

**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, 2024
- OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM** _____ **TO** _____

Commission File Number 001-38937

Aterian, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

83-1739858
(I.R.S. Employer
Identification Number)

350 Springfield Avenue, Suite 200
Summit, NJ 07901
(Address of principal executive offices and zip code)

(347) 676-1681
(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 \$0.0001 per share	ATER	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None.

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 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, 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 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)

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on the Nasdaq Capital Market on June 30, 2024 (the last trading day of the registrant's second fiscal quarter of 2024), was approximately \$20.6 million.

The number of shares of Registrant's Common Stock outstanding as of March 21, 2025 was 8,750,741.



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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this “Annual Report”) contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which statements involve substantial risks and uncertainties. Forward-looking statements generally relate to future events or our future financial or operating performance. In some cases, you can identify forward-looking statements because they contain words such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential,” or “continue” or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans, or intentions.

We have based the forward-looking statements contained in this Annual Report primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, and results of operations. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in the section of this Annual Report entitled “Risk Factors” and elsewhere in this Annual Report. Moreover, we operate in a highly competitive, dynamic and challenging environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Annual Report. We cannot assure you that the results, events and circumstances reflected, or that the plans, intentions or expectations disclosed, in the forward-looking statements will be achieved or occur, and actual results, events or circumstances could differ materially from those expressed or implied by the forward-looking statements.

The forward-looking statements made in this Annual Report relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Annual Report to reflect events or circumstances after the date of this Annual Report, new information or the occurrence of unanticipated events, except as required by law.

PART I

Item 1. Business.

See the sections contained within this Annual Report entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” for further information.

About Aterian

Aterian, Inc. (the "Company") is a technology-enabled consumer products company that predominantly operates through online retail channels such as Amazon, Walmart, and Target and its own direct to consumer websites. The Company operates its owned brands, which were either incubated or purchased, selling products in multiple categories, including home and kitchen appliances, kitchenware, air quality appliances, health and beauty products and essential oils.

Our primary brands include Squatty Potty, HomeLabs, Mueller Living, PurSteam, Healing Solutions, and Photo Paper Direct ("PPD"). We generate revenue primarily through the online sales of our various consumer products with substantially all of our sales being made through the Amazon U.S. marketplace.

Headquartered in New Jersey, the Company also maintains offices in China, the Philippines, and the United Kingdom.

Business Segments

We operate as one operating segment. Our revenues are derived from the sale of consumer goods. See Note 18, *Segment Information*, in the accompanying notes to our consolidated financial statements for further detail.

Products

The Company sells a wide-range of products across multiple categories, including home and kitchen appliances, kitchenware, air quality appliances, health and beauty products, and essential oils. These products are sold under the Company’s owned brands, which were either incubated or acquired.

While we pursue growth from our existing product portfolio, new product launches and omni-channel expansion, we also intend to opportunistically pursue growth through strategic acquisitions of brands that we believe will integrate well with our business.

Intellectual Property and Technology

We rely primarily on a combination of trade secrets, trademarks, employee and third-party nondisclosure agreements and licensing arrangements (including open-source software) to protect our intellectual property. We generally do not pursue patent applications as a means of protecting our intellectual property. We have applied to register or have registered certain of our trademarks in the U.S. and other jurisdictions, and we will pursue additional trademark registrations to the extent we believe they would be beneficial and cost-effective.

We believe that the use of technology allows us to automate and ingest data to create efficiencies within our sales and marketing and our supply chain. This ability to leverage technology is important for our business considering that predominately all our net revenue is generated via e-commerce marketplaces. Historically, we developed the majority of our technology internally. However, in February 2024, we announced that we have shifted our technology platform away from a fully internally developed model to an integrated third-party, best-of-breed model.

Customers

Our customers are mainly individual online consumers who purchase our products primarily on Amazon US, and to a lesser extent on our owned and operated websites and other marketplaces, such as Walmart. In 2023 and 2024, approximately 88% and 92% of our revenue was through the Amazon sales platform, respectively.

Seasonality

Our individual product categories are typically affected by seasonal sales trends primarily resulting from the timing of the summer season for certain of our environmental appliance products and the fall and holiday season for our small kitchen appliances and accessories. With our current mix of environmental appliances, the sales of those products tend to be significantly higher in the summer season. Further, our essential oils, small kitchen appliances and accessories tend to have higher sales during the fourth quarter, which includes Thanksgiving and the December holiday season. As a result, our operational results, cash flows, cash and inventory positions may fluctuate materially in any quarterly period depending on, among other things, adverse weather conditions, shifts in the timing of certain holidays and changes in our product mix.

Sales and Marketing

Our sales and marketing strategy and approach is focused on online channels and e-commerce platforms. Currently our primary focus on advertising spend is online across Amazon and Google, as well as through marketing affiliates.

Third-Party Manufacturing & Logistics

During 2024, we purchased the substantial majority of our finished products from suppliers in China. We do not maintain long-term purchase contracts with suppliers and operate mainly on a purchase order basis. We negotiate purchases from our foreign suppliers in U.S. dollars. We purchased our inventory from approximately 39 suppliers, four of which represented more than 10% of purchases during the year ended December 31, 2024. While we believe the loss of any one supplier would not have a long-term material adverse effect on our business due to the availability of other suppliers, the loss of a supplier could, in the short term, materially and adversely impact our business.

The principal raw materials used by our third-party suppliers to manufacture our products are plastic, glass, steel, copper, aluminum and packaging materials. We believe adequate quantities of raw materials are available from various suppliers.

We use a combination of Amazon warehouses, other third-party warehouses and logistics partners to fulfill direct-to-consumer orders, through agreements or terms of services. In addition to fulfillment by Amazon warehouses, we use geographically distributed third-party warehouses in the U.S. to deliver orders within one to two days through ground shipment to most customers.

Competition

The consumer goods and e-commerce markets are highly competitive and dynamic. We compete primarily against numerous third-party brands and sellers on marketplaces for each of our products. Competition is based on price, product features and quality, strong ratings and reviews, effective marketing, visibility and location on the online shelf and supply chain excellence, which is mostly the ability to deliver products to customers in one to two days. In certain instances, we compete directly with our third-party suppliers who sell their own brands directly to customers, including with respect to certain of our material products.

Government Regulation

We are subject to a variety of U.S. federal, state and local laws and international laws, including but not limited to those governing the processing of payments, consumer protection, the privacy of consumer information and other laws regarding unfair and deceptive trade practices. We are also subject to various environmental laws, rules and regulations, such as California's Proposition 65.

The products sold by us are also subject to regulation by U.S. governmental agencies, including the U.S. Consumer Product Safety Commission, the Federal Trade Commission, United States Food and Drug Administration, the U.S. Environmental Protection Agency, the U.S. Department of Energy and similar state and international regulatory authorities, such as the California Energy Commission. We do not estimate any significant capital expenditures for environmental control matters either in the current fiscal year or in the near future.

We are also subject to regulations relating to our supply chain. For example, the California Transparency in Supply Chains Act requires retail sellers that do business in California to disclose their efforts to eradicate slavery and human trafficking in their supply chains. As part of our vendor qualification process, we review suppliers' operations for compliance with applicable labor and workplace standards and other applicable laws, including laws prohibiting child labor, forced labor and unsafe working conditions.

A significant portion of our products are currently manufactured in China. The enactment of new legislation, executive actions, or changes in current laws related to international trade affecting trade agreements, changes in tariffs, trade barriers, price and exchange controls and other regulatory requirements or changes in sourcing patterns could adversely affect the Company's operations and result in additional expenses. Additional information is discussed in Item 1A of Part I, "Risk Factors,"

Although we have not suffered any material restrictions from doing business in the past due to government regulations, significant impediments may arise in the future as we expand product offerings.

From time to time, we dispose of or donate obsolete inventory in compliance with applicable laws and regulations.

People

The human capital objectives we focus on in managing our business include attracting, developing, and retaining key personnel. We believe our management team has the experience necessary to effectively implement our growth strategy and continue to drive stockholder value. We provide competitive compensation, which includes a focus on stock-based compensation, and benefits to attract and retain key personnel, while also providing a safe, inclusive and respectful workplace. As of December 31, 2024, we had 97 full-time employees, and 28 independent contractors. As of December 31, 2024, our employees and contractors are based in offices, shared workspaces and remote work locations in the U.S., China, the U.K., the Philippines, Costa Rica, Serbia, Pakistan, and Poland.

Emerging Growth Company Status

As of December 31, 2024, we no longer qualify as an Emerging Growth Company ("EGC") due to the expiration of the five-year eligibility period under the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). Although the Company is no longer an EGC, we are still eligible for certain scaled disclosure accommodations, including reduced executive compensation disclosures and exemptions from some of the enhanced financial reporting requirements applicable to larger registrants.

