024

ITEM 8 – FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

AUDIOEYE, INC.

CONSOLIDATED FINANCIAL STATEMENTS

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<a href="#">Consolidated Statements of Stockholders' Equity for the years ended December 31, 2023 and 2022</a>	F-5
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2023 and 2022</a>	F-6
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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and Board of Directors of  
AudioEye, Inc.

***Opinion on the Financial Statements***

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

***Basis for Opinion***

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

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

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

***Critical Audit Matters***

Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ MaloneBailey, LLP  
www.malonebailey.com  
We have served as the Company's auditor since 2011.  
Houston, Texas  
March 7, 2024

**AUDIOEYE, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**DECEMBER 31, 2023 AND 2022**

(in thousands, except per share data)	December 31, 2023	December 31, 2022
<b>ASSETS</b>		
Current assets:		
Cash	\$ 9,236	\$ 6,904
Accounts receivable, net of allowance for doubtful accounts of \$496 and \$468, respectively	4,828	5,418
Prepaid expenses and other current assets	712	644
Total current assets	<u>14,776</u>	<u>12,966</u>
Property and equipment, net of accumulated depreciation of \$251 and \$254, respectively	218	161
Right of use assets	611	1,154
Intangible assets, net of accumulated amortization of \$7,423 and \$5,978, respectively	5,783	6,041
Goodwill	4,001	4,001
Other	106	105
Total assets	<u>\$ 25,495</u>	<u>\$ 24,428</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 2,339	\$ 2,452
Operating lease liabilities	312	468
Finance lease liabilities	7	38
Deferred revenue	6,472	7,125
Contingent consideration	2,399	979
Total current liabilities	<u>11,529</u>	<u>11,062</u>
Long term liabilities:		
Term loan, net	6,727	—
Operating lease liabilities	417	745
Finance lease liabilities	—	7
Deferred revenue	10	73
Contingent consideration, long term	—	1,952
Other	105	—
Total liabilities	<u>18,788</u>	<u>13,839</u>
Stockholders' equity:		
Preferred stock, \$0.00001 par value, 10,000 shares authorized		
Common stock, \$0.00001 par value, 50,000 shares authorized, 11,711 and 11,551 shares issued and outstanding as of December 31, 2023 and 2022, respectively	1	1
Additional paid-in capital	96,182	93,070
Accumulated deficit	(89,476)	(82,482)
Total stockholders' equity	<u>6,707</u>	<u>10,589</u>
Total liabilities and stockholders' equity	<u>\$ 25,495</u>	<u>\$ 24,428</u>

See Notes to Consolidated Financial Statements

**AUDIOEYE, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

(in thousands, except per share data)	Year ended December 31,	
	2023	2022
Revenue	\$ 31,316	\$ 29,913
Cost of revenue	6,974	7,219
Gross profit	24,342	22,694
Operating expenses:		
Selling and marketing	11,781	13,657
Research and development	6,989	6,085
General and administrative	11,537	13,381
Total operating expenses	30,307	33,123
Operating loss	(5,965)	(10,429)
Interest income (expense), net	93	(4)
Net loss	\$ (5,872)	\$ (10,433)
Net loss per common share-basic and diluted	(0.50)	(0.91)
Weighted average common shares outstanding-basic and diluted	11,766	11,477

See Notes to Consolidated Financial Statements



**AUDIOEYE, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**TWO YEARS ENDED DECEMBER 31, 2023**

(in thousands)	Common stock		Preferred stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
Balance, December 31, 2021	11,435	\$ 1	—	\$ —	\$ 88,889	\$ (71,293)	\$ 17,597
Common stock issued upon settlement of restricted stock units	285	—	—	—	—	—	—
Issuance of common stock for services	43	—	—	—	—	—	—
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(73)	—	—	—	(385)	—	(385)
Common stock repurchased for retirement	(139)	—	—	—	—	(756)	(756)
Stock-based compensation	—	—	—	—	4,566	—	4,566
Net loss	—	—	—	—	—	(10,433)	(10,433)
Balance, December 31, 2022	<u>11,551</u>	<u>\$ 1</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 93,070</u>	<u>\$ (82,482)</u>	<u>\$ 10,589</u>
Common stock issued upon settlement of restricted stock units	483	—	—	—	—	—	—
Issuance of common stock for services	41	—	—	—	—	—	—
Common stock issued pursuant to employee stock purchase plan	15	—	—	—	67	—	67
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(131)	—	—	—	(653)	—	(653)
Common stock repurchased for retirement	(248)	—	—	—	—	(1,122)	(1,122)
Stock-based compensation	—	—	—	—	3,698	—	3,698
Net loss	—	—	—	—	—	(5,872)	(5,872)
Balance, December 31, 2023	<u>11,711</u>	<u>\$ 1</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 96,182</u>	<u>\$ (89,476)</u>	<u>\$ 6,707</u>

See Notes to Consolidated Financial Statements

**AUDIOEYE, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in thousands)	Year ended December 31,	
	2023	2022
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net loss	\$ (5,872)	\$ (10,433)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	2,268	2,111
Loss on disposal or impairment of long-lived assets	235	51
Stock-based compensation expense	3,698	4,566
Amortization of deferred commissions	60	113
Amortization of debt discount and issuance costs	8	—
Amortization of right-of-use assets	358	556
Change in fair value of contingent consideration	442	346
Provision for accounts receivable	61	356
Changes in operating assets and liabilities:		
Accounts receivable and unbilled receivables	529	(26)
Prepaid expenses and other assets	(119)	(151)
Accounts payable and accruals	(190)	(1,045)
Operating lease liability	(444)	(528)
Deferred revenue	(716)	(915)
Net cash provided by (used in) operating activities	318	(4,999)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of equipment	(171)	(72)
Software development costs	(1,946)	(1,160)
Patent costs	(39)	(17)
Payment for acquisition	—	(4,484)
Net cash used in investing activities	(2,156)	(5,733)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from term loan, net of lender fees	6,895	—
Payments for costs directly attributable to the issuance of term loan	(71)	—
Repurchase of common stock	(1,122)	(756)
Proceeds from employee stock purchase plan	67	—
Settlement of contingent consideration	(908)	(132)
Payments related to settlement of employee stock-based awards	(653)	(385)
Repayments of finance leases	(38)	(57)
Net cash provided by (used in) financing activities	4,170	(1,330)
Net increase (decrease) in cash and cash equivalents	2,332	(12,062)
Cash and cash equivalents-beginning of period	6,904	18,966
Cash and cash equivalents-end of period	\$ 9,236	\$ 6,904
<b>SUPPLEMENTAL CASH FLOW DISCLOSURES</b>		
Interest paid	\$ 4	\$ 4
Income taxes paid	—	8
Non-cash investing and financing activities:		
Purchases of property and equipment included in accounts payable	15	3
Reduction in right-of-use asset in connection with a partial lease termination	38	—
Reduction in lease liability in connection with a partial lease termination	40	—
Debt discount included in long term liabilities	105	—
Right-of-use assets and operating lease obligations recognized during the year	—	876
Contingent consideration recorded in connection with acquisition	—	2,585

See Notes to Consolidated Financial Statements

**AUDIOEYE, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023 AND 2022**

**NOTE 1 — ORGANIZATION AND DESCRIPTION OF BUSINESS**

AudioEye, Inc. and its wholly-owned subsidiary, Springtime, Inc. ("we", "us", "our", "AudioEye" or the "Company") operates in one segment as a provider of patented, Internet content publication and distribution software and related services that enables conversion of digital content into accessible formats and allows for real time distribution to end users on any Internet connected device. The Company's focus is to create more comprehensive access to Internet, and other media to all people regardless of their device, location, or disabilities.

Our common stock is listed on The Nasdaq Capital Market under the symbol "AEYE" since September 4, 2018. Prior to September 4, 2018, our common stock was listed on the OTCQB and the OTC Bulletin Board since April 15, 2013 under the same symbol.

**NOTE 2 — SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**

This summary of significant accounting policies is presented to assist in understanding the Company's consolidated financial statements. These accounting policies conform to accounting principles generally accepted in the United States of America ("U.S. GAAP") and have been consistently applied in the preparation of the consolidated financial statements. The Company has a fiscal year ending on December 31.

All amounts in the consolidated financial statements, notes and tables have been rounded to the nearest thousand dollars, except share and per share amounts, unless otherwise indicated.

**Use of Estimates**

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses, and the related disclosures at the date of the consolidated financial statements and during the reporting period. On an ongoing basis, management evaluates its estimates and judgments, including those related to stock-based compensation, allowance for doubtful accounts, and intangible assets. Actual results may differ from these estimates.

**Revenue Recognition**

We derive our revenue primarily from the sale of internally-developed software by a software-as-a-service ("SaaS") delivery model, as well as from professional services, through our direct sales force or through third-party resellers. Our SaaS fees include support and maintenance.

We recognize revenue in accordance with Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers* ("ASC 606"). The core principle of ASC 606 is that an entity recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

We determine revenue recognition through the following five steps:

- Identify the contract with the customer;
- Identify the performance obligations in the contract;
- Determine the transaction price;
- Allocate the transaction price to the performance obligations in the contract; and
- Recognize revenue when, or as, the performance obligations are satisfied.

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Performance obligations are the unit of accounting for revenue recognition and generally represent the distinct goods or services that are promised to the customer. If we determine that we have not satisfied a performance obligation, we will defer recognition of the revenue until the performance obligation is deemed to be satisfied. SaaS agreements are generally non-cancelable, although clients typically have the right to terminate their contracts for cause if we fail to perform material obligations.

Our SaaS revenue is comprised of fixed subscription fees from customer accounts on our platform. Our support revenue is comprised of subscription fees for customers which are not on our SaaS platform but receive other customer support services. SaaS and support (also referred to as "subscription") revenue is recognized on a ratable basis over the contractual subscription term of the arrangement beginning on the date that our service is made available to the customer. Certain SaaS and support fees are invoiced in advance on an annual, semi-annual, or quarterly basis. Any funds received for services not provided yet are held in deferred revenue and are recorded as revenue when the related performance obligations have been satisfied.

Non-subscription revenue consists primarily of PDF remediation, and Website and Mobile App report services, and is recognized upon delivery. Consideration payable under PDF remediation arrangements is based on usage. Consideration payable under Website and Mobile App report services arrangements is based on fixed fees.

The following table presents our revenues disaggregated by sales channel:

(in thousands)	Year ended December 31,	
	2023	2022
Partner and Marketplace	\$ 18,027	\$ 15,972
Enterprise	13,289	13,941
Total revenues	<u>\$ 31,316</u>	<u>\$ 29,913</u>

The Company records accounts receivable for amounts invoiced to customers for which the Company has an unconditional right to consideration as provided under the contractual arrangement. Deferred revenue includes payments received in advance of performance under the contract and is reported on an individual contract basis at the end of each reporting period. Deferred revenue is classified as current or noncurrent based on the timing of when we expect to recognize revenue.

The table below summarizes our deferred revenue as of December 31, 2023 and 2022:

(in thousands)	As of December 31,	
	2023	2022
Deferred revenue - current	\$ 6,472	\$ 7,125
Deferred revenue - noncurrent	10	73
Total deferred revenue	<u>\$ 6,482</u>	<u>\$ 7,198</u>

In the year ended December 31, 2023 we recognized \$7,100,000, or 99%, in revenue from deferred revenue outstanding as of December 31, 2022.

We had one major customer (including the customer's affiliates reflecting multiple contracts and a partnership with the Company) which accounted for approximately 17% of our revenue in each of the years ended December 31, 2023 and 2022.

One customer represented 16% and 22%, respectively, of total accounts receivable as of December 31, 2023 and 2022.

#### Deferred Costs (Contract acquisition costs)

We capitalize initial and renewal sales commissions in the period the commission is earned, which generally occurs when a customer contract is obtained, and amortize deferred commission costs on a straight-line basis over the expected period of benefit, which we have deemed to be the contract term. As a practical expedient, we expense sales commissions as incurred when the amortization period of related deferred commission costs would have been one year or less.

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The table below summarizes the deferred commission costs as of December 31, 2023 and 2022:

(in thousands)	As of December 31,	
	2023	2022
Deferred costs – current	\$ 20	\$ 49
Deferred costs - noncurrent	2	12
Total deferred costs	<u>\$ 22</u>	<u>\$ 61</u>

Amortization expense associated with sales commissions was included in selling and marketing expenses on the statements of operations and totaled \$60,000 and \$113,000 for the years ended December 31, 2023 and 2022, respectively.

#### Cost of Revenue

Cost of revenue consists primarily of employee-related costs, including payroll, benefits and stock-based compensation expense for our technology operations and customer experience teams, fees paid to our managed hosting providers and other third-party service providers, amortization of capitalized software development costs and acquired technology, and allocated overhead costs.

#### Cash and Cash Equivalents

The Company considers cash and any short-term, highly liquid investments with maturities of three months or less as cash and cash equivalents.

#### Allowance for Doubtful Accounts

The Company adjusts accounts receivable down to net realizable value with its allowance methodology. In determining the allowance for doubtful accounts for estimated losses, aged receivables are analyzed periodically by management. Each identified receivable is reviewed based upon historical collection experience, financial condition of the client and the status of any open or unresolved issues with the client preventing the payment thereof. Corrective action, if necessary, is taken by the Company to resolve open issues related to unpaid receivables. The allowance for doubtful accounts was \$496,000 and \$468,000 at December 31, 2023 and 2022, respectively. The Company believes that its reserve is adequate, however results may differ in future periods. For the years ended December 31, 2023 and 2022, bad debt expense totaled \$61,000 and \$356,000, respectively.

#### Property and Equipment

Property and equipment includes office and computer equipment. Property and equipment are carried at the cost of acquisition and depreciated using the straight-line method over their estimated useful lives, which typically is 3 years. Costs associated with repairs and maintenance are expensed as incurred. Upon disposition of property and equipment, the cost and the related accumulated depreciation associated with the disposed asset are removed from the accounts and any gain or loss on disposition is included in the results of operations in the year of disposal.

Property and equipment acquired in the years ended December 31, 2023 and 2022 totaled \$183,000 and \$64,000, respectively. Depreciation expense was \$98,000 and \$86,000 for the years ended December 31, 2023 and 2022, respectively.

#### Capitalized Software Development Costs

In accordance with ASC 350-40, the Company capitalizes certain computer software and software development costs incurred in connection with developing or obtaining computer software for internal use when both the preliminary project stage is completed, and it is probable that the software will be used as intended, until the software is available for general release. Capitalized software costs include (i) external direct costs of developing or obtaining computer software, and (ii) compensation and related benefits for employees who are directly associated with the software project.

Capitalized software costs are included in intangible assets on our consolidated balance sheet and amortized on a straight-line basis when placed into service over the estimated useful lives of the software, which is typically three years. Amortization expense is included in cost of revenue on the statements of operations and totaled \$1,510,000 and \$1,201,000 for the years ended December 31, 2023 and

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2022, respectively. The Company reviews the carrying value for impairment whenever facts and circumstances exist that would suggest that assets might be impaired or that the useful lives should be modified. Refer to Note 4 – Intangible Assets for additional information regarding our Capitalized Software Development Costs.

**Patents**

We capitalize patent application costs, including registration, documentation, and other legal fees associated with the application, which are incurred through the months the patent application is filed. Costs associated with provisional application filings are expensed as incurred. Costs incurred to renew or extend the term of recognized intangible assets, including patent annuities and fees, and costs incurred in prosecuting alleged infringements of our patents are expensed as incurred. Patents are included in intangible assets on our consolidated balance sheet.

We amortize capitalized patent costs on a straight-line basis over their estimated useful lives, which is generally 5 years, beginning with the date the patents are issued. We evaluate the capitalized costs for impairment and write off the carrying value of abandoned patents or patent applications. We also write off capitalized costs associated to patents not granted. Refer to Note 4 – Intangible Assets for additional information regarding our patents.

**Goodwill, Intangible Assets and Long-Lived Assets**

Goodwill is tested for impairment at least annually, and more frequently upon the occurrence of certain events that may indicate that the carrying value of goodwill may not be recoverable. Events or circumstances that could trigger an impairment test include, but are not limited to, a significant adverse change in the business climate or in legal factors, an adverse action or assessment by a regulator, a loss of key personnel, significant changes in the strategy for our overall business, significant negative industry or economic trends, significant underperformance relative to operating performance indicators, a significant decline in market capitalization and significant changes in competition. We complete our annual impairment test during the fourth quarter of each year, at the reporting unit level, which is at the company level since we operate in one single reporting segment.

Intangible assets with a finite life are amortized over their estimated useful lives.

We evaluate the need for an impairment charge relating to long-lived assets whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We consider the following to be some examples of indicators that may trigger an impairment review: (i) actual undiscounted cash flows significantly below historical or projected future undiscounted cash flows for the associated assets; (ii) significant changes in the manner or use of the assets or in our overall strategy with respect to the manner or use of the assets or changes in our overall business strategy; (iii) significant negative industry or economic trends; (iv) increased competitive pressures; and (v) a significant decline in our stock price for a sustained period of time.

Once we determine that a potential impairment indicator exists, we perform the test for recoverability by comparing the estimated future undiscounted cash flows associated with the intangible assets with the intangible asset's carrying amount. Where the carrying value of the intangible asset exceeds the future undiscounted cash flows associated with the intangible assets, it is determined that the value of those intangible assets cannot be recovered. For an intangible asset failing the recoverability test, an impairment charge is recorded for the difference between the carrying value and the estimated fair value. No impairment losses associated with goodwill or intangible assets were incurred during the years ended December 31, 2023 and 2022.

**Fair Value of Financial Instruments**

Fair value is an estimate of the exit price, representing the amount that would be received upon the sale of an asset or paid to transfer a liability in an orderly transaction between market participants (i.e., the exit price at the measurement date). Fair value measurements are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our view of market participant assumptions in the absence of observable market information. Assets and liabilities required to be measured at fair value are categorized based upon the level of judgment associated with the inputs used to measure their value in one of the following three categories:

Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities.

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Level 2: Inputs other than quoted market prices that are observable, either directly or indirectly, and reasonably available. Observable inputs reflect the assumptions market participants would use in pricing the asset or liability and are developed based on market data obtained from sources independent of the Company.

Level 3: Unobservable inputs reflect the assumptions that the Company develops based on available information about what market participants would use in valuing the asset or liability.

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate fair value based on the short-term maturity of these instruments.

The table below provides information on our assets and liabilities that are measured at fair value on a recurring basis:

(in thousands)	Fair Value	Fair Value Hierarchy
Contingent consideration (1), December 31, 2023	\$ 2,399	Level 3
Contingent consideration (2), December 31, 2022	\$ 2,931	Level 3

(1) Contingent consideration is a liability recorded in connection with the acquisition of the Bureau of Internet Accessibility Inc. ("BOIA") in the first quarter of 2022 (refer to Note 3 – Acquisitions for additional information on the BOIA acquisition). The fair value of the contingent consideration was determined by management based on revenues from BOIA's offering for 2022 and 2023. We made a \$974,000 payment towards the contingent consideration liability in 2023 and expect to settle the remaining liability in the second quarter of 2024.

(2) Contingent consideration is a liability recorded in connection with the acquisition of BOIA acquisition. The fair value of the contingent consideration was determined by management with the assistance of an independent third-party valuation specialist using the Monte-Carlo simulation.

#### Debt Discount and Debt Issuance Costs

Costs related to the issuance of debt due to the lender (debt discount) or to third parties (debt issuance costs) are capitalized and amortized to interest expense based on the effective interest method over the term of the related debt. Debt discount and debt issuance costs are presented on the Company's consolidated balance sheets as a direct deduction from the carrying amount of our term loan.

#### Business Combinations

The assets acquired, liabilities assumed and contingent consideration are recorded at their estimated fair value on the acquisition date with subsequent changes recognized in earnings. These estimates are inherently uncertain and are subject to refinement. Management develops estimates based on assumptions as a part of the purchase price allocation process to value the assets acquired and liabilities assumed as of the business combination date. As a result, the Company may recognize adjustments to provisional amounts of assets acquired or liabilities assumed in earnings in the reporting period in which the adjustments are determined.

Acquisition-related expenses primarily consist of legal, accounting, and other advisory fees associated and are recorded in the period in which they are incurred.

#### Stock-Based Compensation

The Company periodically issues options, restricted stock units ("RSUs"), and shares of its common stock, as compensation for services received from its employees, directors, and consultants. The fair value of the award is measured on the grant date. The fair value amount is then recognized as expense over the requisite vesting period during which services are required to be provided in exchange for the award. We recognize forfeitures as they occur. Stock-based compensation expense is recorded in the same expense classifications in the statements of operations as if such amounts were paid in cash.

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The fair value of options awards is measured on the grant date using a Black-Scholes option pricing model, which includes assumptions that are subjective and are generally derived from external data (such as risk-free rate of interest) and historical data (such as volatility factor, expected term, and forfeiture rates).

We estimate the fair value of restricted stock unit awards with time- or performance-based vesting using the value of our common stock on the grant date. We estimate the fair value of market-based restricted stock unit awards as of the grant date using the Monte Carlo simulation model.

We expense the compensation cost associated with time-based options and RSUs as the restriction period lapses, which is typically a one- to three-year service period with the Company. Compensation expense related to performance-based options and RSUs is recognized on a straight-line basis over the requisite service period, provided that it is probable that performance conditions will be achieved, with probability assessed on a quarterly basis and any changes in expectations recognized as an adjustment to earnings in the period of the change. Compensation cost is not recognized for service- and performance-based awards that do not vest because service or performance conditions are not satisfied, and any previously recognized compensation cost is reversed. Compensation costs related to awards with market conditions are recognized on a straight-line basis over the requisite service period regardless of whether the market condition is satisfied and is not reversed provided that the requisite service period derived from the Monte-Carlo simulation has been completed. If vesting occurs prior to the end of the requisite service period, expense is accelerated and fully recognized through the vesting date.

#### Earnings (Loss) Per Share ("EPS")

Basic EPS is calculated by dividing net income (loss) available to common stockholders by the weighted average number of shares of the Company's common stock outstanding during the period. Diluted EPS is calculated based on the net income (loss) available to common stockholders and the weighted average number of shares of common stock outstanding during the period, adjusted for the effects of all potential dilutive common stock issuances related to options and restricted stock. The dilutive effect of our stock-based awards is computed using the treasury stock method, which assumes all stock-based awards are exercised and the hypothetical proceeds from exercise are used to purchase common stock at the average market price during the period. The incremental shares (i.e., the difference between shares assumed to be issued versus purchased), to the extent they would have been dilutive, are included in the denominator of the diluted EPS calculation. However, when a net loss exists, no potential common stock equivalents are included in the computation of the diluted per-share amount because the computation would result in an anti-dilutive per-share amount.

Potentially dilutive securities outstanding as of December 31, 2023 and 2022, which were excluded from the computation of basic and diluted net loss per share for the years then ended, are as follows:

(in thousands)	December 31,	
	2023	2022
Options	112	156
Restricted stock units	1,707	1,803
Total	1,819	1,959

#### Stock Repurchases

In the fourth quarter of 2023, the Board of Directors of the Company approved a program to repurchase up to \$5 million of its outstanding shares of common stock through December 31, 2025. In the twelve months ended December 31, 2023, we used \$1.12 million of the program in repurchasing shares. As of December 31, 2023, we had \$3.88 million remaining for the repurchase of shares.

In the second quarter of 2022, the Board of Directors of the Company approved a program to repurchase up to \$3 million of its outstanding shares of common stock. In the twelve months ended December 31, 2023 and 2022, we used zero and \$0.8 million, respectively, of the program in repurchasing shares. In August 2023, the 2022 share repurchase program was terminated.

Shares repurchased by the Company are immediately retired. The Company made an accounting policy election to charge the excess of repurchase price over par value entirely to retained earnings.



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Employee Stock Purchase Plan

In May 2022, the stockholders of the Company approved the Company's Employee Stock Purchase Plan (the "ESPP"), which provides for the issuance of up to 500,000 shares of common stock. Eligible employees may elect to have a percentage of eligible compensation withheld to purchase shares of our common stock at the end of each purchase period. The Company expects each purchase period to be the six-month periods ending on June 30 or December 31 of each calendar year. The purchase price per share is expected to equal 85% of the fair market value of our common stock on the last trading day of the purchase period. Under the ESPP, a participant may not be granted rights to purchase more than \$25,000 worth of common stock for each calendar year and no participant may purchase more than 1,500 shares of our common stock (or such other number as the Compensation Committee may designate) on any one purchase date. As of December 31, 2023, 15,484 shares had been issued under the ESPP and 484,516 shares remained available under the plan.

Loss Contingencies

We are subject to the possibility of various loss contingencies arising in the normal course of business. In determining loss contingencies, we consider the likelihood of the loss or impairment of an asset and the incurrence of a liability, as well as our ability to reasonably estimate the amount of loss. An estimated loss contingency is accrued when it is probable that a liability has been incurred or an asset has been impaired and the amount of loss can be reasonably estimated. We regularly evaluate current information available to us to determine whether to accrue for a loss contingency and adjust any previous accrual.

Income Taxes

We use the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. These assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which the temporary differences are expected to reverse.

The Company has net operating loss carryforwards available to reduce future taxable income. Future tax benefits for these net operating loss carryforwards are recognized to the extent that realization of these benefits is considered more likely than not. To the extent that the Company will not realize a future tax benefit, a valuation allowance is established.

Recent Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-13, *Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which requires measurement and recognition of expected credit losses for financial assets held. The ASU is effective for annual periods beginning after December 15, 2022, including interim periods within those fiscal years. The Company adopted ASU 2016-13 effective January 1, 2023 and determined that the update applied to accounts receivable. The adoption did not have a material effect on our consolidated financial statements and did not significantly impact the Company's accounting policies or estimation methods related to the allowance for doubtful accounts.

In October 2021, the FASB issued ASU No. 2021-08, *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers (Topic 805)*. This ASU requires an acquirer in a business combination to recognize and measure contract assets and contract liabilities (deferred revenue) from acquired contracts using the revenue recognition guidance in Topic 606. At the acquisition date, the acquirer applies the revenue model as if it had originated the acquired contracts. The ASU is effective for annual periods beginning after December 15, 2022, including interim periods within those fiscal years, with early adoption permitted. Adoption of the ASU should be applied prospectively. The Company elected to early adopt ASU 2021-08 on a prospective basis during the first quarter of 2022. The adoption did not have a material effect on our consolidated financial statements.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires public entities, on an annual basis, to provide disclosure of specific categories in the rate reconciliation, as well as disclosure of income taxes paid disaggregated by jurisdiction. The ASU is effective for annual periods beginning after December 15, 2024, with early adoption permitted.

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**NOTE 3 — ACQUISITIONS**

Bureau of Internet Accessibility Inc.

On March 9, 2022, we entered into a Stock Purchase Agreement ("Purchase Agreement") to acquire all the outstanding equity interests of Bureau of Internet Accessibility Inc. ("BOIA"), a Delaware corporation which provides web accessibility services including audits, training, remediation and implementation support. The aggregate consideration for the purchase of BOIA was approximately \$7.5 million (at fair value), consisting of \$5.1 million cash payment at closing, \$0.2 million cash received in the third quarter of 2022 resulting from net working capital adjustments, and an estimated \$2.6 million in aggregate contingent consideration to be paid in cash following the one- and two-year anniversary of the closing date. Actual aggregate cash consideration is based on BOIA's revenues for 2022 and 2023 and may differ from estimated contingent consideration at acquisition.

We accounted for the acquisition of BOIA as business combination in accordance with FASBASC 805, "Business Combinations" ("ASC 805"). Accordingly, under the acquisition method of accounting, the purchase price was allocated to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date as follows:

(in thousands)	Balance at March 9, 2022
<b>Assets purchased:</b>	
Cash	\$ 398
Accounts receivable	437
Other assets	29
Customer relationships (1)	3,600
Internally-developed software (1)	700
Trade name (1)	50
Goodwill (2)	3,300
<b>Total assets purchased</b>	<b>8,514</b>
<b>Liabilities assumed:</b>	
Accounts payable and accrued liabilities	7
Deferred revenue	1,040
<b>Total liabilities assumed</b>	<b>1,047</b>
<b>Net assets acquired</b>	<b>7,467</b>
<b>Consideration:</b>	
Cash paid, net of proceeds from working capital adjustment	4,882
Contingent consideration liability (3)	2,585
<b>Total consideration</b>	<b>\$ 7,467</b>

- (1) Acquired intangible assets will be amortized on a straight-line basis over their estimated useful lives of 2 to 7 years. In the twelve months ended December 31, 2023, amortization expense associated with these acquired intangible assets totaled \$714,000.
- (2) Goodwill represents the excess of purchase price over the estimated fair value of net tangible and intangible assets acquired.
- (3) The fair value of the contingent consideration liability was determined using the Monte-Carlo simulation. The key assumptions used in the Monte-Carlo simulation were as follows: non-recurring and recurring revenue metrics for the earn-out periods, non-recurring revenue discount rate of 11.5%, recurring revenue discount rate of 10.5%, expected revenue volatility of 24.65%, risk-free rate of 1.58%, buyer specific discount rate of 9.0%, and discount periods of 1.01 year and 2.22 year.

For the twelve months ended December 31, 2023 and 2022, we recorded \$442,000 and \$346,000, respectively, in change in the fair value of contingent consideration, which is included in General and administrative in the accompanying Consolidated Statement of Operations. In the first quarter of 2023, we made a \$974,000 cash payment towards the contingent consideration liability. As of

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December 31, 2023, contingent consideration totaled \$2,399,000, which represents the estimated fair value of the second anniversary payment expected to be settled in the second quarter of 2024.

In the twelve months ended December 31, 2023 and 2022, the Company incurred zero and \$247,000, respectively, in transaction costs related to the acquisition of BOIA, which is included on our Consolidated Statement of Operations within General and administrative expenses.

*Pro Forma Financials*

The following unaudited pro forma results of operations for the year ended December 31, 2022 assumes BOIA had been acquired on January 1, 2022.

The pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the results of operations that would have been realized if the acquisition had been completed on January 1, 2022, nor does it purport to project the results of operations of the combined Company in future periods. The pro forma financial information does not give effect to any anticipated integration costs savings or expenses related to the acquired company.

(in thousands)	<b>Pro Forma Combined Financials (unaudited)</b>	
	<b>Year ended December 31, 2022</b>	
Revenue	\$	30,576
Net loss attributed to common shareholders		(9,688)

For purposes of the pro forma disclosures above, results for the year ended December 31, 2022 exclude \$247,000 in acquisition expense and \$346,000 in expense related to change in the fair value of contingent consideration.

**Square ADA LLC**

On December 28, 2021, the Company completed the acquisition of substantially all of the assets of Square ADA LLC ("Square ADA"), a provider of accessibility solution to websites built or hosted by Squarespace, Inc. The aggregate consideration for the purchase of Square ADA was \$185,000, consisting of (i) \$53,000 paid in cash upon closing, and (ii) \$132,000 in contingent consideration paid in cash in the second quarter of 2022.

**NOTE 4 — INTANGIBLE ASSETS**

Intangible assets as of December 31, 2023 and 2022 consisted of the following:

(in thousands)	<b>December 31,</b>	
	<b>2023</b>	<b>2022</b>
<b>Finite-lived assets:</b>		
Patents	\$ 3,899	\$ 3,860
Capitalized software development costs	5,657	4,324
Customer relationships	3,600	3,785
Trade name	50	50
Accumulated amortization	(7,423)	(5,978)
<b>Intangible assets, net</b>	<b>\$ 5,783</b>	<b>\$ 6,041</b>

As of December 31, 2023 and 2022, capitalized cost associated with pending patents totaled \$47,000 and 26,000, respectively.

For the year ended December 31, 2023, software development costs capitalized totaled \$1,946,000. For the year ended December 31, 2022, software development costs capitalized totaled \$1,160,000. In addition, we recorded \$700,000 in internally-developed software costs in connection with the BOIA acquisition.

In 2022, we recorded \$3,600,000 in customer relationships in connection with the acquisition of BOIA. We amortize our customer relationships on a straight-line basis over the estimated useful lives. Refer to Note 3 – Acquisitions for additional information on the

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BOIA acquisition. Refer to Note 2 – Significant Accounting Policies for additional information regarding our intangible assets, including specific information on our patents and capitalized software development costs.

The following table summarizes amortization expense associated with intangible assets for the fiscal years ended December 31, 2023 and 2022:

(in thousands)	Year ended December 31,	
	2023	2022
Patents	\$ 29	\$ 295
Capitalized software development costs	1,510	1,201
Customer relationships	606	509
Trade name	25	20
Total amortization expense	<u>\$ 2,170</u>	<u>\$ 2,025</u>

The weighted average remaining useful life of our finite-lived intangible assets (in years) as of December 31, 2023 are as follows:

Weighted average remaining amortization period (in years)	
Patents	3.6
Capitalized software development costs	2.2
Customer relationships	5.2
Trade name	0.2

For the years ended December 31, 2023 and 2022, loss on impairment of intangible assets totaled zero.

**NOTE 5 — LEASE LIABILITIES AND RIGHT OF USE ASSETS**

We determine whether an arrangement is a lease at inception. Right-of-use assets represent our right to use an underlying asset for the lease term, and lease liabilities represent our obligation to make lease payments arising from the lease.

**Finance Leases**

The Company has finance leases to purchase computer equipment. The amortization expense of the leased equipment is included in depreciation expense. As of December 31, 2023 and 2022, the Company's outstanding finance lease obligations totaled \$7,000 and \$45,000, respectively. The effective interest rate of the finance leases is estimated at 6.0% based on the implicit rate in the lease agreements.

The following summarizes the assets acquired under finance leases included in property and equipment, net of disposals:

(in thousands)	As of December 31,	
	2023	2022
Computer equipment	\$ 162	\$ 214
Less: accumulated depreciation	(156)	(172)
Assets acquired under finance leases, net	<u>\$ 6</u>	<u>\$ 42</u>

**Operating Leases**

Operating lease right-of-use assets and liabilities are recognized at commencement date based on the present value of lease payments over the expected lease term. Since our lease arrangements do not provide an implicit rate, we use our estimated incremental borrowing rate for the expected remaining lease term at commencement date in determining the present value of future lease payments. Operating lease expense is recognized on a straight-line basis over the lease term.

The Company has operating leases for office space in Tucson, Arizona, New York, New York, and Miami Beach, Florida. The lease for the principal office located in Tucson consists of approximately 627 square feet and ends in October 2024. The lease for the New York

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office, which consists of approximately 5,000 square feet, commenced in January 2022 and will expire in December 2026. Upon commencement of the New York lease, we recorded a right-of-use asset and corresponding operating lease liability of \$876,000.

In the second quarter of 2023, we terminated one of the leases for the Miami Beach office, reducing the leased space to approximately 2,000 square feet. The remaining lease will expire in May 2024. In connection with the early termination of this lease, the right-of-use asset and lease liability were reduced by \$38,000 and \$40,000, respectively.

In the first quarter of 2023, we closed our Marietta, Georgia office. As a result of abandoning the office space prior to its lease expiration in August 2024, we wrote off the associated right-of-use asset in full and recognized a \$146,000 loss on impairment, which is included in General and administrative in the accompanying Consolidated Statement of Operations. As of December 31, 2023, the lease liability related to the Marietta, GA office was \$79,000.

In addition, the Company entered into membership agreements to occupy shared office space in Lehi, Utah, Portland, Oregon, and Seattle, Washington. Because the membership agreements do not qualify as a lease under ASC 842, we expense the membership fees as they are incurred.

The Company made operating lease payments in the amount of \$520,000 and \$614,000 during the years ended December 31, 2023 and 2022, respectively.

The following summarizes the total lease liabilities and remaining future minimum lease payments at December 31, 2023 (in thousands):

Year ending December 31,	Finance Leases	Operating Leases	Total
2024	\$ 7	\$ 345	\$ 352
2025	—	219	219
2026	—	225	225
Total minimum lease payments	7	789	796
Less: present value discount	—	(60)	(60)
Total lease liabilities	\$ 7	\$ 729	\$ 736
Current portion of lease liabilities	\$ 7	\$ 312	\$ 319
Long term portion of lease liabilities	\$ —	\$ 417	\$ 417

The following summarizes expenses associated with our finance and operating leases for the years ended December 31, 2023 and 2022:

(in thousands)	Year ended December 31,	
	2023	2022
Finance lease expenses:		
Depreciation expense	\$ 31	\$ 52
Interest on lease liabilities	2	4
Total Finance lease expense	33	56
Operating lease expense	434	642
Short-term lease and related expenses	283	188
Total lease expenses	\$ 750	\$ 886

**AUDIOEYE, INC.**  
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The following table provides information about the remaining lease terms and discount rates applied as of December 31, 2023 and 2022:

	As of December 31,	
	2023	2022
Weighted average remaining lease term (years)		
Operating leases	2.58	3.12
Finance leases	0.35	1.17
Weighted average discount rate (%)		
Operating leases	6.00	6.00
Finance leases	6.00	6.00

**NOTE 6 — DEBT**

On November 30, 2023, the Company entered into a Loan and Security Agreement (the "Loan Agreement") with SG Credit Partners, Inc., a Delaware corporation (the "Lender"). The Loan Agreement provides for a \$7.0 million term loan, which is due and payable on the maturity date of November 30, 2026. The interest rate is 6.25% in excess of the base rate, which is defined as the greater of the prime rate and 7.00% per annum, payable in cash on a monthly basis. In the event of default under the Loan Agreement, the Company would be required to pay interest on principal and all other due and unpaid obligations at the current rate in effect plus 3.00%. The proceeds of the term loan may be used to repurchase shares of the Company's common stock, to fund the contingent consideration associated with the BOIA acquisition, and for working capital and general corporate purposes.

The term loan has a prepayment fee for payments made (i) on or before the 1st anniversary of the closing date equal to a make-whole amount plus 3% of the outstanding principal balance, (ii) after the 1st anniversary of the closing date but before the 2nd anniversary of the closing date equal to 2.00%, and (iii) after the 2nd anniversary of the closing date but before the maturity date equal to 1.00%. The Company paid a commitment fee equal to \$105,000 on the closing date and is required to pay an exit fee equal to \$105,000 upon the earlier of repayment in full of the obligations, the maturity date and the occurrence of a liquidity event. The commitment and exit fees payable to the lender were recorded as debt discount. The exit fee was included within long term liabilities on our consolidated balance sheet as of December 31, 2023. The Company also incurred \$71,000 in third-party expenses in connection with the term loan, which were recorded as debt issuance costs. Debt discount and debt issuance costs are presented as a direct deduction from the carrying amount of our term loan and are amortized to interest expense over the term of the loan using the effective interest method. In 2023, amortization of debt discount and debt issuance costs totaled \$6,000 and \$2,000, respectively.

The Loan Agreement secured by substantially all of our assets and contains certain customary financial covenants, including the requirements that the Company maintain (i) minimum liquidity of \$2.0 million (plus, prior to the payment in full of the contingent consideration associated with the BOIA acquisition, an amount equal to the greater of \$2.1 million or the expected amount of the contingent consideration) and (ii) minimum monthly recurring revenue levels measured on a trailing three month average basis as of the last day of each calendar month. The minimum monthly recurring revenue levels commence at \$2.3 million and increase for each month after the month ending November 30, 2024 to the greater of \$2.3 million and 105% of Borrowers' monthly recurring revenue for the applicable month in the prior year. The Company was in compliance with the applicable financial loan covenants at December 31, 2023.

As of December 31, 2023, outstanding principal balance of the term loan totaled \$7,000,000 and accrued interest thereon totaled \$89,000.