Available Information

We may use our website as a distribution channel of material information about the Company including through press releases, investor presentations, and notices of upcoming events. We intend to utilize the investor relations section of our website at <https://ir.aterian.io> as a channel of distribution to reach public investors and as a means of disclosing material non-public information for complying with disclosure obligations under Regulation FD. We also intend to use certain social media channels, including, but not limited to, X (formerly Twitter), Facebook, Instagram, TikTok and LinkedIn, as a means of communicating with the public, our customers and investors about our Company, our products, and other matters. While not all the information that the Company posts to its website and brand related social media channels may be deemed to be of a material nature, some information may be and we therefore encourage investors, the media, and others interested in our Company to review the information we make public in these locations.

All periodic and current reports, registration statements and other filings that we have filed or furnished to the Securities and Exchange Commission ("SEC"), including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, are available free of charge from the SEC's website (www.sec.gov) and on our website at <https://investors.solobrand.com>. Such documents are available as soon as reasonably practicable after electronic filing of the material with the SEC. Any reference to our website or social media channels does not constitute incorporation by reference of the information contained on or available through our website, and you should not consider such information to be a part of the periodic and current reports, registration statements or other filings that we file or furnish with the SEC from time to time.

Item 1A. Risk Factors.

We operate in a dynamic and rapidly changing environment that involves numerous risks and uncertainties. Certain factors may have a material adverse effect on our business, financial condition and results of operations, and you should carefully consider them. Accordingly, in evaluating our business, we encourage you to consider the following discussion of risk factors, in its entirety, in addition to other information contained in this Annual Report on Form 10-K and our other public filings with the SEC. Other events that we do not currently anticipate or that we currently deem immaterial may also affect our results of operations and financial condition.

Risks Relating to Our Business

We have historically operated at a loss and we may never achieve or sustain continuous profitability or positive cash flows. Further we and our independent registered public accounting firm have expressed substantial doubt about our ability to continue as a going concern.

We have experienced significant after-tax losses for the years ended December 31, 2024 and 2023. In addition, our costs have increased historically and may increase further in future periods, which could negatively affect our future operating results and ability to achieve and sustain long-term ongoing profitability. For example, we may need to continue to expend substantial financial and other resources on the ideation, sourcing and development of products, our technology infrastructure, research and development, sales and marketing, international expansion and general administration, including expenses related to being a public company. We have had to rely on a combination of cash flow from operations and new capital in order to sustain our business. Despite the fact that we have raised significant capital, there can be no assurance that we will ever achieve long-term continuous profitability. Even if we do, there can be no assurance that we will be able to maintain or increase profitability on a quarterly or annual basis. Failure to achieve or sustain profitability could have a material adverse effect on our business.

Our growth strategy has resulted in operating losses and negative cash flows from operations that raise substantial doubt about our ability to continue as a going concern. Our independent registered public accounting firm included an explanatory paragraph in its report on our financial statements as of and for the year ended December 31, 2024, that raised substantial doubt about our ability to continue as a going concern. If we are unable to continue as a going concern or maintain our financial covenants with our lenders, we may have to make significant changes to our operating plan, such as delay expenditures, reduce investments in new products, reduce our sale and distribution infrastructure, or significantly reduce our business. Further, if we are unable to continue as a going concern, we may be forced to liquidate our assets and the values we receive for our assets in liquidation or dissolution could be significantly lower than the values reflected in our financial statements.

We face intense competition and if we are unable to compete effectively, our market share and revenue could be diminished which may delay or otherwise hinder our efforts to achieve or maintain profitability.

We cannot assure you that our products will continue to compete favorably or that we will be successful in the face of increasing competition and from new products and enhancements introduced by existing competitors or new companies entering the markets in which we operate. We sell our products primarily on marketplaces and primarily on Amazon in the U.S. Unlike traditional brick and mortar retailers, the customer who is shopping on marketplaces has a significant number of competing products to select from as there are limited barriers to entry. In addition, the Internet facilitates competitive entry and comparison shopping, which enhances the ability of new and existing businesses to compete against us. A number of our current and potential competitors have greater resources, longer histories, and/or greater brand recognition. As a result, they may be able to secure better terms from vendors and devote more resources to technology, infrastructure, fulfillment, and marketing than we may be able to. In addition, some of our competitors aggressively discount their products in order to gain market share, which has resulted in pricing pressures, reduced profit margins and lost market share. Further, social proof for products sold on marketplaces in the form of product ratings and reviews is highly important to our success. In certain instances, we have been unable to maintain such social proof, and we may be unable to maintain such social proof in the future, or competitors may be able to attain better social proof for their products which could result in reduced market share and have a material impact on our operating results.

For certain significant products in our portfolio such as certain of the dehumidifiers we sell, we compete directly with our contract manufacturer who sells its own competing private label products on the marketplaces we sell and who has a lower cost structure and significantly better R&D capabilities. These manufacturers could take aggressive actions against us including limiting the availability of productive capacity or limiting our access to newer, more innovative models, which we have experienced from time to time.

As a result of competition, our product offerings, whether in new or existing markets, may not be successful, we may fail to gain or may lose business, and we may be required to increase our marketing spending or lower prices, any of which could materially impact our operating results.

Our financial projections are highly subjective in nature and our future financial results could vary significantly from our projections and also from quarter-to-quarter.

From time to time, we may provide financial projections to our shareholders, lenders, investment community, and other stakeholders and these projections are highly subjective. Our quarterly revenue and other operating results have varied in the past and are likely to continue to vary significantly from quarter-to-quarter in the future. It is difficult for us to accurately predict the demand for many of our products, or the amount and timing of our future revenue and operating results. Our projections are based on management's best estimate of sales using historical sales data and other relevant information available at the time. These projections are highly subjective since product sales can fluctuate substantially. Additionally, changes in consumer demand, affected by competitors, transportation, supplier lead times, costs and availability, raw material costs and availability, and other factors could make our inventory management and sales forecasting more difficult. Further, we base our expense levels and investment plans on sales estimates. A significant portion of our expenses and investments are fixed, and we are not able to adjust our spending quickly if our sales are less than expected. Due to these and other factors described elsewhere in this section, our future operating results could vary materially from our projections and from quarter-to-quarter. Further, we believe that quarter-to-quarter comparisons of our operating results are not necessarily meaningful. Moreover, our operating results may not meet the expectations of our equity research analysts or investors. If this occurs, the trading price of our common stock could fall substantially, either suddenly or over time.

Our business is sensitive to the strength of the United States consumer market to a meaningful extent, and changes in consumer spending and economic conditions could adversely affect our business.

The strength of the U.S. economy has a significant impact on our performance. We are dependent on discretionary spending, which is affected by, among other things, unemployment rates, economic and political conditions worldwide, consumer confidence, energy and gasoline prices, interest and mortgage rates, the level of consumer debt and taxation, and financial markets, which are all outside of our control. A continuing softening of demand, whether

caused by changes in customer preferences or a weakening of the U.S. or global economies, may result in decreased revenue. We believe we have sustained a decline in the sales of our products in part due to the factors mentioned above, and any continued economic downturn or uncertainties in the U.S. or in other parts of the world could materially and adversely affect our business, operating results, financial condition, and cash flows.

Demand for our products is highly seasonal and dependent on weather conditions, which could result in significant variations in our inventory levels, financial condition and operating results.

Weather and other conditions can materially impact the demand for our products. Demand for our air quality products primarily occurs during the summer months and demand for our essential oils, kitchen appliances and accessories primarily occurs during the fall and holiday season. Natural disasters (such as wildfires, hurricanes and ice storms), public health crises (such as pandemics and epidemics), or an unusually mild or short summer season may result in unanticipated material fluctuations in consumer demand. These factors could have a material adverse effect on our business, operating results, financial condition, and cash flows.

If we are unable to manage our inventory effectively, our operating results, financial condition, and cash flows could be adversely affected.

In the past, we have not always accurately forecasted consumer demand for our products resulting in inventory shortages, excess inventory write offs and lower gross margins. We are exposed to significant inventory risks that have or may adversely affect our operating results, financial condition, and cash flows as a result of seasonality, new product launches, rapid changes in product cycles and pricing, defective merchandise, shrinkage, changes in customer demand and consumer spending patterns, changes in consumer tastes with respect to our products, spoilage, adverse actions taken by marketplaces to remove our products, and other factors. Demand for products can change significantly between the time inventory is ordered and the date of sale. In addition, when we begin selling a new product, it may be difficult to establish vendor relationships, determine appropriate product or component selection, and accurately forecast demand. We carry a broad selection of products and at times we are unable to sell our products in sufficient quantities or to meet demand during the relevant selling seasons. Any one of the inventory risk factors set forth above may adversely affect our operating results, financial condition, and cash flows.