**NOTE 7 — COMMITMENTS AND CONTINGENCIES**

Membership agreement to occupy shared office space

The Company occupies shared office space in Lehi, UT, and Seattle, WA under membership agreements which end in August 2024 and January 2024, respectively. Fees due under these membership agreements are based on the number of contracted seats and the use of optional office services. As of December 31, 2023, minimum fees due under these shared office arrangements totaled \$179,000.

**AUDIOEYE, INC.**  
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Litigation

We may become involved in various routine disputes and allegations incidental to our business operations. While it is not possible to determine the ultimate disposition of these matters, management believes that the resolution of any such matters, should they arise, is not likely to have a material adverse effect on our financial position or results of operations.

**NOTE 8 — STOCK-BASED COMPENSATION**

On December 9, 2020, the 2020 Equity Incentive Plan (the "2020 Plan") was approved, replacing the 2019 Equity Incentive Plan. The 2020 Plan, as amended on May 20, 2022, provides for the issuance of up to 2,500,000 shares of the Company's common stock to the Company's employees, non-employee directors, consultants and advisors. Awards under the 2020 Plan can be granted in the form of stock options, stock appreciation rights, restricted stock, stock units, other stock-based awards and cash incentive awards. Outstanding awards issued under previous equity incentive plans will continue to be governed by their respective terms until exercised, expired or otherwise terminated or canceled, but no further equity awards will be made under those plans.

The following table summarizes the stock-based compensation expense recorded for the years ended December 31, 2023 and 2022:

(in thousands)	Year ended December 31,	
	2023	2022
Stock Options	\$ 157	\$ 403
RSUs	3,310	3,934
Unrestricted Shares of Common Stock	219	229
Employee stock purchase plan	12	—
Total	\$ 3,698	\$ 4,566

As of December 31, 2023, the outstanding unrecognized stock-based compensation expense related to stock options and restricted stock units ("RSUs") was \$5,000 and \$4,186,000, respectively, which may be recognized through December 2026, subject to achievement of service, performance, and market conditions.

Stock Options

Options granted under our equity incentive plans generally have terms of five years, and typically vest and become fully exercisable ratably over three years of continuous service to the Company from the date of grant.

The following table summarizes the stock option activity for the years ended December 31, 2023 and 2022:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Term	Exercisable	Intrinsic Value of Options
Outstanding at December 31, 2021	191,340	\$ 12.94	3.96	83,070	\$ 71,000
Forfeited/Expired	(35,286)	13.53			
Outstanding at December 31, 2022	156,054	\$ 12.81	3.01	108,460	\$ —
Forfeited/Expired	(43,775)	19.57			
Outstanding at December 31, 2023	112,279	\$ 10.17	1.98	110,570	\$ 13,262
Exercisable as of December 31, 2023	110,570	\$ 9.94	1.97		\$ 13,262

There were no options granted or exercised in 2023 and 2022.

Restricted Stock Units

We issue RSUs to employees, officers, directors, and consultants of the Company. The restrictions on time-based RSUs generally lapse over a one- to three-year term of continuous service from the date of grant.

**AUDIOEYE, INC.**  
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The following table summarizes the RSU activity for year ended December 31, 2023:

	Number of RSUs	Weighted Average Grant Date Fair Value	Vested	Unvested
Restricted stock units outstanding as of December 31, 2022	1,802,655	\$ 6.92	411,668	1,390,987
Granted	728,803	5.12		
Settled	(482,854)	6.59		
Forfeited/Canceled	(341,346)	5.28		
Restricted stock units outstanding at December 31, 2023	1,707,258	\$ 6.54	477,898	1,229,360

In the second quarter of 2022, we granted 400,000 time-based RSUs to our CEO, which will vest over four different dates through August 20, 2025, subject to his continued employment with the Company. For the year ended December 31, 2023 and 2022, we recorded \$370,000 and \$331,000, respectively, in stock-based compensation expense related to these time-based RSUs.

#### NOTE 9 — INCOME TAXES

For the years ended December 31, 2023 and 2022, federal and state income tax expense totaled zero.

The Company has net operating loss carryforwards available to reduce future taxable income. At December 31, 2023, the Company had U.S. federal net operating loss carry forwards of \$58,094,000, of which (i) \$25,202,000 expire at various dates through fiscal 2035, and (ii) \$32,892,000 were generated in or after 2018 and can be carried forward indefinitely but will only be able to offset up to 80% of taxable income in any given year. Future tax benefits for these net operating loss carryforwards are recognized to the extent that realization of these benefits is considered more likely than not. To the extent that the Company will not realize a future tax benefit, a valuation allowance is established.

At this time, the Company is unable to determine if it will be able to benefit from its deferred tax asset. There are limitations on the utilization of net operating loss carryforwards, including a requirement that losses be offset against future taxable income, if any. In addition, utilization of the U.S. federal and state NOL carryforwards may be subject to a substantial annual limitation under Sections 382 and 383 of the Internal Revenue Code, and corresponding provisions of state law, due to ownership changes that have occurred previously or that could occur in the future. These ownership changes may limit the amount of carryforwards that can be utilized annually to offset future taxable income or tax liabilities. In general, an ownership change, as defined by Section 382, results from transactions increasing the ownership of certain stockholders or public groups in the stock of a corporation by more than 50% over a three-year period. Accordingly, our net deferred tax asset was zero as of December 31, 2023 and 2022 as the Company established a full valuation allowance of \$19,544,000 and \$18,938,000, respectively.



**AUDIOEYE, INC.**  
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Significant components of our deferred tax assets and liabilities as of December 31, 2023 and 2022 consist of the following:

(in thousands)	December 31,	
	2023	2022
Deferred tax assets:		
Intangible assets	\$ —	\$ —
Bad debt expense	130	123
Accrued compensation expense	19	36
Deferred revenue and costs	2	223
Capitalized research and development costs	2,756	1,442
Stock-based compensation	2,598	2,523
Interest expense	—	1
Operating lease liability	192	331
State NOL carryforwards	2,630	3,085
Federal NOL carryforwards	12,200	12,155
State tax credit carryforwards	71	71
Federal tax credit carryforwards	57	57
Total Deferred Tax Assets	20,655	20,047
Valuation allowance	(19,544)	(18,938)
Net deferred tax assets	1,111	1,109
Deferred tax liabilities:		
Property and equipment	(439)	(141)
Intangible assets	(512)	(665)
Deferred revenue and costs	—	—
Right of use assets	(160)	(303)
Total deferred tax liabilities	(1,111)	(1,109)
Net deferred tax asset (liability)	\$ —	\$ —

The Company is subject to U.S. federal income tax as well as income taxes in multiple state and local jurisdictions. The Company has concluded all U.S. federal tax matters for years through December 31, 2019. All material state and local income tax matters have been concluded for years through December 31, 2018. The Company is no longer subject to IRS examination for the tax years ended on or before December 31, 2019; however, carryforward losses that were generated through the tax year ended December 31, 2019 may still be adjusted by the IRS if they are used in a future period. The Company had no reserve for uncertain tax positions as of December 31, 2023 and 2022.

**NOTE 10 — SUBSEQUENT EVENTS**

We have evaluated subsequent events occurring after December 31, 2023 and based on our evaluation we did not identify any events that would have required recognition or disclosure in these consolidated financial statements.

**DESCRIPTION OF THE REGISTRANT'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

The following summary describes the common stock, par value \$0.00001 per share, of AudioEye, Inc. (the "Company," "AudioEye," "we," "our," "us," and "our"), which are the only securities of the Company registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.

The following description is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to (i) our Restated Certificate of Incorporation (the "Certificate of Incorporation"), and (ii) our By-Laws, as amended ("By-Laws"), each of which are incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit 4.1 is a part. We encourage you to read our Certificate of Incorporation, our By-Laws and the applicable provisions of the Delaware General Corporation Law, which we sometimes refer to as Delaware law or the DGCL, for additional information.

**Authorized and Outstanding Capital Stock**

*Authorized Shares.* As of December 31, 2023, we were authorized to issue up to 60,000,000 shares of capital stock, par value \$0.00001 per share, divided into two classes designated, respectively, common stock and preferred stock. Of such shares authorized, 50,000,000 shares are designated as common stock, and 10,000,000 shares are designated as preferred stock.

**General**

*Voting Rights.* The holders of our common stock are entitled to one vote for each share of record on all matters to be voted on by stockholders. There is no cumulative voting with respect to the election of our directors or any other matter. Therefore, the holders of more than 50% of the shares voted for the election of those directors can elect all of the directors.

*Dividend Rights.* The holders of our common stock are entitled to receive dividends when, as and if declared by our board of directors from funds legally available therefore, subject to restrictions on such ability to pay dividends, if any, set forth in the relevant terms of any preferred stock as may then be outstanding. Cash dividends are at the sole discretion of our board of directors. Each holder of our common stock is entitled to a pro rata share of cash distributions made to stockholders, including dividend payments.

*Liquidation Rights.* In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining available for distribution to them after payment of our liabilities and after provision has been made for each class of stock, if any, having any preference in relation to our common stock.

*Other Rights and Preferences.* Holders of shares of our common stock have no conversion, preemptive or other subscription rights, and there are no redemption or sinking fund provisions applicable to our common stock. The holders of shares of our common stock are not subject to further calls or assessments by us.

**Anti-Takeover Provisions of Delaware Law and Our Charter Documents**

We are governed by the DGCL. Certain provisions of the DGCL and our Certificate of Incorporation and By-Laws could make more difficult our acquisition by means of a tender offer, a proxy contest or otherwise.

***Vacancies on Board of Directors***

Our Certificate of Incorporation provides that any newly created directorships resulting from any increase in the authorized number of directors or any vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause will be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the board.

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### ***Special Stockholder Meetings***

Under our Certificate of Incorporation and subject to the rights of holders of preferred stock, if any, only a majority of the members of the board of directors, the chairman of the board of directors or the chief executive officer or the president may call special meetings of stockholders. This provision will make it more difficult for stockholders to take action opposed by the board of directors.

### ***Advance Notice of Stockholder Business Proposals and Nominations***

Our By-Laws include an advance notice procedure for stockholder proposals to be brought before an annual meeting of stockholders, including proposed nominations of candidates for election to our board of directors. Nominations of persons for election to the board of directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Company's notice of meeting, (b) by or at the direction of the Board of Directors, or (c) by any stockholder of record of the Company who is entitled to vote at the meeting and who complies with the notice procedures set forth in the By-Laws.

In general, in order to be timely, the stockholder's written notice of nominations to be made or business to be brought at an annual meeting must be delivered to our Secretary at our principal executive offices not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the date of the preceding year's annual meeting. The notice must contain certain information concerning the nominees or the matters to be brought before the meeting and the stockholder submitting the proposal. In addition, to comply with the universal proxy rules, stockholders who intend to solicit proxies in support of director nominees other than the Company's nominees must provide notice that sets forth the information, and within the timeframe, required by Rule 14a-19 under the Securities Exchange Act of 1934, as amended.

These provisions could have the effect of delaying stockholder actions that may be favored by the holders of a majority of our outstanding voting capital stock until the next stockholder meeting, or may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempt to obtain control of the Company.

### ***Authorized but Unissued Shares***

Our authorized but unissued shares of common stock will be available for future issuance without stockholder approval. We may issue additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or otherwise.

The overall effect of the foregoing provisions may be to deter a future tender offer. Our stockholders might view such an offer to be in their best interest should the offer include a substantial premium over the market price of our common stock at that time. In addition, these provisions may have the effect of assisting our management to retain its position and place it in a better position to resist changes that the stockholders may want to make if dissatisfied with the conduct of our business.

### ***Business Combinations***

We are subject to Section 203 of the DGCL, which regulates corporate acquisitions. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder, unless:

- The board of directors approved the transaction in which the stockholder became an interested stockholder prior to the date the interested stockholder attained such status;
  - Upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholders owned at least 85% of the voting stock of the corporation outstanding at the
-

time the transaction commenced, excluding shares owned by persons who are directors and also officers and employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- The business combination is approved by a majority of the board of directors and by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

**Listing**

Our common stock is listed on the Nasdaq Capital Market under the symbol "AEYE."

**Transfer Agent and Registrar**

The transfer agent of our common stock is Equiniti Trust Company.

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## Execution

This Loan and Security Agreement ("Agreement"), dated as of November 30, 2023 (the "Closing Date"), is entered into by Borrowers and other Loan Parties whose names appear on the Loan Chart below and SG Credit Partners, Inc., a Delaware corporation ("Lender").

The following chart ("Loan Chart") sets forth certain of the loan and repayment terms under this Agreement:

<b>LOAN PARTIES</b>	NAME OF BORROWERS	AudioEye, Inc., a Delaware corporation (" <u>AudioEye</u> ") Springtime, Inc., a Delaware corporation (" <u>Springtime</u> ")
	ADDRESSES	5210 E. Williams Cir, Ste 750, Tucson, AZ 85711

<b>LOAN DETAILS</b>	LOAN AMOUNT	\$7,000,000
	COMMITMENT FEE	\$105,000
	NET DISBURSEMENT AMOUNT ON THE CLOSING DATE	\$6,895,000 minus reasonable, out-of-pocket and documented attorney's fees and other costs, fees and expenses of Lender in connection with the documentation and closing of the Loan.
	CASH INTEREST RATE	6.25% per annum in excess of the Base Rate

<b>PAYMENT SCHEDULE</b>	START DATE FOR PAYMENTS	December 1, 2023
	PAYMENT FREQUENCY	Monthly on the first Business Day of each month
	TERM	36 months
	PAYMENT SCHEDULE	(a) The first thirty-six (36) payments shall consist of accrued interest on the Loan only, and (b) all principal and other outstanding Obligations hereunder shall be due and payable on the Maturity Date.
	MATURITY DATE	The date that is 36 months following the Closing Date.

## RECITALS

WHEREAS, Borrowers desire to obtain a loan of money from Lender in the amount set forth in the above Loan Chart (the "Loan Chart") and Lender is willing to make the Loan, but only on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrowers hereby agree as follows:

### 1. LOAN

1.1 Loan. Lender agrees, subject to the terms, covenants and conditions of this Agreement, to make a term loan (the "Loan") to Borrowers equal to the Loan Amount set forth in the Loan Chart. On the Closing Date, subject to the satisfaction of the conditions to borrowing set forth on Addendum 3 hereto, Lender will make the Loan hereunder in the sum designated in the Loan Chart as the "Loan Amount." Lender shall make the Loan by funding the Net Disbursement Amount specified in the Loan Chart per written disbursement instructions between Borrowers and Lender prior to closing and retaining the Commitment Fee shown on the Loan Chart for its own Account.

1.2 Funding. Subject to the terms and conditions of this Agreement, the Loan shall be funded on the date of this Agreement.

### 2. PAYMENT TERMS

2.1 Repayment. Each Borrower shall repay the Loan by paying the outstanding principal amount of such Loan, together with all other outstanding Obligations, including, accrued and unpaid interest, all in accordance with the Loan Chart and subject to the additional terms set forth in this Agreement.

#### 2.2 Voluntary Prepayment.

(a) Borrowers shall be entitled to prepay all (and not less than all) of the outstanding Obligations without discount, at any time either before or after an Event of Default. Each such prepayment shall be subject to the Prepayment Fee (including the Make-Whole Amount component thereof, as applicable prior to the Make-Whole Date) in the amount specified Section 2.2(b) below.

(b) In the event that for any reason (including without limitation as a result of any voluntary prepayment of the Loan, any acceleration of the Loan resulting from an Event of Default, any foreclosure and sale of Collateral, or any sale of Collateral in any bankruptcy or insolvency proceeding), any principal amount of the Loan(s) is prepaid prior to the Maturity Date due hereunder, then, in addition to the amount of the Subject Principal Payment and all unpaid accrued interest and other amounts due thereon, Each Borrower immediately shall be required to jointly and severally pay to the Lender a prepayment fee (the "Prepayment Fee") (as liquidated damages and compensation for the cost of the Lender making the Loans) in an amount equal to the amount set forth in the Fee Letter based on the applicable date of such prepayment.

(c) Each Borrower acknowledges and agrees that (x) the provisions of this Section 2.2(b) shall remain in full force and effect notwithstanding any rescission by Lender of an acceleration with respect to all or any portion of the Obligations pursuant to Section 8.1 or otherwise, (y) payment of any Prepayment Fee under this paragraph constitutes liquidated damages and not a penalty and (z) the actual amount of damages to Lender or profits lost by Lender as a result of such early payment or termination would be impracticable and extremely difficult to ascertain, and the Prepayment Fee under this Section 2.2(b) is provided by mutual agreement of the Borrowers and Lender as a reasonable estimation and calculation of such lost profits or damages of the Borrowers and Lender. All such prepayments shall be applied to the outstanding payments set forth on the Payment Schedule in the Loan Chart in the inverse order of maturities thereof.

#### 2.3 Interest and Fees.

(a) Interest Rate. Each Borrower shall, jointly and severally, pay accrued interest ("Cash Interest") on the outstanding principal amount of each Loan at the Cash Interest Rate set forth in the Loan Chart.

(b) Default Rate (before and after the Maturity Date). Following the occurrence and during the continuance of an Event of Default, an additional interest charge of three percent (3%) per annum on the then outstanding Obligations shall be immediately due and owing.

(c) Fees. Borrowers shall jointly and severally pay Lender the fees set forth in the Fee Letter on the dates set forth therein, which fees are in addition to all fees and other sums payable by Borrowers or any other Person to Lender under this Agreement or under any other Loan Document, and, in each case are not refundable once paid.

(d) Computations. All computations of interest shall be calculated on the basis of a year of 360 days for the actual days elapsed.

2.4 Borrowers' Obligation to Pay Is Not Conditional on Amount of Funds in Borrowers' Designated Account. Borrowers' obligation to repay the Obligations are not dependent upon whether or not there are sufficient funds in Borrowers' Designated Account, nor are Borrowers' obligations to pay excused if Borrowers receive insufficient income to make any payment required under this Agreement. If, for any reason, there are insufficient funds in Borrowers' Designated Account or insufficient income to cover any payment due under this Agreement, or if for any reason Lender is unable to collect on an ACH request to Borrowers' Designated Account, each Borrower agrees to immediately make said payment by regular check, cashier's check, money order or by wire transfer as instructed by Lender. Borrower understands that payments made by any method other than that contemplated by the ACH Authorization may result in a delay in Lender's receipt of such payment and that Borrowers may incur a Late Fee if the payment is received late.

2.5 Protective Advances. Any contrary provision of this Agreement or any other Loan Document notwithstanding, Lender hereby is authorized by Borrowers, from time to time in Lender's sole discretion, but only after the occurrence and during the continuance of an Event of Default, to make advances to, or for the benefit of, Borrowers on behalf of Lender that Lender, in its sole discretion deems necessary or desirable (a) to preserve or protect the Collateral, or any portion thereof (any of the advances described in this Section 2.5 shall be referred to as "Protective Advances"). Each Protective Advance shall be deemed to be an additional Loan hereunder. The Protective Advances shall be repayable on demand, secured by the Collateral, and constitute Obligations hereunder. The provisions of this Section 2.5 are for the exclusive benefit of Lender and are not intended to benefit Borrowers in any way.

### 3. SECURITY INTEREST IN COLLATERAL

3.1 Grant of Security Interest. As security for the payment of the Loan, and all other Obligations, now existing or hereafter created, whether under the Loan Documents or otherwise, including the Guaranty, each Borrower and each Guarantor hereby unconditionally grants, assigns, and pledges to Lender a continuing security interest and Lien (the "Security Interest") in all personal property, tangible or intangible, of Borrowers or such Guarantor, as applicable, whether now owned or hereafter acquired or arising and wherever located, including each Borrower's and each Guarantor's right, title, and interest in and to the following, whether now owned or hereafter acquired or arising and wherever located: all accounts, all chattel paper, all commercial tort claims, all deposit accounts (including, without limitation, Borrowers' Designated Account), all documents, all general intangibles (including, without limitation, all payment intangibles, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which any Borrower or any Guarantor possesses, uses or has authority to possess or use property of others or others possess, use or have authority to possess or use property); all goods (including all equipment, fixtures and inventory), all investment property, securities and all other investment property; supporting obligations; any other contract rights or rights to the payment of money; insurance claims and proceeds; commercial tort claims; all money, all negotiable collateral, all instruments, all books and records, and all supporting obligations and proceeds arising from or relating to any of the foregoing (collectively, the "Collateral"). Notwithstanding anything to the contrary herein, Collateral shall not include any Excluded Assets.

3.2 Collateral Access Agreement.

(a) In the event that any Collateral is in the possession of one or more third Persons, or is located on any leased premises, the applicable Loan Party shall, upon Lender's request for locations where the book value of such Collateral exceeds \$250,000, use commercially reasonable efforts to promptly obtain a duly executed Collateral Access Agreement with respect to such location or premises.

(b) Cloud Based Storage. Upon the Lender's written request after the occurrence, and during the continuance of an Event of Default, except for access to personally identifiable information of the applicable Loan Party's customers or clients, and except to the extent prohibited by applicable law and/or governmental rules and regulations, the Loan Party shall promptly (but in no event later than five (5) Business Days) use commercially reasonable efforts to deliver to Lender fully-executed agreements, in form and substance reasonably satisfactory to the Lender, between such Loan Party, Lender and such Loan Party's vendors that provide off-site data storage, network hosting or management, shared application services or other "cloud-based" services to such Loan Party, which shall provide Lender with such access to such Loan Party's billing and accounts receivable records as Lender deems reasonably necessary or helpful in connection with Lender's audit and inspection rights under the Loan Documents and the collection or realization of or on the Collateral.

3.3 Control Agreements. Within 60 days after the Closing Date, Loan Parties shall use best efforts to deliver to Lender a duly executed control agreement in form and substance reasonably satisfactory to Lender with respect to all deposit accounts, other than with respect to any Excluded Accounts. After the Closing Date, promptly upon Lender's reasonable request from time to time, the Loan Parties shall deliver to Lender a duly executed control agreement in form and substance reasonably satisfactory to Lender with respect to all brokerage accounts, electronic chattel paper, investment property and letter of credit rights; provided, however, that on and after the date that is 60 days after the Closing Date, to the extent that there is more than \$3,000,000 in the aggregate held in any deposit account, securities account or other account of any Loan Party in which Lender has executed control agreements as of such date, the Loan Parties may have securities, brokerage or money market accounts without a control agreement.

3.4 Commercial Tort Claims. Each Corporate Loan Party shall promptly notify Lender of any commercial tort claims it may bring against any Person, including the name and address of each defendant, a summary of the facts, an estimate of damages, copies of any complaint or demand letter submitted by such Corporate Loan Party, and such other information as Lender may request, and in connection therewith, at Lender's reasonable request, the applicable Corporate Loan Party and Lender shall enter into an amendment to this Agreement granting a security interest to Lender in each such commercial tort claim to secure the Obligations.

3.5 Additional Documents. Each Loan Party shall execute from time to time, upon the request of Lender, such other agreements, instruments and documents as Lender may reasonably require to perfect or continue the Security Interest in the Collateral, or such other assets or property of such Loan Party as Lender may require.

3.6 Lender Appointed Attorney-In-Fact. Each Loan Party hereby irrevocably appoints Lender as such Loan Party's attorney-in-fact, with full authority in the place and stead of such Loan Party and in the name of such Loan Party following the occurrence of an Event of Default which is continuing, so as to permit Lender to take any action and to execute any instrument that Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including but not limited to continuing perfection of Lender's Security Interest. Each Loan Party agrees that neither Lender, nor any of its designees or attorneys-in-fact, will be liable for any act of commission or omission, or for any error of judgment or mistake of fact or law with respect to the exercise of the power of attorney granted under this Section 3.6, other than as a result of its or their gross negligence or willful misconduct. THE POWER OF ATTORNEY GRANTED UNDER THIS SECTION 3.6 IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL ALL OF THE OBLIGATIONS HAVE BEEN PAID IN FULL IN CASH, THIS AGREEMENT TERMINATED, AND ALL OF LOAN PARTIES' DUTIES HEREUNDER AND THEREUNDER AND UNDER THE LOAN DOCUMENTS HAVE BEEN DISCHARGED IN FULL.

3.7 Consent. Each Borrower and each Guarantor consents to Lender taking any and all steps that Lender deems necessary to ensure that Lender has obtained a valid and perfected Security Interest in the Collateral. Accordingly, each Borrower and each Guarantor consents to having and hereby authorizes Lender to



file any Liens, financing statements, or any other documentation, as required by the UCC or any other laws, rules, or regulations in order to establish Lender's Security Interest in the Collateral of any Loan Party as Lender may require, and/or perfect Lender's Security Interest in the Collateral of any Loan Party as Lender may require. Each Borrower and each Guarantor also hereby ratifies their authorization for Lender to have filed in any filing office any financing statements prior to the date hereof.

#### 4. REPRESENTATIONS AND WARRANTIES

In order to induce Lender to enter into this Agreement and to make the Loan, each Loan Party makes the following representations and warranties to Lender, each of which shall be deemed made as of the effective date of this Agreement:

4.1 Legal Status. Each Corporate Loan Party, if a corporation, limited liability company, partnership, trust, or other legal entity, (i) has been duly organized and is validly existing under the laws of its jurisdiction of organization and (ii) is qualified to transact business, and has made all filings and is in good standing, in every jurisdiction in which the nature of its business or assets requires such qualification except where failure to be so qualified would not have a Material Adverse Effect. Each Corporate Loan Party has all requisite power and authority to own its properties and conduct its business as presently conducted and as proposed to be conducted and to execute and deliver, and to perform its Obligations under, the Loan Documents.

4.2 Legal Name; State of Organization; Location of Chief Executive Office and Collateral. Each Corporate Loan Party's exact legal name and state of incorporation or formation is accurately set forth in the applicable perfection certificate. Each Corporate Loan Party's chief executive office is located at the address set forth in the applicable perfection certificate, and all other locations where each Corporate Loan Party conducts business or Collateral or books and records are kept are set forth in the applicable perfection certificate.

4.3 No Violation. The execution, delivery and performance by each Corporate Loan Party of the Loan Documents are within such Corporate Loan Party's powers, do not violate any provision of law or any provision of such Corporate Loan Party's Governing Documents, or result in a breach of, or constitute a default under, any material agreement, indenture, or other instrument to which such Corporate Loan Party is a party or by which such Corporate Loan Party may be bound.

4.4 Use of Proceeds. All proceeds of the Loan shall be used by Borrowers solely (i) to repurchase, up to a maximum amount of \$3,000,000 in the aggregate, of Borrower's stock (the "Permitted Stock Repurchase") as permitted under Section 6.10, (ii) to fund the BOIA Earmout, (iii) to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, (iv) for Borrowers' working capital and general corporate purposes not prohibited hereunder and (v) for such other purposes as specifically permitted pursuant to the terms of this Agreement. All proceeds of the Loan shall be used solely for lawful business purposes. Without limiting the scope of the immediately preceding sentence, Borrowers understand and agree NOT to use the proceeds of the Loan for personal, family, or household purposes. Borrowers further understand that there are certain important duties imposed upon entities making loans to consumers for personal, family, or household purposes, and certain important rights conferred upon consumers, pursuant to federal or state law and that all of those laws, rules, and regulations concerning consumer loans do NOT apply to the Loan or this Agreement. Borrowers hereby confirm that they have consulted with their own attorney, or have had a fair opportunity to consult with an attorney, concerning this matter and that Borrowers' counsel has explained to Borrowers and/or Borrowers understand that these rules, regulations, and laws concerning consumer loans do not apply to the Loan or this Agreement. Borrowers also understand that Lender will be unable to confirm whether Borrowers' actual use of the proceeds of the Loan conforms to the requirements of this section. Borrowers agree that a breach by Borrowers of the provisions of this section will not affect Lender's right to: (a) enforce Borrowers' promise to pay all amounts owed under this Agreement, regardless of Borrowers' actual use of the proceeds of the Loan; or (b) use any remedy legally available to Lender, even if that remedy would not have been available had the Loan been made for consumer or personal purposes.

4.5 Authorization. This Agreement has been duly authorized, executed, and delivered by each Loan Party, and is a legal, valid and binding agreement of such Loan Party enforceable against such Loan Party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws effecting creditors' rights generally and by general principles of equity.

4.6 Financial Statements. Each Loan Party has furnished the audited balance sheets of AudioEye as of December 31, 2022, 2021 and 2020, and the audited statements of income and cash flows for the fiscal years then ended, and the unaudited balance sheets of AudioEye for the nine-months ended September 30, 2023, and the unaudited statements of income and cash flows for the nine-months then ended (the "Financial Statements"). The Financial Statements have been prepared in conformity with GAAP, subject to year-end adjustments and absence of footnotes in the case of unaudited financial statements, and fairly and accurately present the financial condition and income of Borrowers, as of the date given. Since the date of the last Financial Statement, there has been no Material Adverse Effect.

4.7 Consent and Licenses. No consent, approval or authorization of, or registration or filing with any governmental body or authority, or any other person, firm or entity not a party hereto, is or will be required as a condition to the valid execution, delivery, performance, or enforceability of the Loan Documents, or the transactions contemplated hereby or thereby, or to the conduct of any Corporate Loan Party's business.

4.8 Litigation. There is no litigation either pending or, to the best of each Loan Party's knowledge, threatened against any Loan Party or any of its Subsidiaries before any court or administrative agency, or before any arbitrator, which is reasonably likely to have a Material Adverse Effect. No Loan Party or any Subsidiary of any Loan Party is in violation of any law nor the subject of any investigation by a governmental agency that could result in an indictment, criminal filing, or a forfeiture or seizure of any of its assets.

4.9 Cybersecurity. Except for any matters that could not reasonably be expected to have a Material Adverse Effect, (a) each Loan Party is in compliance with all data privacy provisions with respect to all contracts with other Persons, as well as compliance with all self-imposed policies and inward- and outward-facing privacy and cybersecurity statements; (b) each Loan Party's information systems are up to date with all of the most-recent recommended security patches and safeguards, as applicable; (c) all of each Loan Party's licenses and certifications required by applicable law are valid, up-to-date and not subject to suspension, revocation and/or termination; (d) no Loan Party is subject to a recent information security breach or incident or known threats or pending event that would be reasonably likely to give rise to an information security breach or incident as defined by applicable law or each Borrower's contractual obligations and (e) each Loan Party has and maintains sufficient auto-logging systems to provide detailed information on access to date following a security incident.

4.10 Title; Liens. Each Loan Party has good and marketable title to all of the Collateral owned by it, and will have good and marketable title to all Collateral acquired by it hereafter, free from any and all Liens other than Permitted Liens.

4.11 Debt. Each Loan Party has no Debt other than Permitted Indebtedness set forth on Addendum 2.

4.12 Tax Returns. Each Loan Party has filed all tax returns that were required to be filed by it and has paid all taxes and assessments which are payable by it, to the extent that the same have become due and payable and before they became delinquent. No Loan Party knows of any proposed material tax deficiency or assessment against it or any of its properties for which adequate provision has not been made on its books.

4.13 Past Legal Proceedings. Neither any Loan Party nor any member, director, principal or officer of any Loan Party has within the past ten years been: (a) the subject of any criminal conviction (excluding traffic misdemeanors); (b) a debtor or alleged debtor in any bankruptcy proceeding, insolvency proceeding or receivership proceeding; (c) subject to Liens imposed by any Governmental Authority; or (d) subject to any restraining order, decree, injunction, or judgment in any proceeding or lawsuit, except for such matters as have been fully disclosed to Lender in writing and expressly consented to by Lender in writing.

4.14 Disclosure. No written report, notice, certificate, information or other statement delivered or made (including, in electronic form) by or on behalf of any Loan Party or any of their respective Affiliates to Lender in connection with this Agreement or any other Loan Document contains any untrue statement of a material fact, or omits to state any material fact necessary to make any statements contained herein or therein not misleading in light of the circumstances under which they were made and taking into consideration all disclosures made by the Loan Parties; provided that, with respect to projected financial information and projections, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. Except for matters of a general economic or political nature which do not affect any Loan Party uniquely,

there is no fact presently known to any Loan Party which has not been disclosed to Lender, which has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.15 Solvency. Each Loan Party and each of its Subsidiaries is Solvent on a consolidated basis. No transfer of property is being made by any Loan Party or any Subsidiary and no obligation is being incurred by any Loan Party or any Subsidiary in connection with the transactions contemplated by this Agreement or the Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party or any Subsidiary.

4.16 Margin Stock. No Loan Party owns, or has any present intention of acquiring, any "margin security" or any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System (herein called "margin security" and "margin stock"). None of the proceeds of the Loan will be used, directly or indirectly, for the purpose of purchasing or carrying, or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry, any margin security or margin stock or for any other purpose which might constitute the transactions contemplated hereby a "purpose credit" within the meaning of said Regulations T, U or X, or cause this Agreement to violate any other regulation of the Board of Governors of the Federal Reserve System or the Exchange Act, or any rules or regulations promulgated under such statutes.

4.17 Eligible Recurring Revenue Contracts. Except as disclosed to Lender prior to the Closing Date with respect to any active customers whose fees are included in the calculation of Monthly Recurring Revenue and to the knowledge of the Borrowers, no Loan Party has received notice of an actual or imminent Insolvency Proceeding commenced by or against any customer of Borrowers. To the knowledge of the Borrowers, any Contracts executed as of the date hereof that will be included in any calculations of Monthly Recurring Revenue are enforceable Contracts against the applicable account debtors, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally.

4.18 Brokers. No Loan Party has incurred any liability for any finders' fees, brokerage fees or similar fees or expenses in connection with entering into this transaction with Lender.

## 5. AFFIRMATIVE COVENANTS

Until all Obligations (other than inchoate expense reimbursement and indemnification obligations) are paid in cash in full, each Loan Party shall comply with the following covenants as applicable to it:

5.1 Books and Records. Each Corporate Loan Party shall at all times keep accurate and complete books, records, and accounts of all of such Corporate Loan Party's business activities, prepared in accordance with GAAP. Each Corporate Loan Party shall permit Lender, or any persons designated by Lender, at Borrower's expense, at any reasonable time and from time to time, and without hindrance or delay, to: (a) visit and inspect such Corporate Loan Party's properties and place(s) of business; (b) at Borrowers' expense, inspect, audit and examine such Corporate Loan Party's books, records, correspondence, and accounts and to make copies or extracts thereof (and Lender may remove any of such records temporarily for the purpose of having such copies made); (c) at Borrowers' expense, inspect the Collateral and (d) discuss with such Corporate Loan Party's principal officers and independent accountants, such Corporate Loan Party's business, Assets, liabilities, financial condition, results of operations, and business prospects; provided, however, that in the absence of any Event of Default, Borrowers shall only be required to pay any expenses of Lender for no more than one such visit or inspection per fiscal year. At Lender's reasonable request, each Corporate Loan Party shall deliver to Lender: (i) schedules of accounts and general intangibles; and (ii) such other information regarding the Collateral as Lender shall request.

5.2 Notices. Each Borrower shall notify Lender in writing within three (3) Business Days of acquiring knowledge of the occurrence of:

(a) any Default or Event of Default;

(b) any legal action, proceeding or investigation threatened (in writing) or instituted against any Loan Party which would reasonably be expected to result in liabilities in excess of \$150,000 or otherwise result in a Material Adverse Effect;

- (c) any dispute which may exist between any Loan Party or any Subsidiary, on the one hand, and any Governmental Authority, on the other which would reasonably be expected to result in liabilities in excess of \$150,000 or otherwise result in a Material Adverse Effect;
- (d) any labor controversy resulting in or threatening to result in a strike against any Corporate Loan Party or any Subsidiary;
- (e) any proposal by any Governmental Authority to acquire the Assets or business of any Loan Party or any Subsidiary, or to compete with Borrowers or any Subsidiary;
- (f) (i) any Environmental Lien has been filed against any of the real or personal property of any Corporate Loan Party or its Subsidiaries, (ii) the commencement of any Environmental Action or written notice that an Environmental Action will be filed against any Corporate Loan Party or its Subsidiaries, and (iii) any written notice of a violation, citation, or other administrative order from a Governmental Authority;
- (g) any Loan Party's present or future inability to pay or perform the Obligations;
- (h) any Loan Party's creation or acquisition of a Subsidiary;
- (i) except to the extent prohibited by applicable law and/or governmental rules and regulations, any actual or imminent Insolvency Proceeding commenced by or against any customer of any Borrower which would reasonably be expected to result in liabilities in excess of \$150,000 or otherwise result in a Material Adverse Effect; and
- (j) any other matter which has resulted or could reasonably be expected to result in a Material Adverse Effect.

If Lender has been notified pursuant to this section, or has knowledge of same from other sources, then at Lender's request, each Borrower shall furnish to Lender a summary of the status of all such actions, proceedings or investigation and provide Lender with such additional information concerning the same as Lender may from time to time request.

5.3 Maintain Business. Each Corporate Loan Party shall: (i) maintain in full force and effect all licenses, permits, insurance, authorizations, bonds, franchises, and other rights necessary or desirable to the profitable conduct of such Corporate Loan Party's business where the failure to do so might have Material Adverse Effect; (ii) continue in, and limit such Corporate Loan Party's operations to, the same general lines of business as are presently conducted and business ancillary or related thereto; (iii) comply with all applicable laws, orders, regulations, and ordinances of all Governmental Authorities; (iv) maintain such Corporate Loan Party's corporate, partnership or limited liability company existence; and (v) take such actions as are necessary to maintain Corporate Loan Party's legal existence, good standing and qualification to do business in each jurisdiction where the failure to do so might have a Material Adverse Effect.

5.4 Maintain Collateral. Each Corporate Loan Party shall: (i) protect and preserve all Assets necessary and material to such Corporate Loan Party's business in its reasonable business judgment, including intellectual property, and (ii) maintain in good working order and condition (subject to ordinary wear and tear) all buildings (if any), equipment and other tangible real and personal property, and from time to time make or cause to be made all renewals, replacements, and additions to such property necessary for the conduct of such Corporate Loan Party's business. Each Loan Party shall appear in any proceeding and defend the right, title, and interest of Lender in and to the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein, subject to Permitted Liens. At any time any Corporate Loan Party acquires any assets, tangible or intangible, real or personal, having a fair market value in excess of \$250,000, in which a security interest, deed of trust or mortgage is not already granted to or properly perfected by Lender on behalf of Lender, such Corporate Loan Party shall immediately provide notice thereof to Lender and cause to be executed such documents as may be reasonably requested by Lender in order to perfect Lender's security interest in such Collateral.

5.5 Insurance. Each Loan Party shall keep all Collateral adequately insured at all times with responsible insurance carriers, reasonably acceptable to Lender, against loss or damage by fire and other hazards

(so called "All Risk Coverage"). Each Loan Party shall at all times maintain adequate insurance with coverage amounts and with responsible insurance carriers, each acceptable to Lender, against liability on account of damage or claims of damage to persons and properties and under all applicable workers' compensation laws, and covering such other risks as Lender may reasonably require from time to time, including without limitation privacy and cybersecurity.

Each Loan Party shall instruct the applicable insurance carrier to have all such insurance policies provide at least 30 days' (or 10 days in the case of non-payment) prior written notice to Lender prior to cancellation or termination. Lender shall be named as lender loss payee, additional insured or otherwise, as Lender's interest may appear, as the case may be, under all such policies. Each Borrower represents that all such insurance coverage is presently in full force and effect and subject to no lapses and defaults. Each Borrower agrees to deliver copies of all of the foregoing insurance policies to Lender. In the event of any loss or damage to the Collateral in excess of \$250,000, each Borrower shall give immediate written notice to Lender and to its insurers of such loss or damage, as applicable, and will promptly file proof of loss with its insurers.