Increased costs of raw materials, energy, labor, transportation and platform fees charged by marketplaces may adversely affect our business, operating results, financial condition, and cash flows.

Significant increases in the cost and/or reductions in the availability of raw materials, energy, labor, transportation, and increases in tariffs and platform fees charged by marketplaces have negatively impacted our business, operating results, financial condition, and cash flows and may continue to negatively impact such items in the future. Our contract manufacturers purchase significant amounts of metals, plastics and other materials to manufacture our products. In addition, they also purchase significant amounts of electricity to supply the energy required in their production processes. Global political instabilities may result in higher metal, plastic, electric, transportation and product costs, or could impair our ability to obtain products at marketable rates or at all. We are heavily dependent on inbound sea, rail and truck freight. Disruptions in the global supply chain and freight networks, has, and may continue to limit inbound and outbound shipment capacity and increase our cost of goods sold and certain operating expenses. Further, the marketplaces on which we sell our products charge fees for selling, storage, advertising and fulfillment, all of which have historically increased, and we expect will continue to increase. The cost of raw materials, energy, labor, transportation, and the platform fees charged by marketplaces in the aggregate, represents a significant portion of our cost of goods sold and certain other operating expenses, which are not within our control and we have had limited success passing these on to customers. Our business, operating results, financial condition, and cash flows could be adversely affected by future increases in any of these costs. Additionally, the loss or disruption of essential manufacturing and supply elements such as raw materials or other finished product components, restricted transportation or increased freight costs, reduced workforce, or other manufacturing and distribution disruption could adversely impact our ability to meet our customers' needs. Furthermore, it is not practical for us to mitigate our exposure to, nor are we able to accurately project the possible effect of foreign currency exchange rate fluctuations on our operating results due to our constantly changing exposure to various foreign currencies and the difficulty in predicting fluctuations in foreign currency exchange rates relative to the U.S. Dollar.

We depend on third-party suppliers for all of our products, most of which are located in Asia, and any inability or delay in obtaining products from such suppliers could have a material adverse effect on our business, operating results, financial condition, and cash flow.

We are dependent on third-party suppliers such as contract manufacturers and third-party logistics providers and carriers for the manufacturing and distribution of our products and any disruption to our supply chain, even for a relatively short period of time, could cause a loss of revenue, which could adversely affect our business, operating results, financial condition, and cash flows. Our ability to select reliable suppliers that provide timely deliveries of quality products will impact our success in meeting customer demand. Further, for a number of our significant products, we only have a single-source of supply (such as for certain dehumidifiers) and in general we do not have contracts with our contract manufacturers covering costs and production that we believe we can enforce without undue effort or cost. Any supplier's inability or unwillingness to timely deliver products that meet desired specifications or any unanticipated changes in suppliers could be disruptive and costly and it is unlikely that we will be able to effect alternative arrangements on a timely basis, or in the case of manufacturing certain of our significant products, at all. Any significant failure by us to obtain quality products, in sufficient quantities, on a timely basis, and at an affordable cost or any significant delays or interruptions of supply would have a material adverse effect on our business, operating results, financial condition, and cash flows.

As most of our product suppliers are based in China, our business is subject to additional risks including, among others: currency fluctuations; labor unrest; potential political, economic and social instability; restrictions on transfers of funds; import duties and quotas; changes in domestic and international customs and tariffs, including embargoes and customs restrictions; uncertainties involving the costs to transport and warehouse products due to the dynamic nature of the global supply chain; unexpected changes in regulatory environments; regulatory issues involved in dealing with foreign suppliers and in exporting and importing products. The foregoing factors could have a material adverse effect on our business, operating results, financial condition, and cash flows.

A significant majority of our revenue results from sales of products on Amazon's U.S. marketplace, and any change, limitation, or restriction on our ability to operate on Amazon's platform could have a material adverse impact on our business, operating results, financial condition, and cash flows.

A substantial percentage of our revenue is from sales of products on Amazon's U.S. marketplace and we are subject to Amazon's terms of service ("ToS") and various other Amazon seller policies. Amazon has the right to terminate or suspend our ability to sell on its platform at any time and for any reason. Amazon may also take other actions against us such as suspending or terminating our seller accounts or product listings and withholding payments owed to us indefinitely. From time to time in the past, we have experienced such adverse actions for products we have launched and products we have acquired and we can provide no assurance that we will be able to comply with Amazon's ToS. Further, in the event any of our seller accounts or product listings are suspended, or our product listings are required to be changed, for noncompliance or any other reason, including UPC brand mismatches, our reinstatement efforts may take significant time and attention or could fail, which could have a material adverse effect on our business, operating results, financial condition, and cash flows. In addition, Amazon has made, and we expect will continue to make, changes to its platform that could require us to change the manner in which we operate, limit our ability to successfully market existing products and to launch new products or increase our costs to operate. Such changes and the efforts required to maintain compliance therewith could have an adverse effect on our business, operating results, financial condition, and cash flows. Examples of past changes from Amazon have included platform fee increases (i.e., storage, advertising, fulfillment and selling commissions), inventory warehouse limitations, restrictions on certain marketing activities and changes to listing requirements that limit the variations of products that can be included in a single listing. Any change, limitation or restriction on our ability to sell on Amazon's platform, even if temporary, could have a material impact on our business, operating results, financial condition, and cash flows. We also rely on services provided by Amazon's fulfillment platform, including its Prime badge program, in which Amazon guarantees expedited shipping of products we sell to the consumer, an important factor in the consumer's buying decision. Further, Amazon allows us to fulfill from our own third-party warehouses directly to customers under the same Prime badge guarantee. Amazon may at any time decide to discontinue allowing us to fulfill sales of our products directly from our warehouse network or limit our ability to advertise on our product listings that such products will receive expedited shipping under its Prime badge program. Any such inability or limitation could have a material impact on our business, results of operations, financial condition, and cash flows. We have historically experienced, and may be subject in the future to, Amazon's removal of the Prime badge guarantee from certain of our seller accounts and in those cases we have had limited success having the Prime badge guarantee reinstated in a timely manner or at all.

Our Credit Facility contains various restrictions and covenants that could limit our operating flexibility and we may be unable to refinance or repay our Credit Facility. We also rely on credit export insurance for our vendors in China, the unavailability of which could have a material adverse impact on our business, operating results, financial condition, and cash flows.

On December 22, 2021, we obtained a revolving credit facility from Midcap Funding IV Trust (the "Credit Facility"). Our Credit Facility contains covenants and other restrictions that, among other things, requires us to satisfy certain liquidity and borrowing availability tests, restricts our ability to execute M&A transactions and to incur additional indebtedness. These restrictions and covenants, and those in other future financing arrangements, may limit our ability to respond to market conditions, to provide for capital investment needs or to take advantage of business opportunities.

On February 23, 2024, the Company amended the Credit Facility to extend the term to December 2026 and provide us with access to \$17 million in current commitments which can be increased, subject to certain conditions, to \$30.0 million.

There is no guarantee that we will be available to repay or refinance our Credit Facility. Further, at any time, if we violate the terms of the Credit Facility, we may not be able to obtain a waiver from our lender under satisfactory terms, or at all, which would limit our operating flexibility and/or liquidity and which could have a material adverse effect on our business, operating results, financial condition, and cash flows.

We also rely on the availability of export credit insurance from the China Export & Credit Insurance Corporation ("Sinosure"), a Chinese state-owned enterprise, that provides export credit insurance to our contract manufacturers. From time to time, our contract manufacturers have experienced reductions in the availability of such credit from Sinosure as a result of our failure to timely pay them. While we currently believe our contract manufacturers have insurance at levels that we believe are sufficient to fund our operations, there can be no assurance that such insurance will be available at levels we require for our business, or at all, whether or not we make timely payments to our vendors, which would have a material adverse effect on our business, operating results, financial condition, and cash flows.

In addition, the Company has cash deposits at financial institutions in excess of the insured amount of \$0.3 million by the Federal Deposit Insurance Corporation.

Our efforts to grow our business through new products, marketplace and geographic expansion may not be successful and may place a significant strain on our management and operational, financial and other resources.