5.6 Payment of Taxes and Other Obligations; Tax Returns. Each Loan Party shall timely file all required tax returns and pay and discharge (a) all taxes, assessments, and governmental charges or levies imposed upon it or on income or profits or upon property belonging to it prior to the date on which penalties attach thereto and pay and perform all lawful claims, obligations, and debts which, if unpaid, might become a Lien or charge upon any asset or property of such Loan Party, or where the failure to pay or perform might have a Material Adverse Effect; provided that such Loan Party shall not be required to pay or perform any such tax, assessment, charge, levy, claim, obligation, or debt for which such Loan Party has obtained a bond or insurance, or for which it has established a reserve in accordance with GAAP and the payment or performance of which is being contested in good faith and by appropriate proceedings which are being diligently pursued, and, by reason of such contest or nonpayment, no property is subject to a material risk of loss or forfeiture, and (b) any and all of its other obligations and liabilities other than obligations or liabilities being contested in good faith by appropriate proceedings, and for which adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of such contest or nonpayment, no property is subject to a material risk of loss or forfeiture. Each Loan Party agrees to deliver an executed IRS Form 8821 to be submitted to the Internal Revenue Service which shall grant Lender access to receive such Loan Party's tax information and otherwise be in form and substance reasonably satisfactory to Lender, and each Borrower agrees to deliver additional executed IRS Forms 8821 as necessary if the form is cancelled, rejected, expired, or if it is no longer effective to grant Lender access to receive such Loan Party's tax information.

5.7 Comply with Laws. Each Loan Party shall perform and promptly comply, and cause all property of such Loan Party to be maintained, used and operated in accordance, in each case in all material respects, with all: (i) present and future laws, ordinances, rules, regulations, orders, and requirements (including, without limitation, zoning ordinances, building codes, and environmental laws, and the regulations adopted pursuant thereto, and any other similar applicable federal, state, or local laws, rules, regulations, or ordinances) of every duly constituted governmental or quasi-Governmental Authority or agency applicable to such Loan Party or any of such Loan Party's properties; (ii) similarly applicable orders, rules, and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization, or other body exercising similar functions, to the extent usually complied with by companies engaged in similar businesses and owning similar properties in the same general areas in which such Loan Party operates; and (iii) similarly applicable duties or obligations of any kind imposed under any certificate of occupancy or otherwise by law, covenant, conditions, agreement or easement, public or private.

5.8 Financial Reporting Requirements. Each Borrower shall deliver to Lender the following, all in form and substance reasonably satisfactory to Lender:

(a) within thirty-five (35) days after the end of each calendar month, (i) combined management-prepared balance sheets and statements of income and retained earnings and of cash flow of each Borrower as of the end of such month and for such month then ended and for the period from the beginning of the then current fiscal year of each Borrower to the end of such month, setting forth in comparative form (A) the corresponding figures for the comparable monthly and year-to-date periods in the preceding fiscal year; and (B) the corresponding figures for such monthly and year-to-date period as reflected in the projected budget for the then-current fiscal year prepared in accordance with GAAP subject to year-end adjustments and absence of footnotes and certified for and on behalf of each Borrower by the controller or chief financial officer or other comparable authorized officer of each Borrower, (ii) reports of each Borrower's accounts (including Borrowers' Monthly Recurring Revenue), (iii) a detailed aging of Borrowers' Designated Account by invoice or a summary aging by account debtor, together with payable

aging, deferred revenue report, and (iv) a compliance certificate signed by an authorized officer of each Borrower in substantially the form of Exhibit A hereto (a "Compliance Certificate");

(b) on or before February 1 of each calendar year, each Borrower's board approved projections and annual operating plan, on a quarterly basis for the current fiscal year, specifying the assumptions used in creating such projections;

(c) copies of AudioEye's Form 10-K and 10-Q filings not more than ten (10) after the filing thereof (provided, however, that to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission, such documents may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which AudioEye posts such documents);

(d) to the extent not included in AudioEye's Form 10-K referenced above, audited annual financial statements of AudioEye no later than one hundred twenty (120) days after the fiscal year-end of AudioEye;

(e) within thirty (30) days after the filing thereof, copies of all business tax returns, which must be prepared by a Certified Public Accountant;

(f) promptly, board meeting packages; and

(g) promptly upon Lender's request, such other books, records, statements, lists of property and accounts, budgets, sales projections, forecasts, operating plans or reports as to each Borrower and as to each guarantor of Borrowers' obligations to Lender as Lender may request.

5.9 Disclosure of Employee Benefits. Each Borrower shall:

(a) Promptly, and no later than ten (10) Business Days after any Borrower or any of its Subsidiaries know or have reason to know that an event has occurred relating to any Borrower's plan requirements under the Employee Retirement Income Security Act of 1974 ("ERISA") that reasonably could be expected to result in a material adverse change in any Borrower's financial condition, a written statement of the chief financial officer of such Borrower or such Subsidiary shall be delivered to Lender describing such ERISA event and any action that is being taken with respect thereto by any Borrower or any of its Subsidiaries or Affiliates, and any action taken or threatened by the Internal Revenue Service ("IRS"), the Department of Labor, or the Pension Benefit Guaranty Corporation ("PBGC"). Each Borrower and its Subsidiaries shall: (i) be deemed to know all facts known by the administrator of any benefit plan of which it is the plan sponsor; (ii) promptly, and no later than five (5) Business Days after the filing thereof with the IRS, deliver to Lender a copy of each funding waiver request filed with respect to any benefit plan of any Borrower and all communications received by any Borrower or any of its Subsidiaries or Affiliates with respect thereto; and (iii) promptly, and no later than five (5) Business Days after receipt by Borrower or any of its Subsidiaries of any information that the PBGC has an intention to terminate any benefit plan or to have a trustee appointed to administer a benefit plan, deliver copies of each such notice to Lender.

(b) Cause to be delivered to Lender, upon Lender's reasonable request, each of the following to the extent applicable: (i) a copy of each defined benefit pension plan and retiree health plan (or, where any such plan is not in writing, complete description thereof) (and if applicable, related trust agreements or other funding instruments), if any, and all amendments thereto, and all associated summary plan descriptions thereof that have been distributed to employees or former employees of any Borrower or any of its Subsidiaries; (ii) the most recent determination letter issued by the IRS with respect to each qualified pension benefit plan; (iii) for the three most recent plan years, annual reports on Form 5500 Series required to be filed with any governmental agency for each benefit plan subject to such filing requirement; (iv) all actuarial reports prepared for the last three plan years for each benefit plan; (v) a listing of all multiemployer plans, with the aggregate amount of the most recent annual contributions required to be made by any Borrower or any of its Subsidiaries or any of their ERISA affiliates to each such plan and copies of the collective bargaining agreements requiring such contributions; (vi) any information that has been provided to any Borrower or any of its Subsidiaries or any of their ERISA affiliates regarding withdrawal liability under any multiemployer plan; and (vii) the aggregate amount of the most recent annual payments made to former employees of any Borrower or any of its Subsidiaries under any retiree health plan.

5.10 Online Access to View Bank Accounts. At all times on and after the Closing Date, each Borrower shall provide Lender with online read-only access to all of Borrowers' bank accounts and maintain such access in effect for Lender throughout the term of this Agreement and until all Obligations have been paid in full (other than inchoate expense reimbursements and indemnity obligations), all in a manner acceptable to Lender.

5.11 Financial Covenants. Each Borrower shall comply with the Financial Covenants described on Addendum 4.

5.12 Compliance with Auditor Requests. Within seven (7) days of receipt, each Borrower shall comply with any written request from Lender's auditors including, but not limited to, the provision of evidence from each Borrower's books and records that assist in the confirmation of Lender's calculation of the outstanding Obligations.

5.13 Intellectual Property. Each Borrower shall promptly give Lender written notice of any Corporate Loan Party's applications or registrations of intellectual property rights filed with the United States Patent and Trademark Office not more than five (5) Business Days after such filing, including the date of such filing and the registration or application numbers, if any. Each Borrower shall (i) give Lender written notice of any Corporate Loan Party's filing of any applications or registrations with the United States Copyright Office, including the title of such intellectual property rights to be registered, as such title will appear on such applications or registrations, and the date such applications or registrations will be filed, and (ii) shall execute such documents as Lender may reasonably request for Lender to maintain its perfection in such intellectual property rights to be registered by such Corporate Loan Party, and upon the request of Lender, shall file such documents simultaneously with the filing of any such applications or registrations, in each case not more than five (5) Business Days after such filing. Each Borrower shall promptly provide Lender with (i) a copy of such applications or registrations, without the exhibits, if any, thereto, (ii) evidence of the filing of any documents requested by Lender to be filed for Lender to maintain the perfection and priority of its security interest in such intellectual property rights, and (iii) the date of such filing.

5.14 Further Assurances. Each Loan Party shall make, execute, and deliver all such additional and further acts, things, deeds, and instruments as Lender may reasonably require to document and consummate the transactions contemplated hereby and to vest completely in and ensure Lender its rights under this Agreement.

5.15 Reserved.

5.16 Post Closing Matters. Each Borrower will execute and deliver the documents and take such actions (or cause such actions to be taken by other Persons) as are set forth in the section labeled "Post Closing Deliverables and Covenants" on Exhibit A to Addendum 3, in each case, within the time limits specified on Exhibit A to Addendum 3 (or such longer period as Lender may agree).

## 6. **NEGATIVE COVENANTS**

Until all Obligations have been paid in cash in full (other than inchoate expense reimbursement and indemnification obligations), each Corporate Loan Party covenants and agrees that it shall not:

6.1 Additional Encumbrances. (i) Create or suffer to arise any Lien except for the Security Interest and any Permitted Liens, or (ii) grant or agree to any negative pledge that would prohibit securing the Obligations created by this Agreement and any replacement or refinancing thereof with any Collateral of Borrowers or (iii) consent to or vote in favor of any pledge of the Equity Interests of any Corporate Loan Party (including itself) in favor of any Person other than Lender. Each Borrower shall notify Lender promptly in the event that any Lien or charge on any Collateral shall be created, asserted, filed, or come into existence in violation of this Section 6.1.

6.2 Other Advances. Receive any loans, incur any indebtedness for borrowed money or receive any advances or sell any accounts receivable without Lender's written approval except for the following: (i) the indebtedness set forth on Addendum 2 ("Permitted Indebtedness") and (ii) indebtedness (other than the Obligations, but including capitalized lease obligations), incurred at the time of, or within twenty (20) days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof, including any refinancing of such Purchase Money Debt ("Purchase Money Debt"), all in the aggregate amount at any time not to exceed the amount specified in Addendum 1 in item (c);



6.3 Merger, Consolidation, Transfer or Acquisition of Assets. Wind up, liquidate or dissolve, reorganize, reincorporate, divide, merge or consolidate with or into any other Person, or directly or indirectly acquire all or substantially all of the Assets or the business of any other Person or any business or division of any other Person, or permit any Subsidiary to do so, other than (i) any Permitted Acquisition, (ii) any Borrower or any Subsidiary of a Borrower may merge (but in the case of a Subsidiary of a Borrower, solely for the purpose of merging itself out of existence) or consolidate with any Borrower in a transaction in which the surviving entity is AudioEye and (iii) any Subsidiary that is not a Borrower may liquidate, wind up or dissolve if AudioEye determines in good faith that such liquidation, winding up or dissolution is in the best interests of the Loan Parties and is not materially disadvantageous to the Lender;

6.4 Disposition of Assets. Sell, lease, assign, transfer, or otherwise dispose of any of Borrowers' rights, title, or interests in and to any of the Collateral, excepting only sales of inventory or dispositions of obsolete equipment or equipment being replaced (not to exceed \$250,000 in the aggregate in any calendar year), any abandonment, cancellation, nonrenewal or discontinuance of use or maintenance of intellectual property (or rights relating thereto) of the Loan Parties that the Borrowers determine in good faith is desirable in the conduct of its business, leases or subleases of real property or equipment on an arm's length basis for fair market value, the discount without recourse of accounts receivable in the ordinary course of business and consistent with past practice, the non-exclusive licensing of intellectual property and any dispositions that may deemed to occur as a result of the disposition of ownership of any reports and feedback generated by software or services, in each case in the ordinary course of Borrowers' business and other dispositions of assets made on an arm's length basis for fair market value of other property having an aggregate fair market value not to exceed \$250,000 in any fiscal year of the Borrowers provided that at the time of any such disposition, no Event of Default shall have occurred and be continuing;

6.5 No Guaranties or Contingent Obligations. Guaranty, assume, or otherwise become directly or contingently liable for the debt of any other person or organization, other than any guarantees or contingent liabilities for obligations of other Loan Parties for Permitted Indebtedness or for the performance of leases, licenses or contracts in the ordinary course of business;

6.6 Limitations on Extensions of Credit. Make any loan or advance or extend any credit other than extension of trade credit in the ordinary course of business, other than as permitted by Section 6.13 or any other provision of this Agreement;

6.7 No Changes in Name. (a) Change such Corporate Loan Party's legal name from that indicated in the public record of such Corporate Loan Party's jurisdiction of organization without providing at least thirty (30) days' prior written notice to Lender; (b) change the location of such Corporate Loan Party's headquarters or executive offices without providing at least thirty (30) days' prior written notice to Lender; or (c) change such Corporate Loan Party's legal entity structure without the written consent of Lender except for any transaction permitted by Section 6.3 of this Agreement;

6.8 No Amendments/Modifications to Constituent Documents. Permit the amendment, modification, restatement, or other changes to the organizational documents of Borrowers including, if applicable, the certificates of incorporation or organization, by-laws, or operating partnership agreement in any manner adverse to Lender, so long as Borrowers promptly provide Lender notice of any such changes and copies of all material documentation;

6.9 No Prepayments of Debt. Prepay any indebtedness for borrowed money to any person or entity other than (a) indebtedness owing to Lender and (b) indebtedness permitted by this Agreement and owing to any lender that has not been subordinated to the Obligations;

6.10 Restricted Payments. (a) Declare or pay or make any form of dividend or distribution other than (i) dividends or distributions to equity holders to meet their tax obligations on income realized by such holders attributable solely to such holders' investment in Borrowers in a timely manner and (ii) dividends or distributions so long as immediately after giving pro forma effect thereto, Borrowers have (A) pro forma Liquidity of at least \$3,000,000 and (B) Adjusted EBITDA on an average basis for the most recent three months then ended that is greater than Borrower's Lender Debt Payments on an average basis for the most recent three months then ended; (b) make any payments of any indebtedness subordinated to the Obligations due Lender or otherwise redeem, repurchase or retire any instrument evidencing such amount, or reduce or terminate any commitment in respect of



such indebtedness, in each case except pursuant to the provisions of a subordination agreement acceptable to Lender; or (c) redeem, repurchase, or retire any capital stock or other equity; provided, that Borrowers may (i) consummate the Permitted Stock Repurchase so long as immediately after giving pro forma effect to such Permitted Stock Repurchase, Borrowers have pro forma Liquidity of at least \$3,000,000; (ii) in addition to the Permitted Stock Repurchase, redeem, repurchase, or retire any capital stock or other equity so long as immediately after giving pro forma effect thereto, Borrowers have (A) pro forma Liquidity of at least \$3,000,000 and (B) Adjusted EBITDA on an average basis for the most recent three months then ended that is greater than Borrower's Lender Debt Payments on an average basis for the most recent three months then ended; and (iii) any transactions where shares of AudioEye are surrendered to AudioEye by its employees to satisfy tax withholding obligations in connection with the settlement of restricted stock units or the issuance of restricted stock.

6.11 Transactions with Affiliates. (a) Make any loan, advance, extension of credit or non-compensation related payment to any of its Affiliates (excluding between the Borrowers or the extension of credit to employees in the ordinary course of business, in an amount not to exceed \$100,000 at any given time); or (b) enter into any other transaction, including, without limitation, the purchase, sale, lease, or exchange of property, or the rendering of any service, to or with any of its Affiliates (excluding between the Borrowers), the terms of which are less favorable to such person than the terms such person would have been able to obtain in a similar transaction between such person and an unrelated third party obtained through arms' length dealings;

6.12 Deposit Accounts. (a) Close any of its deposit accounts (other than Excluded Accounts), including the Borrowers' Designated Account; or (b) open any deposit account (other than Excluded Accounts) without first providing Lender with a fully executed deposit account control agreement among it, Lender and the bank where such deposit account is maintained, in form and substance satisfactory to Lender;

6.13 Limitations on Investments. Purchase, own, invest in, or otherwise acquire, directly or indirectly, any equity securities, any interests in any partnership or joint venture (including the creation or capitalization of any subsidiary), evidence of indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other person or entity, or any other investment or interest whatsoever in any other person or entity, or make or permit to exist, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of property in, any person or entity other than: (i) the extension of trade credit and credit to employees, in an amount not to exceed \$100,000 at any given time, in the ordinary course of business and consistent with past practices; (ii) deposits with banks or other financial institutions; (iii) investments in cash and cash equivalents, all in accordance with AudioEye's board approved cash management investment policy; (iv) investments received in settlement of amounts due to any Loan Party, (v) deposits or unsecured guarantees made to secure the performance of leases, licenses or contracts in the ordinary course of business and consistent with historical practices; and (vi) any investment in Permitted Acquisitions.

6.14 Reserved.

6.15 No Transactions Prohibited by ERISA; Unfunded Liability. Directly or indirectly

(a) engage in any prohibited transaction which is reasonably likely to result in a civil penalty or excise tax described in sections 406 of ERISA or 4975 of the Internal Revenue Code for which a statutory or class exemption is not available or a private exemption has not been previously obtained from the Department of Labor;

(b) permit to exist with respect to any benefit plan any accumulated funding deficiency (as defined in sections 302 of ERISA and 412 of the Internal Revenue Code) whether or not waived;

(c) fail to pay timely required contributions or annual installments due with respect to any waived funding deficiency to any defined benefit pension plan;

(d) terminate any defined benefit pension plan where such event would result in any liability of any Borrower, any Subsidiary of Borrowers, or any of their ERISA affiliates under Title IV of ERISA which was not paid in connection with such termination;

(e) fail to make any required contribution or payment to any multiemployer plan;

(f) fail to pay any required installment or any other payment required under section 412 of the Internal Revenue Code on or before the due date for such installment or other payment;

(g) amend a plan resulting in an increase in current liability for the plan year such that any Borrower, any Subsidiary of Borrowers, or any of their ERISA affiliates is required to provide security to such plan under section 401(a)(29) of the Internal Revenue Code; or

(h) withdraw from any multiemployer plan where such withdrawal is reasonably likely to result in any liability of such entity under Title IV of ERISA;

any of which, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

6.16 Sales and Leasebacks. Sell, transfer, or otherwise dispose of, or permit any Subsidiary to sell, transfer, or otherwise dispose of, any real or personal property to any Person, and thereafter directly or indirectly leaseback the same or similar property.

6.17 Subsidiaries.

(a) Form or acquire any Subsidiary unless such Subsidiary at Lender's discretion, (x) expressly joins in this Agreement as a Borrower and becomes jointly and severally liable for the obligations of each Borrower hereunder and under any other agreement between any Borrower and Lender, or (y) becomes a Guarantor with respect to the Obligations and executes a joinder to this Agreement with respect to the Guaranty hereunder or a standalone guaranty in form and substance satisfactory to Lender, and in either case in favor of Lender, and (iii) Lender shall have received all documents, including without limitation and appraisals it may reasonably require to establish compliance with each of the foregoing conditions in connection therewith.

(b) Enter into any partnership, joint venture or similar arrangement.

## 7. EVENTS OF DEFAULT

The occurrence of one or more of the following events shall constitute an "Event of Default" under this Agreement. Unless expressly provided for in this Section 7, Lender is under no duty to provide any Loan Party with any notice for an event to become an Event of Default:

7.1 Payment Default. Any Borrower shall fail to make any payment of sums due under this Agreement, including any amounts specified in the Loan Chart, within three (3) Business Days of the applicable due date. A failure to pay includes any nonpayment as a result of Lender's inability for any reason to collect the entire sum due from Borrowers' Designated Account;

7.2 Other Defaults Where Grace Period is Inapplicable. Any Loan Party shall breach any covenant, condition or other obligation under Section 5.8, Section 5.11, Section 6 or Section 9 of this Agreement;

7.3 Other Defaults Where Grace Period is Applicable. Any Loan Party shall breach any covenant, condition, or other obligation contained in this Agreement (other than covenants and obligations described in another subsection of this Section 7) or any of the other Loan Documents, and if such breach is capable of being cured, such breach is not cured within thirty (30) calendar days after the earlier of written notice from Lender or the date on which any Borrower had actual knowledge of such breach;

7.4 Breach of Representations, Warranties; Misstatements. Any financial statement, representation, warranty or certificate made or furnished by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document shall be materially false or misleading when made or reaffirmed;

7.5 Insolvency. Any Loan Party shall become insolvent, admit its insolvency, or shall be unable to pay its debts as they mature;

7.6 Judgments; Attachment. One or more judgments, orders, or decrees for the payment of money either individually or in an aggregate amount in excess of \$250,000 (to the extent not paid, fully bonded or covered

by a solvent and unaffiliated insurer that has not denied coverage) is entered by a court of competent jurisdiction against any Loan Party, or any one or more Loan Parties suffers one or more writs, warrant of attachment, or similar process, or a judgment creditor obtains possession of any of the Assets of any one or more Loan Parties by any means, including levy, distraint, replevin, or self-help and the same shall remain undischarged for a period of forty-five (45) consecutive days during which execution shall not be effectively stayed (by reason of pending appeal or otherwise), or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment and such action shall not have been stayed;

7.7 Bankruptcy. (a) Any Loan Party shall make an assignment for the benefit of its creditors, file a petition in bankruptcy, be the subject of an involuntary bankruptcy petition or be the subject of a pending application, motion, or petition for the appointment of a receiver if such application, motion, or petition is not dismissed within forty-five (45) days of its filing, or if a receiver is appointed; or (b) Any Loan Party by any act or omission shall indicate its consent to, approval of, or acquiescence in, any application or proceeding or order for relief or the appointment of a custodian, receiver, or any trustee for any substantial part of any of its properties;

7.8 Restrictions on Business Operations. Any Loan Party shall have received any material order, or there shall have been imposed upon it any material limitation, of any kind, restricting its right to do business and/or its right to free and unencumbered use and operation of any of the Collateral, by any court, administrative body, or other regulatory or judicial authority purporting to have jurisdiction over the business of any Borrower or any Guarantor of the Obligations or the ownership and/or operation of such Collateral;

7.9 Loss, Theft, Damage to Assets. The occurrence of any uninsured loss, theft, damage, or destruction to any material Assets (or to a material portion of all Assets) of any Loan Party;

7.10 Revocation of Loan Documents. The actual or attempted revocation or termination of, or limitation or denial of liability under this Agreement or any other Loan Document by any Loan Party, including any repudiation, purported revocation, or failure by any Guarantor to perform such Guarantor's obligations hereunder or any other Loan Document;

7.11 Asset Seizure. Any federal, state, or local governmental body, instrumentality or agency shall condemn, seize or otherwise appropriate, or take custody and control of all or substantially all of the properties of any Loan Party, or file a Lien or levy an assessment in respect of all, or substantially all, of the properties of any Loan Party;

7.12 Dissolution. If any Corporate Loan Party shall dissolve or liquidate, or be dissolved or liquidated, or cease legally to exist, or merge or consolidate, or be merged or consolidated with or into any corporation or entity, or any order, judgment or decree is entered decreeing the dissolution of any Corporate Loan Party;

7.13 Cross Defaults. A default shall occur with respect to any Debt (other than the Obligations) of any Loan Party in an outstanding principal amount exceeding \$250,000, and such default shall continue for more than the period of grace, if any, therein with respect thereof, if the effect thereof (with or without the giving of notice or further lapse of time or both) is to accelerate, or permit the holder of any such Debt to accelerate, the maturity any such Debt, or any such Debt shall be declared due and payable or be required to be paid (other than by a regularly scheduled required prepayment) prior to the stated maturity thereof;

7.14 Documents; Liens. (a) Any of the Loan Documents fails to be in full force and effect for any reason, or (b) Lender fails to have a perfected, first priority Lien (subject only to Permitted Liens) in and upon all of the Collateral;

7.15 Change of Control. At any time (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall become, or obtain rights to more than fifty percent (50%) of all outstanding Equity Interests of AudioEye as of the Closing Date other than any existing holder that holds more than five percent (5%) of Equity Interests of AudioEye as of the Closing Date (a "Change of Control"), except to the extent all Obligations, including, without limitation, the Exit Fee, are simultaneously paid in full, in cash, to Lender as the result of the consummation of a transaction that results in such change of control or (b) AudioEye no longer owns 100% of any Subsidiary except pursuant to a transaction otherwise permitted by this Agreement or to the

extent all Obligations, including, without limitation, the Exit Fee, are simultaneously paid in full, in cash, to Lender as the result of the consummation of such transaction.

## 8. REMEDIES UPON DEFAULT

At any time after the occurrence and during the continuance of an Event of Default, Lender may, without presentment, demand, protest, or further notice of any kind (all of which are hereby expressly waived) and, notwithstanding the provisions contained in any other document or instrument executed or to be executed by any Loan Party to Lender, exercise all remedies and rights provided in law or in equity or permitted under this Agreement or by the UCC, including without limitation:

8.1 Declare all Obligations, including, without limitation, all loan costs and expenses and attorneys' fees, to be immediately due and payable. Lender shall be entitled to immediately enforce payment of all Obligations by any means permitted by law or in equity.

8.2 Notify customers, account debtors or lessees of any Loan Party that Lender has a Security Interest in the accounts, rights to payment, equipment, chattel paper and general intangibles of such Loan Party and may collect them directly; Lender may settle or adjust disputes and claims directly with account debtors or payment processor companies or insurance companies for amounts and upon terms that Lender considers advisable, and in such cases, Lender will credit the Obligations under this Agreement with only the net amounts received by Lender, after deducting all reasonable expenses incurred or expended in connection therewith;

8.3 Make such payments and do such acts as Lender considers necessary or reasonable to protect its Security Interest and Collateral. Each Loan Party agrees to assemble the Collateral if Lender so requires, and to make the Collateral available to Lender as Lender may designate at a location which is reasonably convenient to such Loan Party and Lender. Each Loan Party authorizes Lender to enter the premises where the Collateral is located, take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest or compromise any encumbrance, charge or Lien which in the opinion of Lender appears to be prior or superior to the Security Interest (other than the Permitted Liens) and to pay all expenses incurred in connection therewith. With respect to any of each Loan Party's owned or leased premises, such Loan Party hereby grants Lender a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Lender's rights or remedies;

8.4 Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Lender is hereby granted a license or other right to use, without charge, each Loan Party's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale and selling any Collateral, and such Loan Party's rights under all licenses and franchise agreements shall inure to Lender's benefit;

8.5 Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including each Loan Party's premises) as is commercially reasonable in the opinion of Lender. It is not necessary that the Collateral be present at any such sale. Lender shall not be obligated to make any sale of the Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned;

8.6 Give notice of the disposition of the Collateral as follows:

(a) Lender shall give each Loan Party and each holder of a security interest in the Collateral a notice in writing of the time and place of public sale, or, if the sale is a private sale or some other disposition other than a public sale is to be made of the Collateral, the time on or after which the private sale or other disposition is to be made;

(b) The notice shall be personally delivered or mailed, postage prepaid, to Borrowers as provided in this Agreement, at least ten (10) calendar days before the date fixed for the sale, or at least ten (10)

calendar days before the date on or after which the private sale or other disposition is to be made, unless the Collateral is perishable or threatens to decline speedily in value;

8.7 Each Loan Party agrees that Lender may obtain the appointment of a receiver or keeper to take possession of all or any portion of the Collateral or to operate same;

8.8 Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by the Loan Parties. Any excess will be promptly returned, subject to the rights of third parties, and/or as provided by law, to Borrowers by Lender;

8.9 All payments received by Borrowers in respect of the Collateral shall be forthwith paid over to Lender in the same form as so received (with any necessary endorsement), and may be held or applied by Lender to the Obligations in such order as Lender may determine;

8.10 Lender may credit bid and purchase at any public sale;

8.11 File suit for any sums owing or for damages; and

8.12 Exercise any other remedy or right provided in law or in equity or permitted under this Agreement or by the UCC.

8.13 Lender Not Liable. So long as Lender complies with the obligations, if any, imposed by the UCC, Lender shall not otherwise be liable or responsible in any way or manner for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion or from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever, except to the extent any damage is caused by willful misconduct or gross negligence on the part of the Lender. Loan Parties bear the risk of loss or damage of the Collateral.

## 9. GUARANTY

9.1 Guaranty. Each Guarantor hereby agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Lender, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, all of the Obligations; and all costs and expenses, including all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by Lender in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, any Borrower, any Guarantor of all or any part of the Obligations (and such costs and expenses paid or incurred shall be deemed to be included in the Obligations). Each Guarantor further agrees that the Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any branch or Affiliate of Lender that extended any portion of the Obligations.

9.2 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require Lender to sue or otherwise take action against any Borrower, any other Guarantor, or any other Person obligated for all or any part of the Obligations, or otherwise to enforce its payment against any Collateral securing all or any part of the Obligations.

9.3 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise expressly provided for herein, the obligations of each Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of all of the Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Guarantor; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Borrower or any other Guarantor, or their assets or any resulting release or discharge of any obligation of any Borrower or any other Guarantor; or (iv) the existence of any claim, setoff or other rights which any Guarantor may

have at any time against any Borrower, any other Guarantor, Lender, or any other Person, whether in connection herewith or in any unrelated transactions

(b) The obligations of each Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Borrower or any other Guarantor, of the Obligations or any part thereof.

(c) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for all or any part of the Obligations or all or any part of any obligations of any Guarantor; (iv) any action or failure to act by Lender with respect to any Collateral; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all of the Obligations).

9.4 Defenses Waived. To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of any Guarantor or the unenforceability of all or any part of the Obligations from any cause, or the cessation from any cause of the liability of any Guarantor, other than the indefeasible payment in full in cash of all of the Obligations. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Borrower, or any other Person. Each Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. Lender may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any Collateral, compromise or adjust any part of the Obligations, make any other accommodation with any Borrower or any other Guarantor or exercise any other right or remedy available to it against any Borrower or any other Guarantor, without affecting or impairing in any way the liability of any Guarantor under this Loan Guaranty except to the extent the Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Borrower or any other Guarantor or any security.

9.5 Financial Statements. Unless compliance is waived in writing by Lender or until all of the Obligations have been paid in full, Guarantors will promptly submit to Lender such information relating to Guarantors' affairs (including but not limited to annual financial statements and tax returns for Guarantors) or any security for this Guaranty as Lender may reasonably request.

9.6 Rights of Subrogation. No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Borrower or any other Guarantor, or any Collateral, until the Termination Date.

9.7 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or any other Person, or otherwise, each Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not Lender is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Obligations shall nonetheless be payable by the Loan Parties forthwith on demand by Lender. This Section 9.7 shall remain operative even after the Maturity Date and shall survive the payment in full of all of the Obligations.

9.8 Information. Each Guarantor assumes all responsibility for being and keeping itself informed of Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of

the Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Loan Guaranty, and agrees that Lender shall not have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

9.9 Termination. To the maximum extent permitted by law, each Guarantor hereby waives any right to revoke this Loan Guaranty as to future Obligations. If such a revocation is effective notwithstanding the foregoing waiver, each Guarantor acknowledges and agrees that (a) no such revocation shall be effective until written notice thereof has been received by Lender, (b) no such revocation shall apply to any Obligations in existence on the date of receipt by Lender of such written notice (including any subsequent continuation, extension, or renewal thereof, or change in the interest rate, payment terms, or other terms and conditions thereof), (c) no such revocation shall apply to any Obligations made or created after such date to the extent made or created pursuant to a legally binding commitment of Lender, (d) no payment by any Borrower, any other Guarantor, or from any other source, prior to the date of Lender's receipt of written notice of such revocation shall reduce the maximum obligation of any Guarantor hereunder, and (e) any payment, by any Borrower or from any source other than a Guarantor which has made such a revocation, made subsequent to the date of such revocation, shall first be applied to that portion of the Obligations as to which the revocation is effective and which are not, therefore, guaranteed hereunder, and to the extent so applied shall not reduce the maximum obligation of any Guarantor hereunder.

9.10 Maximum Liability. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any federal or state corporate law or other law governing business entities, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Parties or Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "Maximum Liability"). This Section with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of Lender to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other Person shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of Lender hereunder, provided, that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

9.11 Contribution. In the event any Guarantor shall make any payment or payments under this Loan Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty (such Guarantor a "Paying Guarantor"), each other Guarantor (each a "Non-Paying Guarantor") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Applicable Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Section 9.11, each Non-Paying Guarantor's "Applicable Percentage" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (a) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from Borrowers after the date hereof (whether by loan, capital infusion or by other means) to (b) the aggregate Maximum Liability of all Loan Parties hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Guarantor, the aggregate amount of all monies received by such Loan Parties from Borrowers after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Guarantor's several liability for the entire amount of the Obligations (up to such Guarantor's Maximum Liability). Each of the Loan Parties covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of all of the Obligations. This provision is for the benefit of Lender and the Loan Parties and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

9.12 Liability Cumulative. The liability of each Guarantor under this Section 9 is in addition to and shall be cumulative with all liabilities of each Guarantor to Lender under this Agreement and the other Loan Documents

to which such Guarantor is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

9.14 **Guarantors' Representations and Warranties.** Guarantors represent and warrant to Lender as follows:

(a) No Guarantor's execution and performance of this Loan Guaranty will (i) violate or result in a default or breach (immediately or with the passage of time) under any contract, agreement or instrument to which such Guarantor is a party, or by which such Guarantor is bound, (ii) violate or result in a default or breach under any order, decree, award, injunction, judgment or applicable law, or (iii) cause or result in the imposition or creation of any Lien upon any property of such Guarantor;

(b) The execution, delivery and performance of this Loan Guaranty is within each Guarantor's capacity;

(c) No consent, license or approval of, or filing or registration with, any Governmental Authority is necessary for the execution and performance hereof by any Guarantor;

(d) This Loan Guaranty constitutes each Guarantor's valid and binding obligation enforceable in accordance with its terms except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally;

(e) This Loan Guaranty promotes and furthers the business and financial interests of each Guarantor and the creation of the obligations hereunder will result in direct financial benefit to each Guarantor;

(f) Each Guarantor has executed this Loan Guaranty after conducting its own independent review and analysis of the financial condition and operations of Borrowers, and no Guarantor has relied upon any representation, statement or information of or from Lender;

(g) Each Guarantor is currently informed of the financial condition of each Borrower and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations; and

(h) Each Guarantor has read and understands the terms and conditions of the Loan Documents.

## 10. MISCELLANEOUS

10.1 **Power of Attorney.** From and after an Event of Default and while such Event of Default is continuing, each Loan Party hereby irrevocably appoints Lender (and all Persons designated by Lender) as its or his true and lawful attorney, as the case may be, with full power of substitution, for purposes provided in this section. Lender or Lender's designee, may, in Lender's name or in its or his name or otherwise, for Lender's sole use and benefit, but at such Loan Party's cost and expense, without notice to such Loan Party or any other person, to exercise at any time and from time to time:

(a) demand, sue for, collect, receive, and give acquittance for any and all monies due or to become due upon or by virtue thereof;

(b) receive, take, endorse, assign, and deliver any and all checks, notes, drafts, documents, negotiable or non-negotiable instruments, or chattel paper in connection therewith;

(c) settle, compromise, compound, prosecute or defend any action or proceeding, including, without limitation, a foreclosure action, with respect thereto;

(d) extend or modify terms of payment or make any allowance or other adjustment with respect thereto;



(e) notify account debtors of the Security Interest granted hereby and instruct such account debtors that payment of their respective accounts is to be made directly to Lender and take control of any and all such payments or other proceeds of such accounts;

(f) vote any right or interest with respect to 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 such instrument owned by such Loan Party (regardless of how designated), whether voting or nonvoting, including common stock, preferred stock or any convertible securities; or

(g) take all other actions as Lender reasonably deems appropriate to fulfill each Borrower's obligations under the Loan Documents;

THE POWER OF ATTORNEY GRANTED UNDER THIS SECTION 10.1 AND SECTION 3.6 IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL ALL OF THE OBLIGATIONS HAVE BEEN PAID IN FULL IN CASH, THIS AGREEMENT IS TERMINATED, AND ALL OF LOAN PARTIES' DUTIES UNDER THE LOAN DOCUMENTS HAVE BEEN DISCHARGED IN FULL.

#### 10.2 Waivers.

(a) Each Loan Party hereby waives presentment, demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance herein, and all other demands and notices of any kind or description. With respect to the Obligations and the Collateral, each Loan Party assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of Collateral, to the addition or release of any person or entity primarily or secondarily liable therefor, to the acceptance of partial payments thereon and the settlement, compromise, or adjustment of any thereof, all in such manner and at such time or times as Lender may deem advisable in its sole and absolute discretion. Lender shall have no duty as to the collection or protection of the Collateral or any income therefrom, as to the preservation of rights against prior parties, or as to the preservation of any rights pertaining to the Collateral beyond the safe custody thereof. Lender may exercise its rights with respect to the Collateral without resorting or regard to any other collateral or sources of payment for liability;

(b) Neither any failure nor any delay on the part of Lender in exercising any right, power, or privilege hereunder or under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Lender shall not be deemed to have waived any of its rights with respect to the Obligations or Collateral hereunder or under any other written document, unless such waiver is in writing and signed by Lender.

10.3 No Third-Party Beneficiary. This Agreement is made solely between the Loan Parties and Lender and no other person shall have any right of action hereunder and the parties expressly agree that no person shall be a third-party beneficiary to this Agreement.

#### 10.4 Expenses; Indemnity; Waiver of Consequential Damages.

(a) Costs and Expenses. Each Borrower shall, jointly and severally, pay (i) all reasonable out of pocket expenses incurred by the Lender and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out of pocket expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loan, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loan. Lender acknowledges that Borrowers have paid an amount equal to Forty Thousand Dollars (\$40,000) as a deposit to be used to pay the expenses incurred by Lender in connection with the preparation of the Loan Documents and other Lender costs and expenses prior to the Closing Date and that such amount will be applied by Lender against any amounts payable by any Loan Party hereunder.

(b) Indemnification. Each Loan Party agrees to indemnify, defend, and hold harmless Lender, its employees, members, directors, managers, officers, attorneys and agents (each such Person being called an "Indemnitee") from and against any and all losses, claims, liabilities, damages, penalties or expenses (including attorneys' fees, expert witness fees, and costs of defense) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including Borrowers) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) the Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrowers, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (B) result from a claim brought by the Borrowers or the Loan Parties against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, or (C) arising from any dispute solely among Indemnites or any of their respective Affiliates. This Section 10.4(b) shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, neither any Loan Party nor any Indemnitee shall assert, and each such Person hereby waives, any claim against any other Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(d) Payments. All amounts due under this Section shall be payable after demand therefor.

(e) Survival. Each Loan Party's obligations under this Section 10.4 shall survive the termination of this Agreement and the payment of the Obligations and are in addition to, and not in substitution of, any other of its obligations set forth in the Loan Documents.

10.5 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, heirs, successors, and assigns, provided, however, that neither this Agreement nor any rights or Obligations hereunder shall be assignable by any Loan Party without first obtaining the express written consent of Lender. Lender has no obligation to consent to any Loan Party assigning this Agreement. Any purported assignment made in contravention of the foregoing consent shall be void. Lender may assign any part of or all of the Loan and its rights and obligations hereunder at any time in its sole and absolute discretion; provided, however, that Lender shall provide notification of such assignment and the name of the assignee to the Loan Parties promptly after the Lender's assignment of this Agreement. Lender may sell participations in all or any portion of the Loan to such other party or parties as Lender shall select, all without notice or disclosure to the Loan Parties.