Our long-term success depends on our ability to develop and commercialize a continuing stream of new products, to expand both to new marketplaces and geographies and to leverage new technologies we may incorporate into our business. We have entered and expect to continue to enter new product categories and both new marketplaces and geographies for which we have limited or no experience. In part we rely on Amazon's global reviews program for success in our international expansion. If that program were to be limited, reduced or discontinued, our international expansion would be negatively affected. We also in part rely on our ability to include new products as variations to existing listings on Amazon. If that strategy were no longer possible for whatever reason, our ability to launch new products could be materially affected. Our efforts to grow our business place significant strain on our management, personnel, operations, systems, financial resources, and internal financial control and reporting functions, among other things. We have limited personnel and resources and have reduced headcount significantly in recent years. In order to accomplish our growth goals, our team is required to focus on such growth ventures and reallocate their time and other resources, creating risk in all aspects of our business. We face the risk that we will be unable to disrupt incumbents and that our competitors will introduce new and better products that compete with us. There are numerous uncertainties inherent in successfully developing and commercializing new products on a continuing basis and new product launches may not deliver expected growth in sales or operating results. Any new product that we develop and market may not be introduced in a timely or cost-effective manner, may contain defects, errors, quality or other issues, or may not achieve the market acceptance necessary to generate sufficient revenue or may never become profitable. If we are unable to develop and introduce a continuing stream of competitive new products, it may have an adverse effect on our business, operating results, financial condition, and cash flows. Our failure to successfully execute on our growth initiatives can negatively impact our financial results, financial condition, and cash flows.

We may be unsuccessful in making investments, unable to make or unsuccessful in integrating acquisitions or in maintaining or growing the financial performance of any investees or acquired businesses which may adversely affect our business and operating results and could impact the price of our common stock and result in dilution to shareholders.

We have acquired a number of companies, and we may in the future acquire or invest in or enter into joint ventures with additional companies. Such acquisitions have in the past required, and in the future may require, the attention of management in integrating those businesses including increased attention to managing the supply chain of certain acquisitions. In addition, we have been required to in the past, and may be required to in the future, make significant impairment charges relating to the goodwill and intangible assets of such acquired businesses. The market for acquisitions has historically been highly competitive. Our growth strategy may be adversely affected if we face increased competition for or fail to identify suitable targets. In addition, pursuing or completing any such acquisitions or investments could divert management's attention, and otherwise disrupt our operations and adversely affect our operating results, financial condition, and cash flows. Any acquisition or investment, if not favorably received by consumers, shareholders, analysts, and others in the investment community, could have a material adverse effect on the price of our common stock. In addition, any acquisition involves numerous risks, including: failing to identify problems during due diligence, liabilities or other shortcomings or challenges that could cause a target to under-perform post-closing; difficulties in the assimilation of the operations, technologies, products, and personnel associated with the acquisition and unanticipated expenses related to such integration; challenges in integrating distribution channels; diversion of management's attention from other business concerns; difficulties in transitioning and preserving customer, contractor, supplier, and other important third-party relationships; challenges realizing anticipated cost savings, synergies and other benefits; the potential impairment of tangible and intangible assets and goodwill; risks of entering markets in which we have no or limited experience; risks associated with subsequent losses including potential unknown liabilities associated with a company we acquire; and problems retaining key personnel. We provide no assurances that we will be able to complete any acquisitions or that any acquired businesses will experience the same or better level of financial performance as prior to the acquisition.

In order to complete any future acquisitions, we may need to use our cash on hand, raise additional equity or incur or assume debt, any of which could harm our business. Given the Company's current market capitalization, certain of these options may not be available or only be available on unfavorable terms and could result in significant additional dilution to our stockholders.

We may be unable to attract, retain or motivate key personnel, which could harm our business.

Our future success depends on our continuing ability to attract, motivate and retain well qualified employees. Competition for well-qualified employees in all aspects of our business is intense globally. The loss of one or more of our key personnel or our inability to promptly identify a suitable successor to a key role, including through a succession plan, could have an adverse effect on our business. Each of our executive officers, key personnel and other employees could terminate their employment relationship with us at any time. Moreover, we rely on stock-based compensation as a method to attract, retain and motivate our employees. If our common stock continues to be volatile or depressed, we may be unable to attract, retain and motivate employees, and if this occurs, it could have a material adverse effect on our business, operating results, financial condition, and cash flows. We do not currently maintain key person life insurance policies on any member of our senior management team or any other key employees.

Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.

We have \$241.7 million net operating loss carryforwards as of December 31, 2024, which have a full valuation allowance against them. In general, under Section 382 of the Internal Revenue Code of 1986, as amended (the “Code”), a corporation that undergoes an ownership change, which is generally defined as a greater than 50-percentage-point cumulative change by value in the equity ownership of certain stockholders over a rolling three-year period, is subject to limitations on its ability to utilize its pre-change net operating losses (“NOLs”) to offset post-change taxable income. Our existing NOLs may be subject to limitations arising from previous ownership changes, and if we undergo an ownership change, our ability to utilize NOLs could be further limited by Section 382 of the Code and similar state provisions. Future changes in our stock ownership, some of which may be outside of our control, could result in an ownership change under Section 382 of the Code. Furthermore, our ability to utilize NOLs of companies that we may acquire in the future may be subject to limitations. There is also a risk that due to regulatory changes, such as limitations on the use of NOLs, our existing NOLs could expire, decrease in value or otherwise be unavailable to offset future income tax liabilities. For example, the Tax Cuts and Jobs Act resulted in a reduction in the economic benefit of the NOLs and other deferred tax assets available to us. For these reasons, we may not be able to realize a tax benefit from the use of our NOLs, even if we attain profitability. We have not performed a detailed analysis to determine whether an ownership change under Section 382 of the Code has occurred. The effect of a Section 382 ownership change would be the imposition of an annual limitation on the use of net operating loss carryforwards attributable to periods before the change. Any limitation may result in expiration of all, or a portion of the NOLs or other tax attributes, such as research and development credit carryforwards, before utilization.

We have recently undergone a management change and reevaluated various aspects of our business including but not limited to a reduction in the number of products we sell, a change in our technology infrastructure and a cost and a fixed cost reduction plan including a reduction in workforce; each of which, individually or in the aggregate, could have a material impact on our results of operations, financial condition, and business.

During the year ended December 31, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering. Further, on July 26, 2023, Yaniv Sarig resigned as CEO of Aterian, and Arturo Rodriguez and Joseph Risico were promoted to Co-CEOs of Aterian. Further on June 26, 2024, Mr. Risico resigned and Mr. Rodriguez was promoted to sole CEO. As a result of this change in leadership, we enacted a number of strategic initiatives that could impact certain aspects of how we currently do business including a further rationalization of our product portfolio to improve our operations and potential future profitability, a change in our technology infrastructure and a reduction of our workforce. This reduction in our product portfolio has led to and will continue to lead to a decline in revenue in upcoming quarters. Executing on any of these decisions is complex and entails a number of potential risks, including but not limited to uncertainties, disruptions and challenges in our business and business model, a decline in revenues and profitability, market share erosion, inventory write-offs and other restructuring related charges, impacts to our relationships with our various vendors and could potentially impact employee morale. Further, pursuing or completing any such strategic initiative could divert management’s attention, and otherwise disrupt our operations which could adversely affect our operating results, financial condition, and cash flows.

Risks Relating to Information and Cyber Security

We rely on data provided by third parties and any loss, reduction in access or increased costs related thereto of which could have a material adverse effect on our business.

We use a combination of technologies in various aspects of our business including for new product launches, forecasting, fulfillment and the automation of sales and marketing of our products, among other things. Our ability to successfully use our technology depends to a large extent on our ability to analyze and utilize data, including search engine results, provided by unaffiliated third parties, primarily, Google and Amazon. In the future, these third parties could change their data sharing policies, including making them more restrictive or expensive, or could alter their algorithms, any of which could result in the loss of, or significant impairment to, our ability to analyze useful data. These third parties could also interpret our service providers' data collection policies or practices as being inconsistent with their policies, which could result in the loss of our ability to collect and use this data.

Our business, operating results, financial condition, and cash flows could be adversely impacted if our information technology systems or those of third-parties become subject to a data security breach, are disrupted or cease to operate effectively.