10.6 Maximum Interest. If Lender contracts for, charges, or receives any consideration that constitutes interest in excess of the highest lawful rate that is permissible under the law applicable to this Agreement, then any such excess shall be canceled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loan made hereunder or be refunded to Borrowers. In determining whether the interest contracted for, charged, or received by Lender exceeds the highest lawful rate, Lender may, to the extent permitted by applicable law: (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Loan hereunder.

10.7 Time Is of the Essence. The parties hereto expressly acknowledge and agree that time is of the essence and that all deadlines and time periods provided for under this Agreement are ABSOLUTE AND FINAL.

10.8 Notices. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and may be given by personal delivery, email, facsimile, first class mail via the United States Postal Service, postage prepaid, or by any overnight courier by sending said notice to the applicable Loan Party at the address set forth in the Loan Chart or to Lender at the following address:

SG Credit Partners, Inc.  
500 Newport Center Dr.  
Suite 580  
Newport Beach, CA 92660  
Email: techpm@sgcreditpartners.com  
Attn: Portfolio Manager

If either party desires to change the address or email and fax numbers to which notices are to be sent, it shall do so in writing and deliver the same to the other party in accordance with the notice provisions set forth above.

10.9 Modifications. This Agreement may not be modified, amended, waived, extended, changed, discharged, or terminated orally or by any act or failure to act on the part of the Loan Parties or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.

10.10 Severability. If any term or provision of this Agreement or the application thereof to any circumstance, shall be invalid, illegal, or unenforceable to any extent, such term or provision shall not invalidate or render unenforceable any other term or provision of this Agreement or the application of such term or provision to any other circumstance then to the extent permitted by law, each Loan Party and Lender hereto hereby waive any provision of law that renders any term or provision hereof invalid or unenforceable in any respect.

10.11 Remedies Cumulative. Any and all remedies conferred upon Lender shall be deemed cumulative with, and non-exclusive of any other remedy conferred hereby or by law and/or equity. Lender in the exercise of any one remedy shall not be precluded from the exercise of any other. Lender may exercise any and all rights and remedies available to it concurrently or independently, in such order, as frequently, and at such time or times as Lender may, in its sole discretion, deem expedient.

10.12 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by any Loan Party or the transfer to Lender of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions applicable laws relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and reasonable attorneys' fees of Lender related thereto, the liability of each Loan Party automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

10.13 Definitions. Defined terms used in this Agreement are set forth on Addendum 5.

## 11. GOVERNING LAW, FORUM SELECTION, CONSENT TO JURISDICTION AND CLASS ACTION WAIVER

11.1 THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR

THERE TO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

11.2 THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER 'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE LENDER ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH LOAN PARTY AND LENDER WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 11.2.

11.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH LOAN PARTY AND LENDER HEREBY WAIVES ITS RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH LOAN PARTY AND LENDER REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11.4 EACH LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

11.5 NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST LENDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF LENDER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

12. **JUDICIAL REFERENCE** IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN SECTION 11.3 ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

12.1 WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SECTION 12.2 BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

12.2 THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

12.3 UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

12.4 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER; PROVIDED, THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

12.5 THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

12.6 THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

12.7 THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

13. **NO FIDUCIARY RELATIONSHIP**

Each Loan Party hereby acknowledges that Lender does not have any fiduciary relationship to any Loan Party, and the relationship between Lender, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor and no joint venture exists between Lender and any Loan Party.

14. **ADVERTISEMENT.** With the prior written consent of Borrower, Lender shall have the right to announce and publicize the financing established hereunder, as it deems appropriate, by means and media selected by Lender. Such publication may include all pertinent information relating to such financing, including without limitation, the term, purpose, loan amount and name and logo of Borrowers. The form and content of the published information shall be in the reasonable discretion of Lender and shall be considered the sole and exclusive property of Lender.

15. **BORROWING AGENCY**

15.1 Each Borrower hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity to (i) borrow, (ii) request advances, (iii) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and all other certificates, notice, writings and further assurances now or hereafter required hereunder, and (iv) otherwise take action under and in connection with this Agreement and the other Loan Documents, all on behalf of and in the name such Borrower or Borrowers, and hereby authorizes Lender to pay over or credit all Loan proceeds hereunder in accordance with the request of Borrowing Agent.

15.2 The handling of the Loan as a co-borrowing arrangement with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Borrowers and at their request. Lender shall not incur liability to Borrowers as a result thereof. To induce Lender to do so and in consideration thereof, each Borrower hereby indemnifies Lender and holds Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Borrowers as provided herein, reliance by Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to this Section 15.2 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

15.3 All Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Borrower shall in no way be affected by any extensions, renewals and forbearance granted by Lender to any Borrower, failure of Lender to give any Borrower notice of borrowing or any other notice, any failure of Lender to pursue or preserve its rights against any Borrower, the release by Lender of any Collateral now or thereafter acquired from any Borrower, and such agreement by each Borrower to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Lender to the other Borrowers or any Collateral for such Borrower's Obligations or the lack thereof. Each Borrower waives all suretyship defenses.

16. **RULES OF CONSTRUCTION**

Lender and Loan Parties have participated in the preparation and/or review of this Agreement, and this Agreement shall be deemed the result of the joint efforts of Lender and the Loan Parties. This Agreement has been accepted and approved as to its final form by Lender and the Loan Parties, and upon the advice of their respective counsel. Each Loan Party acknowledges that if such Loan Party elected not to consult with an attorney before signing this Agreement, such Loan Party had ample time to hire an attorney and obtain a review of this Agreement by counsel before signing this Agreement. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against either Lender or any Loan Party as a result of the manner of the preparation and presentation of this Agreement. Each Loan Party and Lender agree that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement and are hereby waived.

17. **CONFIDENTIALITY**

Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent

requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this section, to any assignee of, or any prospective assignee of, any of its rights or obligations under this Agreement, (g) with the consent of Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this section or (y) becomes available to Lender on a nonconfidential basis from a source other than Borrower. For purposes of this section, "Information" means all information received from any Loan Party relating to any Loan Party or any of their respective businesses, clients or partners, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by any Loan Party, provided that, in the case of information received from a Loan Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 17 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, but in no event less than a reasonable degree of care. Other than as permitted above, for the avoidance of doubt, Lender will (x) only share Borrowers' sensitive information with those that need to know for purposes of financing Lender, subject at all times to a non-disclosure agreement, and (y) use best-efforts to restrict providing customer identifiable information.

**18. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile or scanned email copies reflecting the party's signature hereto, and any such facsimile copy or scanned email copies shall be sufficient to evidence the signature of such party as if it were an original signature. Any failure by any Loan Party or Lender to deliver original counterparts shall not affect the validity or the delivery of this Agreement or any documents in writing between Lender and any Loan Party.

**19. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between Lender and the Loan Parties with respect to the subject matter hereof, and supersedes all other agreements, oral or written, between Lender and any Loan Party with respect to the subject matter. Each Loan Party acknowledges and represents that it has read this Agreement carefully and that there have been no oral or written statements made to it by Lender or any other party that contradicts, varies, or would change the meaning of any statements, promises, or agreements set forth in this Agreement. Each Loan Party acknowledges that a failure to review this Agreement before signing it precludes any claim that it does not represent the true and accurate agreement of Lender and such Loan Party. No claim of waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be made against any party herein, except upon the basis of a written instrument executed by or on behalf of such party, which written instrument must expressly reference this Agreement.

[Remainder of page intentionally blank]

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

**BORROWERS:**

AUDIOEYE, INC.

By: /s/ David Moradi  
Name: David Moradi  
Title: Chief Executive Officer

SPRINGTIME, INC.

By: /s/ David Moradi  
Name: David Moradi  
Title: Chief Executive Officer

**LENDER:**

SG CREDIT PARTNERS, INC.

By: /s/ Marc Cole  
Name: Marc Cole  
Title: Chief Executive Officer

*[Signature page to Loan and Security Agreement]*

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ADDENDUM 1

PERMITTED LIENS

- (a) Liens arising under this Agreement and the other Loan Documents;
  - (b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrowers maintain adequate reserves on its books;
  - (c) purchase money Liens securing Purchase Money Debt in an aggregate amount outstanding not to exceed \$250,000 at any time (i) on equipment acquired or held by Borrowers incurred for financing the acquisition of the equipment, or (ii) existing on equipment when acquired, in each case if the Lien is confined to the equipment and improvements and the proceeds of the equipment;
  - (d) Liens of carriers, warehousemen, suppliers, landlords or other persons that are possessory in nature arising in the ordinary course of business so long as the amount secured by such Liens is not delinquent or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;
  - (e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business;
  - (f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in clause (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;
  - (g) leases or subleases of real property granted in the ordinary course of business, and leases, subleases, non-exclusive licenses or sublicenses of property granted in the ordinary course of each Borrower's business, if the leases, subleases, licenses and sublicenses do not prohibit granting Lender a security interest;
  - (h) non-exclusive license of intellectual property granted to third parties in the ordinary course of business. For the avoidance of doubt, the licensing of reports and feedback generated by software or services that constitute intellectual property shall not violate the prohibition on liens set forth in Section 6.1;
  - (i) Precautionary UCC financing statements or similar filings made in respect of operating leases entered into by any Loan Party;
  - (j) Liens securing Indebtedness represented by financed insurance premiums in the ordinary course of business consistent with past practice, provided that such Liens do not extend to any property or assets other than the corresponding insurance policies being financed;
  - (k) Liens arising from Sections 9.1 and 9.2 of a confidential settlement agreement previously disclosed to Lenders;
  - (l) Liens securing any Acquired Indebtedness; and
  - (m) Liens arising from judgments, orders, decrees or attachments in circumstances not constituting an Event of Default under Section 7.6.
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ADDENDUM 2

PERMITTED INDEBTEDNESS

Purchase money indebtedness secured by Liens described in clause (c) of Addendum 1.

Indebtedness incurred for the acquisition of services, supplies or inventory on normal trade credit in the ordinary course of business.

Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business.

Indebtedness consisting of the BOIA Earnout and any other earnouts in connection with any Permitted Acquisition, so long as any consideration is paid solely in Equity Interests of AudioEye.

Indebtedness consisting of the financing of insurance premiums in the ordinary course of business.

Indebtedness assumed in any Permitted Acquisition in an aggregate amount not to exceed \$250,000 ("Acquired Indebtedness"), provided that such Indebtedness is unsecured or subordinated to the Obligations.

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ADDENDUM 3

CONDITIONS TO FUNDING

The obligation of Lender to execute and deliver this Agreement and fund the Loan to Borrowers are subject to the satisfaction of the following conditions precedent:

1. Lender shall have received, in form and content acceptable to Lender, fully executed copies of the documents and other deliverables set forth on Exhibit A to this Addendum 3 (other than those listed under the heading "Post Closing Deliverables and Covenants"),
  2. Lender shall have completed its business and legal due diligence pertaining to Borrowers, its business and assets, with results thereof satisfactory to Lender in its sole discretion;
  3. Lender shall have received, in form and content acceptable to Lender, evidence that Borrowers have Monthly Recurring Revenue for the most recent month ended immediately prior to the Closing Date of more than \$2,450,000;
  4. Lender shall have received, in form and content acceptable to Lender, evidence that Borrowers have Liquidity, as of the Closing Date but after giving effect to the funding of the Loan, of at least \$9,100,000; and
  5. Lender shall have received results, acceptable to Lender, of a third-party field exam of Borrowers, including, without limitation, Borrower's Monthly Recurring Revenue, cash flow and customer retention
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ADDENDUM 4

ADDITIONAL COVENANTS

1. Minimum Liquidity. At all times and reported as of the last day of each calendar month (unless Liquidity is below \$2,000,000 on any day during such month, in which case such breach shall be reported within one (1) Business Day of such breach), the actual Liquidity for any day in any given calendar month shall not be less than \$2,000,000.

2. Minimum Monthly Recurring Revenue. Measured on a trailing three (3) month average basis as of the last day of each calendar month, beginning with the month ending November 30, 2023, Borrowers shall not permit its aggregate Monthly Recurring Revenue for the most recent month then ended to fall below the amount set forth below:

Each month, during the period commencing with the month ending November 30, 2023 and ending with the month ending November 30, 2024	\$2,300,000
Each month thereafter	An amount equal to the greater of (i) \$2,300,000 and (ii) 105% of Borrowers' actual Monthly Recurring Revenue for the applicable month's prior year (e.g., the Monthly Recurring Revenue measured on a trailing three (3) month average basis as of the last day of December 2024 to be greater than or equal to 105% of the Monthly Recurring Revenue measured on a trailing (3) month average basis as of the last day of December 2023 Monthly Recurring Revenue)

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## DEFINITIONS

"Adjusted EBITDA" for any period means the sum of (a) Borrowers' EBITDA for such period less (b) capitalized software developments costs for such period (c) plus net non-cash stock compensation for such period (after deducting amounts due to settle tax withholding obligations in connection with stock compensation).

"Affiliate" means (i) any other person or entity which, directly or indirectly, controls or is controlled by or is under common control with any Borrower or (ii) any officer, employee, member, manager, shareholder, or director of any Borrower; an entity shall be deemed to be "controlled by" any other person or entity if such person or entity possesses, directly or indirectly, power to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such entity whether by contract or otherwise.

"Applicable Percentage" has the meaning given in Section 2.2(b).

"Asset" means any interest of a Person in any kind of property or asset, whether real, personal, or mixed real and personal, and whether tangible or intangible.

"Base Rate" means, for any day, the greatest of (a) the per annum rate of interest which is identified as the "Prime Rate" and normally published in the Money Rates section of The Wall Street Journal (or, if such rate ceases to be so published, as quoted from such other generally available and recognizable source as Lender may select) (the "Published Prime Rate") (and, if any such published rate is below zero, then the rate determined pursuant to this clause (a) shall be deemed to be zero) and (b) 7.00% per annum. Any change in the Base Rate due to a change in such Published Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in such Published Prime Rate or the Federal Funds Rate.

"Borrowing Agent" means AudioEye, Inc.

"BOIA Earnout" that certain earnout obligation under the Stock Purchase Agreement by and between Borrowers, as Buyer, Mark Shapiro, Kim Testa, Garry Harstad, Ken Berquist and Betaspring Fund 100, LLC, a Delaware limited liability company (collectively "Sellers"), and Mark Shapiro, as Sellers' Representative, as amended prior to the date hereof.

"Borrowers" means individually and collectively as the context may require, the Person(s) listed in the Loan Chart as "Borrower" or "Borrowers" as of the date hereof and all Person who may later be joined as borrowers to this Agreement.

"Business Day" means any calendar day other than Saturdays, Sundays and official federal holidays.

"Change of Control" has the meaning given in Section 7.15.

"Collateral Access Agreement" means a landlord waiver, mortgagee waiver, bailee letter, or acknowledgement agreement of any warehouseman, processor, lessor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Collateral, in each case, in form and substance satisfactory to Lender.

"Contracts" means services contracts, subscription license contracts, maintenance contracts, and support contracts (and related orders and statements of work) for the provision of services by Borrowers to Borrowers' customers and/or resellers.

"Corporate Loan Parties" means, collectively, all Loan Parties (except those that are individuals), if any, and "Loan Party" means, individually, any of them.

"Debt" means, as of the date of determination, the sum, but without duplication, of any and all of a Person's: (i) indebtedness heretofore or hereafter created, issued, incurred or assumed by such Person (directly or indirectly) for or in respect of money borrowed; (ii) capital lease obligations; (iii) obligations evidenced by bonds, debentures, notes, or other similar instruments; (iv) obligations for the deferred purchase price of property or services (other

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than trade payables which are not more than 90 days past due incurred in the ordinary course of business); (v) current liabilities in respect of unfunded vested benefits under any Plan; (vi) contingent obligations under letters of credit; (vii) contingent obligations under acceptance facilities; (viii) guarantees of Debt; (ix) obligations with respect to indebtedness in accordance with GAAP secured by any Lien on any Asset of such Person, whether or not such obligations have been assumed; (x) the net obligations under swap transactions; and (xi) obligations to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in such Person (excluding any obligations to satisfy tax withholding obligations in connection with the settlement of restricted stock units or the issuance of unrestricted stock related to the surrender of shares of AudioEye by its employees) or any other Person, or any warrant, right or option to acquire such Equity Interests, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends.

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

"Default" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"EBITDA" shall mean on a consolidated basis for any period with respect to Borrowers, the sum of (a) net income (or loss) for such period (excluding non-cash extraordinary gains or non-cash extraordinary losses), plus (b) all interest expense for such period, plus (c) all charges against income for such period for federal, state and local taxes, plus (d) depreciation expenses for such period, plus (e) amortization expenses for such period.

"Enterprise Channel" means (a) Borrowers' Enterprise channel, which generally speaking, consists of Borrowers' larger customers and organizations, including those with non-platform custom websites, who generally engage directly with Borrowers' sales personnel for custom pricing and solutions (which channel also includes federal, state and local government agencies), (b) the Bureau of Internet Accessibility Inc. ("BOIA"), which was acquired by Borrowers in March 2022, and (c) any other channel of Borrower other than the Partner and Marketplace Channel.

"Equity Interests" means, with respect to a Person, all of the shares of stock, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities Exchange Commission under the Securities Exchange Act of 1934, as in effect from time to time (the "Exchange Act")).

"Excluded Account" shall mean (i) any deposit account, securities account, commodities account or other account of any Loan Party (and all cash, cash equivalents and other securities or investments held therein) to the extent solely and exclusively used for payment of payroll, employee benefits and withholding taxes and (ii) any deposit account, securities account, commodities account or other account of any Loan Party, the balance of which does not exceed \$100,000 in the aggregate at any time.

"Excluded Assets" means (i) Equipment or other property owned by any Loan Party on the date hereof or hereafter acquired that is subject to a Lien securing capitalized leases and purchase money Indebtedness permitted to be incurred pursuant to clause (c) of Addendum 1 to the extent and for so long as the documentation providing for such capitalized leases and purchase money Indebtedness prohibits the creation of a Lien on such assets (other than to the extent that any such term or prohibition would be rendered ineffective after giving effect to Section 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) or any other applicable law (including the Bankruptcy Code), (ii) any United States intent-to-use trademark applications to the extent that the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable Federal law, and (iii) assets and property to the extent such assets and property are subject to a term or a rule of law, statute or regulation that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than such Loan Party) to, the creation, attachment or perfection of the security interest granted herein, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law (including, without limitation, pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC); provided, that with respect to any such limitation described in the foregoing clause (iii) (1) upon the request of Lender, such Loan Party shall use commercially reasonable efforts to obtain any requisite consent for the creation of such Lien in favor of Lender on such property, (2) immediately upon the ineffectiveness, lapse or termination of any such restriction, the Collateral shall include,

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and such Loan Party shall be deemed to have granted a Lien on such property under the applicable Loan Documents as if such restriction had never been in effect; and (3) notwithstanding any such restriction, the Collateral shall, to the extent such restriction does not by its terms apply thereto and such rights and proceeds do not otherwise constitute Excluded Assets, include all rights incident or appurtenant to any such property, and the right to receive all proceeds derived from, or in connection with the sale, assignment or transfer of, such property.

"Fee Letter" means that certain Fee Letter, dated as of the date hereof, between Borrowers and Lender.

"GAAP" means generally accepted accounting principles in the United States of America, consistently applied, which are in effect as of the date of this Agreement. If any changes in accounting principles from those in effect on the date hereof are hereafter occasioned by promulgation of rules, regulations, pronouncements or opinions by or are otherwise required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions), and any of such changes results in a change in the method of calculation of, or affects the results of such calculation of, any of the financial covenants, standards or terms found herein, then the parties hereto agree to enter into and diligently pursue negotiations in order to amend such financial covenants, standards or terms so as to equitably reflect such changes, with the desired result that the criteria for evaluating financial condition and results of operations of Borrowers and their Subsidiaries shall be the same after such changes as if such changes had not been made.

"Governmental Authority" means any federal, state, local or other governmental department, commission, board, bureau, agency, central bank, court, tribunal or other instrumentality or authority or subdivision thereof, domestic or foreign, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guarantors" means, collectively, any of the Persons signatory to this Agreement as a Guarantor from time to time, and "Guarantor" means, individually, any of them.