We rely heavily on information technology systems to operate our business and we collect, maintain, transmit and store sensitive data including data about our consumers. We also engage and rely upon third parties who engage in the same activities on our behalf. Accordingly, it is vital to maintain constant operation of these systems and to maintain cybersecurity. Our systems and those of third parties that we use in our operations are vulnerable to security risks, including from viruses and worms, phishing attacks, social engineering, hacking, distributed denial-of-service attacks, ransomware, and similar disruptions from the unauthorized tampering with our servers and computer systems or those of third parties that we use in our operations, which could lead to interruptions, delays, loss of critical and sensitive data, and loss of consumer confidence. In addition, insider actors-malicious or otherwise-could cause technical disruptions and/or confidential data leakage. In addition, if a ransomware attack or other cybersecurity incident occurs, either internally or at our third-party technology service providers, we could be prevented from accessing our data or systems, which may cause interruptions or delays in our business operations, cause us to incur material remediation costs, and could subject us to demands to pay a ransom or damage our reputation. Our failure to prevent or mitigate data loss, theft, misuse, or other security breaches or vulnerabilities affecting our or our vendors' technology and systems, could: expose us or our customers to a risk of loss, disclosure, or misuse of such information; result in litigation, fines, liability, or regulatory action (including under laws related to privacy, data use, data protection, data security, network security, and consumer protection); deter customers from using our stores to buy our products; and harm our business, operating results, financial condition and reputation. We use third party technology and systems for a variety of reasons, including, without limitation, encryption and authentication technology, employee email, content delivery to customers, back-office support, hosting, payment processing and other functions. Despite our security efforts, some of our systems have experienced past security breaches, and, although they did not have a material adverse effect on our operations or financial results, there can be no assurance that future incidents, which we expect to have, will not have material adverse effects on our business, operating results or financial condition. The Company's adoption of remote working, initially driven by the pandemic, may also introduce additional threats or disruptions to our information technology networks and infrastructure. Although we have developed systems and processes that we believe are reasonably designed to protect customer data and prevent such incidents, including systems and processes designed to reduce the impact of a security breach at a third-party vendor or customer, such measures cannot provide absolute security and may fail to operate as intended or be circumvented. In addition, our insurance may not provide sufficient coverage to compensate for related losses.

Additionally, we use open source software in our technology platform and our other sophisticated information technologies and systems, and we expect to continue to use open source software in the future. In addition to risks related to license requirements, use of certain open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties, indemnities or other contractual protections with respect to the software (for example, non-infringement or functionality). Our use of open source software may also present additional security risks because the source code for open source software is publicly available, which may make it easier for hackers and other third parties to determine how to breach our sites and systems that rely on open source software.

Our information technology systems and those of our third parties may be vulnerable from time to time to damage, interruptions and other technical malfunctions including but not limited to breaches, human error, power outages, telecommunication or utility failures, systems failures, natural disasters or other catastrophic events. In addition, growth in our transaction volume or surges in online traffic place additional demands on our systems and could cause or exacerbate slowdowns or interruptions. If any such systems are damaged, or fail to function properly, we may have to make monetary investments to repair or replace the systems and could endure delays in operations. From time to time, we have experienced disruptions to our systems and we expect to continue to experience disruptions. Any material disruption or slowdown of such systems, including the failure to successfully upgrade systems, could have a material impact on many aspects of our operations including our ability to operate on e-commerce marketplaces. Such a loss or delay could have a material adverse impact on our business, operating results, financial condition, and cash flows. Our systems are not fully redundant and our disaster recovery planning may not be sufficient.

Risks Relating to the Litigation and Government Regulation

Claims, litigation, government investigations, product liability and recalls, and other proceedings may adversely affect our business, operating results, financial condition, and cash flows.

We are, from time to time, involved in various claims, litigation matters and regulatory proceedings that could have a material adverse effect on us. These matters may include personal injury and other tort claims, deceptive trade practice disputes, intellectual property disputes, product recalls, contract disputes, employment and tax matters and other proceedings and litigation, including class actions lawsuits. It is not possible to predict the outcome of pending or future litigation and any such claims, with or without merit, could be time consuming and expensive, and may require the Company to incur substantial costs and divert the resources of management.

We face exposure to product liability and other claims in the event that one of our products is alleged to have resulted in property damage, bodily injury or other adverse effects. In addition, if we are required to, or voluntarily, repair, replace or refund one or more of our products, it could have a material impact on our business, operating results, financial condition and reputation.

In the summer of 2021, the Company received informal notice from a third-party alleging patent infringement with respect to certain transfer paper products sold by the Company.

In February 2022, the Company received a notice disputing the Company's calculation of the earn-out payment to be paid to the prior owners of a transfer paper business acquired by the Company. A motion to compel arbitration was filed in the Southern District of New York on September 14, 2022, which was granted on May 18, 2023. The parties engaged an independent accountant to resolve the dispute, as required by the PPD Stock Purchase Agreement and the Southern District of New York. In February 2024, the independent accountant ruled in favor of the Company and determined that the Company owes no earn-out. Therefore, the Company believes it has no liability to the sellers.

Determining legal reserves or possible losses from claims against us involves judgment and may not reflect the full range of uncertainties and unpredictable outcomes. Until the final resolution of such matters, we may be exposed to losses in excess of the amount recorded, and such excess amounts could have a material effect on our business, results of operations, financial condition, and cash flows. In addition, it is possible that a resolution of any claim, including as a result of a settlement, could require us to make substantial future payments, prevent us from offering certain products or services, or require us to change our business practices each of which could have a material adverse effect on our business, operating results, financial condition, and cash flows.

We must successfully manage compliance with current and expanding laws and regulations, as well as manage new and pending legal and regulatory matters in the U.S. and abroad.

We are subject in the ordinary course of our business, in the U.S. and internationally, to many statutes, ordinances, rules and regulations that, if violated by us or the third parties we work with, could have a material adverse effect on our business, operating results, financial condition, and cash flows. These laws and regulations include but are not limited to accounting and financial reporting, advertising, anti-bribery and anti-corruption, consumer protection, data security and privacy, electronic commerce, employment, intellectual property, product liability, and trade (including tariffs). In addition, increasing governmental and societal attention to environmental, social and governance (ESG) matters, including expanding mandatory and voluntary reporting, diligence and disclosure on topics such as climate change, waste production, water usage, human capital, labor and risk oversight, could expand the nature, scope and complexity of matters that we are required to control, assess and report, each of which can be challenging given our reliance on third party suppliers. These and other rapidly changing laws, regulations, policies and related interpretations as well as increased enforcement actions by various governmental and regulatory agencies, create challenges for us, including our compliance and ethics programs, may alter the environment in which we do business and may increase the ongoing costs of compliance, which could adversely impact our business, operating results, financial condition, and cash flows. If we are unable to continue to meet these challenges and to comply with all laws, regulations, policies and related interpretations, it could negatively impact our reputation and our business, operating results, financial condition, and cash flows. Additionally, we may in the future be subject to inquiries, investigations, claims, proceedings and requests for information from governmental agencies or private parties, the adverse outcomes of which could harm our business. Failure to successfully manage these new or pending regulatory and legal matters and to resolve such matters without significant liability or damage to our reputation may materially adversely impact our operating results, financial condition, and cash flows. Furthermore, if new legal or regulatory matters result in fines or costs in excess of the amounts accrued to date, that may also materially impact our operating results and financial position.

U.S. government trade actions could have a material adverse effect on our business, financial position, and results of operation.

Over the past several years, the U.S. government has taken a number of trade actions that impact or could impact our operations, including imposing tariffs on certain goods imported into the United States. As the majority of our products are imported into the United States from China, many of our products are subject to the tariffs imposed under Section 301 of U.S. trade law that have been applied to separate lists of Chinese goods imported into the United States, beginning during the Trump Administration and continuing in the Biden Administration. A number of lawsuits and other legal challenges with respect to the Section 301 tariff actions have been filed and remain pending, which could result in changes to the tariffs.

Changes in U.S. trade policy have created ongoing uncertainties in international trade relations, and it is unclear what future actions governments will or will not take with respect to tariffs or other international trade agreements and policies. During his campaign, President Trump expressed various intentions to impose tariffs on imports, including 60% tariffs on goods imported from China, 25% tariffs on goods imported from Mexico and between 10% and 20% tariffs on other imports. President Trump has instituted an additional 20% tariffs on imports from China currently and China has declared certain retaliatory tariffs but it is unclear what action his administration will take next with respect to these tariffs. Ongoing or new trade wars or retaliatory trade measures taken by China or other countries in response or other governmental action related to tariffs or international trade agreements or policies could reduce demand for our products and services, increase our costs, reduce our profitability, adversely impact our supply chain or otherwise have a material adverse effect on our business and results of operations.

We are continually evaluating the impact of the current and any possible new tariffs on our supply chain, costs and sales and are considering strategies to mitigate such impact, including reviewing sourcing options in the US and other regions, filing requests for exclusion from the tariffs for certain product lines and working with our suppliers. We can provide no assurance that any strategies we implement to mitigate the impact of such tariffs or other trade actions will be successful or that doing so will not impact the quality and cost of our products or our ability to bring them in in a timely manner. Given the uncertainty regarding the scope and duration of these trade actions by the U.S. government or other countries, as well as the potential for additional trade actions, the impact on our operations and results remains uncertain.

Risks Relating to the Ownership of our Common Stock

We no longer qualify as an “emerging growth company” as of December 31, 2024 and, as a result, we are no longer able to avail ourselves of certain reduced disclosure requirements applicable to emerging growth companies.

As of December 31, 2024, we no longer qualify as an emerging growth company within the meaning of Section 2(a) of the Securities Act, as modified by the JOBS Act. As such, we are subject to certain disclosure and compliance requirements that apply to other public companies but did not previously apply to us due to our status as an emerging growth company.

We are a “smaller reporting company” and the reduced disclosure requirements applicable to smaller reporting companies may make it more difficult to compare our performance with other public companies and make our common stock less attractive to investors.

We are a “smaller reporting company” as defined in Item 10(f)(1) of Regulation S-K. Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited consolidated financial statements. We will remain a smaller reporting company until the last day of the fiscal year in which (i) the market value of our common stock held by nonaffiliates exceeds \$250 million as of the prior June 30 or (ii) our annual revenues exceeded \$100 million during such completed fiscal year and the market value of our common stock held by non affiliates exceeds \$700 million as of the prior June 30. To the extent we take advantage of such reduced disclosure obligations, it may also make comparisons of our consolidated financial statement with other public companies difficult or impossible.

The market price and trading volume of our common stock may fluctuate significantly.

The market price and trading volume of our common stock has at times experienced substantial price volatility. There has been, and we expect will continue to be, significant volatility in the market price and trading volume of our common stock. In certain instances, these fluctuations have been unrelated or disproportionate to our operating performance, financial condition, and cash flows. In addition, the market price of our common stock may be, and we believe has been, significantly impacted by investors covering large short positions in our common stock. In addition, there are many other factors that have caused and may continue to cause the market price of our common stock to fluctuate, including: actual or anticipated variations in our quarterly operating results, or the operating results, financial condition, and cash flows of companies perceived to be similar to us; deterioration and decline in general economic, industry and/or market conditions; changes in estimates of our financial results or recommendations by equity research analysts, including any decision by equity research analysts to initiate or discontinue coverage; announcements by us or our competitors of significant acquisitions, strategic alliances or joint ventures; and changes in our capital structure, such as future issuances of securities or the incurrence of additional debt.

We may be limited by our ability to raise the funding we need to support our growth or to maintain our existing business. Also, such funding may be available only by diluting existing stockholders.

The success of our business depends in part on our ability to invest significant resources in various aspects of our business. To support our business growth, we will likely require additional funds to maintain and grow our business and to respond to business challenges. Accordingly, from time to time we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through issuances of equity or convertible debt securities, that would result in significant dilution to our existing stockholders, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt we may incur may negatively impact our business, financial condition and operating results. We have in the past and may in the future incur debt that allows us to repay such debt using our common stock, which could result in significant dilution. Further, we may not be able to obtain additional financing on terms favorable to us, or at all, whether due to issues related to the Company or unrelated to the Company including but not limited to bank failures. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to grow or to respond to business challenges would be significantly limited, and our business could fail or our operating results, financial condition, and cash flows could be adversely affected.

Any debt financing secured by us in the future could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. In addition, we may not be able to acquire the financing needed in order to pursue future acquisitions or similar transactions or we may not be able to raise sufficient equity or equity-like capital without first seeking stockholder approval, which could limit our ability to complete such financing, or to complete any related transaction on a timely basis or at all.

Future sales of our common stock by our insiders, or the perception that these sales may occur, may cause the market price of our common stock to decline.

Our employees, directors and officers, and their affiliates, hold substantial amounts of shares of our common stock which is granted as a portion of their compensation. Sales by these stockholders, or the perception that such sales will occur, may cause the market price of our common stock to decline. Other than our stock ownership guidelines and our restrictions on trading that arise under securities laws (or pursuant to our securities trading policy that is intended to facilitate compliance with securities laws), including the prohibition on trading in securities by or on behalf of a person who is aware of nonpublic material information, we have no restrictions on the right of our employees, directors and officers, and their affiliates, to sell their unrestricted shares of common stock. Our employees, officers and directors periodically sell shares of common stock to cover tax liabilities from prior restricted stock awards.

Future sales and issuances of our capital stock, or the perception that such sales may occur, could cause our stock price to decline.

Future sales and issuances of our capital stock or rights to purchase our capital stock could result in substantial dilution to our existing stockholders. We may sell common stock, convertible securities and other debt or equity securities in one or more transactions at prices and in a manner as we may determine from time to time. If we sell any such securities in subsequent transactions, the ownership of existing stockholders will be diluted, possibly materially. New investors in subsequent transactions could also gain rights, preferences and privileges senior to those of existing holders of our common stock. In addition, we issue to our employees equity awards under our equity incentive plans which could be material in amount.

If our existing stockholders sell a large number of shares of our common stock, or the public market perceives that those existing stockholders might sell shares of common stock, the market price of our common stock could decline significantly. Existing stockholder sales might also make it more difficult for us to sell additional equity securities at a time and price that we deem appropriate, or at all.

There is no guarantee of a continuing public market for you to resell our common stock.

There is no guarantee that we will continue to meet all requirements for continued listing on the Nasdaq Capital Market. We must continue to satisfy Nasdaq's continued listing requirements, including, among other things, a minimum closing bid price requirement of \$1.00 per share.

On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC ("Nasdaq") indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company was not in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market (the "Bid Price Notice"). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement. On April 8, 2024, Aterian, Inc. (the "Company") received written notice (the "Compliance Notice") from Nasdaq informing the Company that it has regained compliance with Nasdaq Listing Rule 5450(a)(1) which requires that companies listed on Nasdaq maintain a minimum bid price of \$1.00 per share. Nasdaq notified the Company in the Compliance Notice that from March 22, 2024 to April 5, 2024 the closing bid price of the Company's common stock had been \$1.00 per share or greater and, accordingly, the Company had regained compliance with Nasdaq Listing Rule 5450(a)(1) and that the matter was now closed.

In the future, if our Common Stock falls below the continued listing standard of \$1.00 per share or otherwise fails to satisfy any of the Nasdaq continued listing requirements, and if we are unable to cure such deficiency during any subsequent cure period, our Common Stock could be delisted from the Nasdaq. If our Common Stock ultimately were to be delisted for any reason, we could face significant material adverse consequences, including:

- limited availability of market quotations for our Common Stock;
- a limited amount of news and analyst coverage for us;
- a decreased ability for us to issue additional securities or obtain additional financing in the future;
- limited liquidity for our stockholders due to thin trading; and
- the potential loss of confidence by investors and employees.

Item 1B. Unresolved Staff Comments.

None.

Item 1C. Cybersecurity

We have processes in place for assessing, identifying, and managing material risks from potential unauthorized occurrences on or through our information systems that could adversely affect the confidentiality, integrity, or availability of our information systems or the information residing on those systems. These include a wide variety of mechanisms, controls, technologies, methods, systems, and other processes that are designed to prevent, detect, or mitigate data loss, theft, misuse, unauthorized access, or other security incidents or vulnerabilities affecting the data. The data includes confidential, proprietary, and business and personal information that we collect, process, store, and transmit as part of our business, including on behalf of third parties. We also use systems and processes designed to reduce the impact of a security incident at a third-party vendor or customer, including assessment and monitoring of security standards and control procedures for external suppliers and vendors, with enhanced engagement or internal controls depending on the results of the assessment.

Additionally, we use processes to oversee and identify material risks from cybersecurity threats associated with our use of third-party technology and systems, including: technology and systems we use for encryption and authentication; employee email; content delivery to customers; back-office support; and other functions. As part of our risk management process, we conduct application security assessments, vulnerability management, security audits, and ongoing risk assessments. We also maintain a variety of incident response plans that are utilized when incidents are detected. We require employees with access to information systems, including all corporate employees, to undertake data protection and cybersecurity training and compliance programs annually. We have a unified and centrally coordinated team, led by our Chief Technology Officer and our General Counsel, that is responsible for implementing and maintaining centralized cybersecurity and data protection practices at Aterian in close coordination with senior leadership and other teams across Aterian. In addition to our in-house cybersecurity capabilities, at times we also engage assessors, consultants, auditors, or other third parties to assist with assessing, identifying, and managing cybersecurity risks. These third parties also consult on best practices to address new challenges upon request. Our cybersecurity risks and associated mitigations are evaluated by senior leadership, including as part of our risk assessments that are reviewed by the Audit Committee and our Board of Directors. As of the date of this report, the Company is not aware of any material risks from cybersecurity threats that have materially affected or are reasonably likely to materially affect the Company, including its business strategy, results of operations, or financial condition. Despite the extensive approach we take to cybersecurity, we may not be successful in preventing or mitigating a cybersecurity incident that could have a material adverse effect on the Company or its stakeholders.