"Insolvency Proceeding" means any proceeding commenced by or against any Person, under any provision of Debtor Relief Laws, or under any other bankruptcy or insolvency law, including, but not limited to, assignments for the benefit of creditors, formal or informal moratoriums, compositions, or extensions with some or all creditors.

"Lender Debt Payments" shall mean for any period, in each case, all: (a) interest payments on any Loans hereunder plus (b) scheduled principal payments on the Loan(s), if applicable.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement or other preferential arrangement, charge or encumbrance (including, any conditional sale or other title retention agreement, or finance lease) of any kind.

"Liquidity" means as of any date of determination (a) the aggregate amount of any cash, cash equivalents and other securities or investments held in deposit account, securities account or other account of any Loan Party (and all cash, cash equivalents and other securities or investments held therein) in which Lender has executed control agreements as of such date (commencing 60 days after the Closing Date) and any other investments approved by Lender in its reasonable discretion, minus (b) Restricted Liquidity.

"Liquidity Event" means, any one of the following: (i) the consummation of a sale or other disposition of all or a majority of the assets of Borrowers, (ii) the consummation of a merger, consolidation or similar transaction following which the Borrowers are not the surviving entity; (iii) the consummation of a merger, consolidation, recapitalization or similar transaction following which the Borrowers are the surviving corporation but the capital stock outstanding immediately preceding the merger, consolidation, recapitalization or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise; (iv) a Change of Control or (v) a winding up or dissolution of any Borrower or any Borrower's business.

"Loan Documents" means, collectively, this Agreement, the Fee Letter, and all other documents evidencing, securing or relating to the Obligations or executed in connection herewith, and all amendments and modifications of any of the foregoing.

"Loan Guaranty" means the guaranty set forth in Section 9.

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"Loan Parties" means, collectively, Borrowers and the Guarantors, if any, and "Loan Party" means, individually, any of them.

"Make-Whole Amount" shall mean with respect to the principal amount of each Loan that is prepaid pursuant to Section 2.2(b) (each such payment being referred to herein as a "Subject Principal Payment"), an amount equal to the aggregate amount of Cash Interest payable under Section 2.3(a) of this Agreement (assuming that the interest rate in effect as of the date of such Subject Principal Payment is the same rate that would apply throughout the Make-Whole Date) and that would have otherwise accrued thereon, during the period commencing on the date of such Subject Principal Payment through and including the Make-Whole Date. For the avoidance of doubt, after the Make-Whole Date, the Make-Whole Amount will be zero.

"Make-Whole Date" means, the one (1) year anniversary of the Closing Date.

"Material Adverse Effect" means any event, act, omission, condition or circumstance which, which individually or in the aggregate, has or could reasonably be expected to have a material adverse effect on (i) the business, operations, properties, assets or financial condition of Borrowers, (ii) the ability of any Loan Party to perform any of its obligations under any of the Loan Documents, (iii) the validity or enforceability of, or Lender's rights and remedies under, any of the Loan Documents, (iv) the value of the Collateral, or (v) the priority of Lender's Liens with respect to the Collateral.

"Monthly Recurring Revenue" means, with respect to any measurement period, the sum of (a) for the Borrower's Enterprise Channel, the total of the annual recurring fee under each active contract (as of the last day of the applicable month), such amount divided by twelve, plus (b) for the Borrower's Partner and Marketplace Channel, the monthly fee for all active customers (as of the last day of the applicable month), in each case assuming no changes to the subscription.

"Obligations" means (i) any and all obligations of Loan Parties (or any of them) to Lender, including without limitation all principal, interest, and other amounts, costs and fees (including the Exit Fee) and expenses payable under this Agreement and the Loan Documents; and (ii) all other indebtedness, liabilities, and obligations of Loan Parties (or any of them) owing to Lender, and to its successors and assigns, previously, now, or hereafter incurred, and howsoever evidenced, whether direct or indirect, absolute or contingent, joint or several, liquidated or unliquidated, voluntary or involuntary, due or not due, legal or equitable, whether incurred before, during, or after any Insolvency Proceeding and whether recovery thereof is or becomes barred by a statute of limitations or is or becomes otherwise unenforceable or unallowable as claims in any Insolvency Proceeding, together with all interest thereupon (including interest under Section 2.3 and including any interest that, but for the provisions of Debtor Relief Laws, would have accrued during the pendency of an Insolvency Proceeding). The Obligations shall include, without limiting the generality of the foregoing, all principal and interest and other payment obligations owing under the Loan, any fees and expenses due hereunder and under the Loan Documents (including any fees or expenses that, but for the provisions of Debtor Relief Laws, would have accrued during the pendency of an Insolvency Proceeding), and all other indebtedness evidenced by this Agreement, the Loan Documents.

"Partner and Marketplace Channel" means Borrower's Partner and Marketplace channel, which consists of Borrowers' CMS partners, platform & agency partners, authorized resellers and our marketplace. This channel serves small and medium sized businesses who are on a partner or reseller's web-hosting platform or who purchase Borrowers' solution from Borrowers' marketplace.

"Permitted Acquisition" means any acquisition by a Borrower that satisfies each of the following requirements:

- (a) such Person or division or line of business is engaged in the same or a similar line of business as AudioEye or any of its Subsidiaries or any business activities reasonably related or ancillary thereto;
  - (b) no Default exists at the time of such acquisition or would result therefrom;
  - (c) after giving pro forma effect to such acquisition, Borrowers have Liquidity of at least \$3,000,000;
  - (d) Target's annualized operating cash flow after capitalized software costs shall be no worse than (\$250,000) after giving effect to cost structure changes arising from the proposed acquisition;
  - (e) Borrowers' Adjusted EBITDA on an average basis for the most recent three months then ended that is greater than Borrower's Lender Debt Payments on an average basis for the most recent three months then ended; and
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(f) the Loan Parties shall comply with the requirements of Section 6.17 of this Agreement if any new Subsidiary is acquired in such acquisition.

"Permitted Liens" are listed on Addendum 1.

"Person" means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, government or any agency or political division thereof, or any other entity.

"Restricted Liquidity" means (a) prior to Borrowers' payment in full of the BOIA Earnout, an amount equal to the greater of (i) \$2,100,000 and (ii) the expected BOIA Earnout and (b) at all times thereafter, \$0.

"Solvent" means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets of such Person (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to pay all liabilities of such Person as such liabilities mature and (c) such Person does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, association or joint venture or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time owned or the management of which is controlled, directly, or indirectly through one or more intermediaries, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of Borrowers.

"Target" means, in connection with a Permitted Acquisition, the Person whose Equity Interests are being acquired or the Person from whom certain assets are being acquired.

"UCC" means the New York Uniform Commercial Code, as amended or supplemented from time to time.

Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP consistently applied. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Indebtedness or other liabilities of any Loan Party at "fair value", as defined therein.

References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits" or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". "Or" shall be construed to mean "and/or". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. Time is of the essence for each performance obligation of the Loan Parties under this Agreement and each Loan Document. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any agreement, instrument or document (a) shall include all schedules, exhibits, annexes and other attachments thereto and (b) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein or in any other Loan Document). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. All numbers indicated in parenthesis indicate

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negative numbers. Unless otherwise specified herein Dollar (\$) baskets set forth in the representations and warranty, covenants and event of default provisions of this Agreement (and other similar baskets) are calculated as of each date of measurement by the Dollar Equivalents thereof as of such date of measurement.

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EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

COMPLIANCE CERTIFICATE

SG Credit Partners, Inc.  
500 Newport Center Dr.  
Suite 580  
Newport Beach, CA 92660  
Email: techpm@sgcreditpartners.com  
Attn: Portfolio Manager

The undersigned, an authorized officer of AudioEye, Inc. a Delaware corporation ("Borrower"), gives this certificate to SG Credit Partners, Inc., a Delaware corporation ("Lender") in accordance with the requirements of that certain Loan and Security Agreement dated as of November 30, 2023, among Loan Parties and Lender (as amended, restated, supplemented or modified from time to time, the "Loan Agreement"). Capitalized terms used herein, unless otherwise defined herein, shall have the meanings ascribed to them in the Loan Agreement.

Based upon my review of the consolidated and consolidating balance sheets and statements of income of Borrower and its consolidated Subsidiaries, if any, for the fiscal period ending \_\_\_\_\_ (the "Reporting Period"), copies of which are attached hereto as Schedule "B", I hereby certify that:

- (a) to my knowledge, there exists no Event of Default or event which, with the giving of notice or passage of time or both, would constitute an Event of Default.
- (b) See chart below:

*Please indicate compliance status by circling Yes/No under "Complies" column.*

<b>Reporting Covenant</b>	<b>Required</b>	<b>Complies</b>	
Monthly financial statements, and Compliance Certificate	Monthly within 35 days	Yes	No
Annual financial statements	Annually with 120 days	Yes	No
Annual operating budget, sales projections and operating plans approved by board of directors	Annually no later than February 1 after the beginning of each fiscal year	Yes	No
Revenue-related reports (including Monthly Recurring Revenue), A/R aging, A/P aging and deferred revenue report	Monthly within 35 days	Yes	No

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<b>Financial Covenant</b>	<b>Required</b>	<b>Actual</b>	<b>Complies</b>	
Minimum Liquidity	≥\$2,000,000	\$ _____	Yes	No
Minimum Monthly Recurring Revenue	≥\$ _____	\$ _____	Yes	No

Attached as Schedule "A" are the details underlying such financial covenant calculations.

[signatures on following page]



Very truly yours,

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

Name:

Title:

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**Schedule A to Compliance Certificate**

**Financial Covenant Calculations**

[see attached]

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**Schedule B to Compliance Certificate**

**Financial Statements**

[see attached]

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-190871, 333-195471, 333-200170, 333-231760, 333-232568, 333-248088, 333-251225, 333-265355 and 333-265356) and in the Registration Statement on Form S-3 (No. 333-276937) of our report dated March 7, 2024 relating to the financial statements of AudioEye, Inc. (the "Company"), appearing in this Annual Report on Form 10-K of the Company for the year ended December 31, 2023.

*/s/ MaloneBailey, LLP*  
www.malonebailey.com  
Houston, Texas  
March 7, 2024

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## CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Moradi, Principal Executive Officer of AudioEye, Inc. (the "Registrant"), certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended December 31, 2023 of AudioEye, Inc. (the "Annual Report");

2. Based on my knowledge, this Annual 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 Annual Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Annual 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 Annual 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 my supervision, to ensure that material information relating to the Registrant is made known to me by others within those entities, particularly during the period in which this Annual Report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my 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 Annual Report my conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual 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 my 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: March 7, 2024

By: /s/ David Moradi

Name: David Moradi  
Title: Chief Executive Officer  
(Principal Executive Officer)

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## CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kelly Georgevich, Principal Financial Officer of AudioEye, Inc. (the "Registrant"), certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended December 31, 2023 of AudioEye, Inc. (the "Annual Report");

2. Based on my knowledge, this Annual 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 Annual Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Annual 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 Annual 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 my supervision, to ensure that material information relating to the Registrant is made known to me by others within those entities, particularly during the period in which this Annual Report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my 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 Annual Report my conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual 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 my 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: March 7, 2024

By: /s/ Kelly Georgevich

Name: Kelly Georgevich  
Title: Chief Financial Officer  
(Principal Financial Officer)

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## CERTIFICATION UNDER SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing by AudioEye, Inc. (the "Registrant") of its Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the "Annual Report") with the Securities and Exchange Commission, I, David Moradi, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) The Annual Report fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: March 7, 2024

By: /s/ David Moradi

Name: David Moradi  
Title: Chief Executive Officer  
(Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to the Registrant and will be retained by the Registrant and furnished to the Securities and Exchange Commission or its staff upon request.

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## CERTIFICATION UNDER SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing by AudioEye, Inc. (the "Registrant") of its Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the "Annual Report") with the Securities and Exchange Commission, I, Kelly Georgevich, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) The Annual Report fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: March 7, 2024

By: /s/ Kelly Georgevich

Name: Kelly Georgevich

Title: Chief Financial Officer

(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Registrant and will be retained by the Registrant and furnished to the Securities and Exchange Commission or its staff upon request.

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## AUDIOEYE, INC.

## COMPENSATION RECOVERY POLICY

Effective October 24, 2023

**Policy**

The Board of Directors (the "Board") of AudioEye, Inc. (the "Company") has adopted this Compensation Recovery Policy (this "Policy") pursuant to Rule 10D-1 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), the Securities and Exchange Commission ("SEC") regulations promulgated thereunder, and applicable Nasdaq Stock Market ("Nasdaq") listing standards.

Subject to and in accordance with the terms of this Policy, upon a Recoupment Event, each Covered Executive shall be obligated to return to the Company, reasonably promptly, the amount of Erroneously Awarded Compensation that was received by such Covered Executive during the Lookback Period.

**Administration**

This Policy will be administered by the Compensation Committee of the Board (the "Committee"). Any determinations made by the Committee will be final and binding on all affected individuals.

**Definitions**

"Accounting Restatement" means an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

"Covered Executive" means each of the Company's current and former executive officers who is or was an "officer" of the Company within the meaning of Rule 16a-1(f) of the Exchange Act.

"Erroneously Awarded Compensation" means, with respect to each Covered Executive in connection with an Accounting Restatement, the excess of the amount of Incentive-Based Compensation received by the Covered Executive during the Lookback Period over the amount of Incentive-Based Compensation that otherwise would have been received had it been determined based on the restated amounts, computed without regard to any taxes paid. For Incentive-Based Compensation based on stock price or total shareholder return, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement: (a) the amount must be based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or total shareholder return upon which the Incentive-Based Compensation was received; and (b) the Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq.

"Financial Reporting Measures" are any measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures derived wholly or in part from such measures. Stock price and total shareholder return are also Financial Reporting Measures. A Financial Reporting Measure need not be presented within the financial statements or included in a filing with the SEC.

"Incentive-Based Compensation" is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a Financial Reporting Measure.

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"Lookback Period" means the three completed fiscal years immediately preceding the Required Restatement Date and any transition period (that results from a change in the Company's fiscal year) of less than nine months within or immediately following those three completed fiscal years.

A "Recoupment Event" occurs when the Company is required to prepare an Accounting Restatement.

"Required Restatement Date" means the earlier to occur of: (a) the date the Company's Board, a committee of the Board, or the officer(s) of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (b) the date a court, regulator, or other legally authorized body directs the Company to prepare an Accounting Restatement.

"Section 409A" means Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder.

### **Amount Subject to Recovery**

The Incentive-Based Compensation that is subject to recovery under this Policy includes such compensation that is received by a Covered Executive (i) on or after October 2, 2023 (even if such Incentive-Based Compensation was approved, awarded or granted prior to that date), (ii) after the individual began service as a Covered Executive, (iii) if the individual served as a Covered Executive at any time during the performance period for such Incentive-Based Compensation, and (iv) while the Company has a class of securities listed on a national securities exchange or national securities association.

The amount of Incentive-Based Compensation subject to recovery from a Covered Executive upon a Recoupment Event is the Erroneously Awarded Compensation, which amount shall be determined by the Committee in accordance with this Policy.

For purposes of this Policy, Incentive-Based Compensation is deemed "received" in the Company's fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, even if the payment or grant of the Incentive-Based Compensation occurs after the end of that period.

### **Recovery of Erroneously Awarded Compensation**

Promptly following a Recoupment Event, the Committee will determine the amount of Erroneously Awarded Compensation for each Covered Executive, and the Company will provide each such Covered Executive with a written notice of such amount and a demand for repayment or return. Upon receipt of such notice, each affected Covered Executive shall promptly repay or return such Erroneously Awarded Compensation to the Company.

If such repayment or return is not made within a reasonable time, the Company shall recover Erroneously Awarded Compensation in a reasonable and prompt manner using any lawful method determined by the Committee; provided that recovery of any Erroneously Awarded Compensation must be made in compliance with Section 409A. The applicable Covered Executive shall also be required to reimburse the Company for any and all expenses (including legal fees) reasonably incurred by the Company in recovering such Erroneously Awarded Compensation in accordance with the immediately preceding sentence.

### **Limited Exceptions**

Erroneously Awarded Compensation will be recovered in accordance with this Policy unless the Committee determines that recovery would be impracticable and one of the following conditions is met:

- the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered, provided the Company has first made a reasonable effort to recover the Erroneously Awarded Compensation; or
- the recovery would likely cause a U.S. tax-qualified retirement plan to fail to meet the requirements of Internal Revenue Code Sections 401(a)(13) and 411(a) and the regulations thereunder.

Reliance on any of the above exemptions will further comply with applicable listing standards, including without limitation, documenting the reason for the impracticability and providing required documentation to Nasdaq.

#### **No Insurance or Indemnification**

Neither the Company nor any of its affiliates or subsidiaries may indemnify any Covered Executive against the loss of any Erroneously Awarded Compensation (or related expenses incurred by the Covered Executive) pursuant to a recovery of Erroneously Awarded Compensation under this Policy, nor will the Company nor any of its affiliates or subsidiaries pay or reimburse a Covered Executive for any insurance premiums on any insurance policy obtained by the Covered Executive to protect against the forfeiture or recovery of any compensation pursuant to this Policy.

#### **Interpretation**

The Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. This Policy shall be applied and interpreted in a manner that is consistent with the requirements of Rule 10D-1 and any applicable regulations, rules or standards adopted by SEC or the rules of any national securities exchange or national securities association on which the Company's securities are listed. In the event that this Policy does not meet the requirements of Rule 10D-1, the SEC regulations promulgated thereunder, or the rules of any national securities exchange or national securities association on which the Company's securities are listed, this Policy shall be deemed to be amended to meet such requirements.

#### **Indemnification of Policy Administrators**

Any members of the Committee who participate in the administration of this Policy shall not be personally liable for any action, determination or interpretation made with respect to this Policy and shall be fully indemnified by the Company to the fullest extent permitted under applicable law and Company governing documents and policies with respect to any such action, determination or interpretation. The foregoing shall not limit any other rights to indemnification of the members of the Committee under applicable law or Company governing documents and policies.

#### **Amendment; Termination**

The Board or the Committee may amend this Policy in its discretion and shall amend this Policy as it deems necessary to comply with the regulations adopted by the SEC under Rule 10D-1 and the rules of any national securities exchange or national securities association on which the Company's securities are listed. The Board or the Committee may terminate this Policy at any time. Notwithstanding anything herein to the contrary, no amendment or termination of this Policy shall be effective if that amendment or termination would cause the Company to violate any federal securities laws, SEC rules or the rules of any national securities exchange or national securities association on which the Company's securities are listed.

## **Other Recoupment Rights**

The Board intends that this Policy will be applied to the fullest extent of the law. Any Incentive-Based Compensation provided for in an employment agreement, incentive compensation plan, policy, program or agreement, equity award, or similar plan, program or agreement shall, as a condition to the grant of any benefit thereunder, be subject to the terms of this Policy. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar provision in any employment agreement, incentive compensation plan, policy, program or agreement, equity award, or similar plan, program or agreement and any other legal remedies available to the Company. This Policy is in addition to any other clawback or compensation recovery, recoupment or forfeiture policy in effect or that may be adopted by the Company from time to time, or any laws, rules or listing standards applicable to the Company, including without limitation, the Company's right to recoup compensation subject to Section 304 of the Sarbanes-Oxley Act of 2002.

## **Successors**

This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

## **Applicable Law and Venue**

This Policy and all rights and obligations hereunder shall be governed by and construed in accordance with the law of the State of Delaware regardless of the application of rules of conflicts of laws that would apply to the laws of any other jurisdiction. The jurisdiction and venue for any disputes arising under, or any action brought to enforce (or otherwise relating to), this Policy will be exclusively in the courts in the State of Delaware, New Castle County, including the Federal Courts located therein (should Federal jurisdiction exist). The parties' consent to and submit to the personal jurisdiction and venue of courts of Delaware and irrevocably waive any claim or argument that the courts in Delaware are an inconvenient forum.