Additional information about cybersecurity risks we face is discussed in Item 1A of Part I, “Risk Factors,” under the heading “Risks Related to Information and Cyber Security,” which should be read in conjunction with the information above. The Audit Committee, which is comprised of independent directors, oversees our policies and procedures for protecting our cybersecurity infrastructure and for compliance with applicable data protection and security regulations, and related risks. The Audit Committee receives reports regarding such risks from management, including our Chief Technology Officer, and reports to the Board at least quarterly. The Audit Committee also oversees the Board’s response to any significant cybersecurity incidents. Our Chief Technology Officer, who has extensive cybersecurity knowledge and skills gained from over ten years working in the technology industry, heads the team responsible for implementing and maintaining cybersecurity and data protection practices at Aterian, working closely with our General Counsel who has a certification in Data Security and Privacy Policy from Cornell University. Both our Chief Technology Officer and General Counsel report directly to our CEO.

Item 2. Properties.

As of December 31, 2024, our principal place of business and corporate headquarters was our Summit, New Jersey office which is leased for a term of one year expiring in September 2025. Our UK office is a building we own, and our China office is leased for a term of one year expiring in May 2025.

Our other offices are either shared workspaces or leases with a short-term commitment (month to month).

Item 3. Legal Proceedings.

From time to time, we may be involved in various claims and legal proceedings relating to claims arising out of our operations, primarily with respect to the sale of our consumer products. We believe that there are no pending lawsuits or claims that, individually or in the aggregate, may have a material effect on our business, financial condition or operating results.

Item 4. Mine Safety Disclosures.

None.

PART II

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

Market Information

Our common stock is traded on the Nasdaq Capital Market under the symbol “ATER”.

Holders of Record

As of December 31, 2024, there were approximately 120 holders of record of our common stock. Many shares of common stock are held by brokerage firms, banks, and other financial institutions as nominees for beneficial owners. Accordingly, we are unable to estimate the total number of stockholders represented by these record holders.

Dividends

We have never declared or paid any cash dividends on our capital stock. We intend to retain any future earnings, if any, to finance the operation and expansion of our business, and do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be made at the discretion of our board of directors or any authorized committee thereof after considering our financial condition, results of operations, capital requirements, business prospects and other factors our board of directors or such committee deems relevant, and subject to the restrictions contained in our current or future financing instruments. Pursuant to the Credit Agreement, dated as of December 22, 2021 and amended as of February 23, 2024, with Midcap Funding IV Trust as Agent (“MidCap”) and the lenders party thereto, we are restricted from declaring any dividends or other distributions, subject to exceptions for certain of our subsidiaries.

Securities Authorized for Issuance Under Equity Compensation Plans

See Item 12 of Part III of this Annual Report regarding information about securities authorized for issuance under our equity compensation plans.

Unregistered Sales of Equity Securities

None

Purchase of Equity Securities

On March 14, 2025, the Board of Directors authorized a share repurchase program to acquire up to \$3.0 million of the Company’s common stock. The Company may purchase common stock on the open market, through privately negotiated transactions, or by other means including through the use of trading plans intended to qualify under Rule 10b-18 under the Securities Exchange Act of 1934, as amended, in accordance with applicable securities laws and other restrictions. The timing and total amount of stock repurchases will depend upon business, economic and market conditions, corporate and regulatory requirements, prevailing stock prices, and other considerations. The share repurchase program will have a term of 24 months and may be suspended or discontinued at any time and does not obligate the Company to acquire any amount of common stock. The objective of this program is to repurchase shares of common stock opportunistically when management believes that the Company’s stock is trading below the Company’s determination of long-term fair value. The shares of common stock when repurchased by the Company will be retired.

Item 6. [Reserved]

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

The following discussion and analysis of our financial condition and results of operations contains forward-looking statements that involve a number of risks, uncertainties and assumptions. Actual events or results may differ materially from our expectations. Important factors that could cause actual results to differ materially from those stated or implied by our forward-looking statements include, but are not limited to, those set forth in Part I, "Item 1A. Risk Factors" in this Annual Report. All forward-looking statements included in this Annual Report are based on information available to us as of the time we file this Annual Report and, except as required by law, we undertake no obligation to update publicly or revise any forward-looking statements.

Overview

We are a technology-enabled consumer products company that predominantly operates through online retail channels such as Amazon, Walmart, and Target and its own direct to consumer websites. The Company operates its owned brands, which were either incubated or purchased, selling products in multiple categories, including home and kitchen appliances, kitchenware, air quality appliances, health and beauty products and essential oils.

Our primary brands include Squatty Potty, HomeLabs, Mueller Living, PurSteam, Healing Solutions, and Photo Paper Direct ("PPD"). We generate revenue primarily through the online sales of our various consumer products with substantially all of our sales being made through the Amazon U.S. marketplace.

During the year ended December 31, 2023, the Company enacted a strategy to reduce the number of SKUs it sells and is no longer pursuing future sales of SKUs that are either not profitable or not core to the Company's strategy.

Seasonality of Business and Product Mix

Our individual product categories are typically affected by seasonal sales trends primarily resulting from the timing of the summer season for certain of our environmental appliance products and the fall and holiday season for our small kitchen appliances and accessories. With our current mix of environmental appliances, the sales of those products tend to be significantly higher in the summer season. Further, our essential oils, small kitchen appliances and accessories tend to have higher sales during the fourth quarter, which includes Thanksgiving and the December holiday season. As a result, our operational results, cash flows, cash and inventory positions may fluctuate materially in any quarterly period depending on, among other things, adverse weather conditions, shifts in the timing of certain holidays and changes in our product mix.

Product mix can affect our gross profit and the variable portion of our sales and distribution expenses. We rely heavily on a global supply chain in which the cost, lead times, and delays, as well as global and geopolitical events can ultimately have a direct impact to our margins. Further, impacts on our supply chain may force us to hold more inventory, which not only affects working capital but also requires us to increase our storage capacity, through our warehouse network, which of itself has a capital impact.

Financial Operations Overview

Net Revenue—We derive our revenue from the sale of consumer products, primarily in the U.S. We sell products directly to consumers through online retail channels and through wholesale channels. Direct-to-consumer sales (i.e., direct net revenue), which is currently the majority of our revenue, is done through various online retail channels. We sell on Amazon.com, Walmart.com, Target.com and our own websites, with substantially all of our sales made through Amazon.com. For all of our sales and distribution channels, revenue is recognized when control of the product is transferred to the customer (i.e., when our performance obligation is satisfied), which typically occurs at the shipment date.

Cost of Goods Sold—Cost of goods sold consists of the book value of inventory sold to customers during the reporting period. Book value of inventory includes the amounts we pay manufacturers for product, tariffs and duties associated with transporting product across national borders, and freight costs associated with transporting the product from our manufacturers to our warehouses, as applicable. Shrinkage costs are also recognized within the cost of goods sold. When circumstances dictate that we use net realizable value as the basis for recording inventory, we base our estimates on expected future selling prices, less expected disposal costs.

Expenses:

Research and Development Expenses—Research and development expenses include compensation and employee benefits for technology development employees, travel-related costs and fees paid to outside consultants related to the development of our intellectual property. During the year ended December 31, 2024, the Company shifted its technology platform away from a fully internally developed model to an integrated third party model. For the year ended December 31, 2024, technology and employee related costs have been presented in general and administrative costs on the Consolidated Statement of Operations.

Sales and Distribution Expenses—Sales and distribution expenses consist of online advertising costs, marketing and promotional costs, sales and ecommerce platform commissions, fulfillment, including shipping and handling, and warehouse costs (i.e., sales and distribution variable expenses). Sales and distribution expenses also include employee cash and stock compensation and benefits and other related fixed costs. Shipping and handling expenses are included in our consolidated statements of operations in sales and distribution expenses. This includes inbound, pick and pack costs and outbound transportation costs to ship goods to customers performed by e-commerce platforms or incurred directly by us, through our own direct fulfillment platform, which leverages our technology platform and third-party logistics partners. Our sales and distribution expenses, specifically our logistics expenses and online advertising, will vary quarter to quarter as they are dependent on our sales volume, our product mix and whether we fulfill products ourselves, i.e., fulfillment by merchant ("FBM"), or through e-commerce platform service providers, i.e., fulfillment by Amazon ("FBA") or fulfilled by Walmart ("WFS"). Products with less expensive fulfillment costs as a percentage of net revenue may allow for a lower gross margin, while still maintaining their targeted profitability level. Conversely, products with higher fulfillment costs will need to achieve a higher gross margin to maintain their targeted level of profitability. We are FBM One Day and Two Day Prime certified, allowing us to deliver our sales through Amazon to most customers within one or two days. We periodically review the locations and capacity of our third-party warehouses to ensure we have the appropriate geographic reach, which helps to reduce the average last mile shipping zones to the end customer and as such our speed of delivery improves while our shipping costs to customers decrease, prior to the impacts on shipping providers' rates.

General and Administrative Expenses—General and administrative expenses include cash and stock compensation and employee benefits for executive management, finance administration, legal, and human resources, facility costs, insurance, travel, professional service fees, and other general overhead

costs, including the costs of being a public company. For the year ended December 31, 2023, technology and employee-related costs were classified within research and development expenses. For the year ended December 31, 2024, these costs have been presented within general and administrative expenses.

Interest Expense, Net—Interest expense, net includes the interest cost from our credit facility and term loans, and includes amortization of deferred finance costs and debt discounts from our credit facility (the “Credit Facility”) with MidCap Funding IV Trust (“MidCap”).

Results of Operations

Comparison of Years Ended December 31, 2023 and 2024

The following table summarizes our results of operations for the years ended December 31, 2023 and 2024, together with the changes in those items in dollars and percentage:

	December 31, 2023 (1)	December 31, 2024 (1)	Change	
			Amount	%
			(in thousands, except percentages)	
Net revenue	\$ 142,566	\$ 99,045	\$ (43,521)	(30.5)%
Cost of goods sold	72,281	37,550	(34,731)	(48.0)%
Gross profit	70,285	61,495	(8,790)	(12.5)%
Operating expenses:				
Sales and distribution	81,911	55,979	(25,932)	(31.7)%
Research and development	4,616	—	(4,616)	(100.0)%
General and administrative	20,220	17,339	(2,881)	(14.2)%
Impairment loss on intangibles	39,728	—	(39,728)	(100.0)%
Total operating expenses	146,475	73,318	(73,157)	(49.9)%
Operating loss	(76,190)	(11,823)	64,367	84.5%
Interest expense, net	1,421	949	(472)	(33.2)%
Change in fair value of warrant liabilities	(2,440)	(924)	1,516	62.1%
Other expense, net	260	61	(199)	(76.5)%
Loss before income taxes	(75,431)	(11,909)	63,522	84.2%
Benefit for income taxes	(867)	(47)	820	94.6%
Net loss	\$ (74,564)	\$ (11,862)	\$ 62,702	84.1%

(1) Amounts include stock-based compensation expense as follows:

	December 31, 2023	December 31, 2024	Change	
			Amount	%
			(in thousands, except percentages)	
Sales and distribution expenses	\$ 2,439	\$ 1,783	\$ (656)	(26.9)%
Research and development expenses	1,414	—	(1,414)	(100.0)%
General and administrative expenses	4,483	5,727	1,244	27.7%
Total stock-based compensation expense	\$ 8,336	\$ 7,510	\$ (826)	(9.9)%

The following table sets forth the components of our results of operations as a percentage of net revenue:

	December 31, 2023	December 31, 2024
Net revenue	100.0%	100.0%
Cost of goods sold	50.7	37.9
Gross profit	49.3	62.1
Operating expenses:		
Sales and distribution	57.5	56.5
Research and development	3.2	—
General and administrative	14.2	17.5
Impairment loss on intangibles	27.9	—
Total operating expenses	102.7	74.0
Operating loss	(53.4)	(11.9)
Interest expense, net	1.0	1.0
Change in fair value of warrant liabilities	(1.7)	(0.9)
Other income, net	0.2	0.1
Loss before income taxes	(52.9)	(12.0)
Benefit for income taxes	(0.6)	(0.0)
Net loss	(52.3)%	(12.0)%

Net Revenue

Revenue by Product Categories:

The following table sets forth our net revenue disaggregated by product categories:

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
Direct	\$ 138,410	\$ 97,341	\$ (41,069)	(29.7)%
Wholesale	4,156	1,704	(2,452)	(59.0)%
Net revenue	<u>\$ 142,566</u>	<u>\$ 99,045</u>	<u>\$ (43,521)</u>	<u>(30.5)%</u>

Net revenue decreased \$43.5 million, or 30.5%, during the year ended December 31, 2024 to \$99.1 million, compared to \$142.6 million for the year ended December 31, 2023. The decrease in net revenue was primarily attributable to a decrease in direct net revenue of \$41.1 million, or 29.7%, which was primarily relating to a reduction in our product offering due to our SKU rationalization, competitive pricing pressure and other competitive dynamics on marketplaces.

	December 31, 2023	December 31, 2024
		(in thousands)
Heating, cooling and air quality	\$ 34,686	\$ 26,398
Kitchen appliances	24,181	9,565
Health and beauty	16,025	13,467
Cookware, kitchen tools and gadgets	11,696	5,924
Home office	9,781	8,017
Housewares	26,093	22,521
Essential oils and related accessories	17,204	12,719
Other	2,900	434
Total net revenue	<u>\$ 142,566</u>	<u>\$ 99,045</u>

Every category of business had a reduction in sales compared to the prior year primarily relating to the SKU rationalization that took place during the year ended December 31, 2024 and softness in consumer demand due the macroeconomic environment. In addition, there were competitive pricing pressures coupled with certain key products losing their prominent positioning on Amazon due to competition, specifically in the kitchen appliance businesses. These factors resulted in a reduction of units sold and a reduction in certain retail sales prices.

Cost of Goods Sold and Gross Profit

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
Cost of goods sold	\$ 72,281	\$ 37,550	\$ (34,731)	(48.0)%
Gross profit	\$ 70,285	\$ 61,495	\$ (8,790)	(12.5)%

Cost of goods sold decreased by \$34.7 million from \$72.3 million for the year ended December 31, 2023 to \$37.6 million for the year ended December 31, 2024 primarily from reduced sales volume. The decrease in cost of goods sold was primarily attributable to a decrease of \$27.6 million in cost of goods sold from our direct businesses and a decrease of \$7.1 million in cost of goods sold from our wholesale businesses.

Gross profit increased from 49.3% for the year ended December 31, 2023 to 62.1% for the year ended December 31, 2024. The increase in gross profit was primarily due to a reduction in liquidation of high priced excess inventory at reduced prices compared to the prior year.

Sales and Distribution Expenses

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
Sales and distribution expenses	\$ 81,911	\$ 55,979	\$ (25,932)	(31.7)%

Sales and distribution expenses which included e-commerce platform commissions, online advertising and logistics expenses (i.e., variable sales and distribution expense), decreased to \$56.0 million for the year ended December 31, 2024 from \$81.9 million for the year ended December 31, 2023. This decrease is primarily attributable to the decrease in the volume of products sold during the year ended December 31, 2024, as our e-commerce platform commissions, online advertising, selling and logistics expenses decreased to \$44.6 million for the year ended December 31, 2024 as compared to \$68.9 million in the prior year.

Our sales and distribution fixed costs (e.g., salary and office expenses) including stock-based compensation decreased to \$11.4 million for the year ended December 31, 2024, from \$13.0 million for the year ended December 31, 2023. This decrease is primarily attributable to a decrease in headcount expense of \$1.6 million, a decrease in stock-based compensation expenses of \$0.7 million and a decrease in restructuring costs of \$0.4 million, partially offset by an increase in expenses related to a new Amazon Seller Program of \$0.8 million.

As a percentage of net revenue, sales and distribution expenses decreased to 56.5% for the year ended December 31, 2024, from 57.5% for the year ended December 31, 2023. E-commerce platform commissions, online advertising, selling and logistics expenses included within sales and distribution expenses, as a percentage of net revenue, were 45.0% for the year ended December 31, 2024 as compared to 48.3% for the year ended December 31, 2023. This decrease in sales and distribution expenses as a percentage of revenue is primarily due to product mix and a decrease in logistics costs.

Research and Development Expenses

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
Research and development expenses	\$ 4,616	\$ —	\$ (4,616)	(100.0)%

During the year ended December 31, 2024, the Company shifted its technology platform away from a fully internally developed model to an integrated third party model. Therefore, beginning with the year ended December 31, 2024, technology and employee related costs have been presented in general and administrative costs on the Consolidated Statements of Operations.

General and Administrative Expenses

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
General and administrative expenses	\$ 20,220	\$ 17,339	\$ (2,881)	(14.2)%

The decrease in general and administrative expenses was primarily the result of a decrease of \$2.3 million in depreciation and amortization, a decrease of \$0.9 million in insurance expenses, and a decrease of \$0.6 million in professional fees, partially offset by an increase in stock-compensation expense of \$1.2 million.

Impairment loss on Intangibles

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
Impairment loss on intangibles	\$ 39,728	\$ —	\$ (39,728)	(100.0)%

Certain asset groups experienced a significant decrease in sales and contribution margin during the year ended December 31, 2023. This was considered a triggering event for the year ended December 31, 2023. Based on the analysis of comparing the undiscounted cash flow to the carrying value of the asset group, one group tested indicated that the assets may not be recoverable. There was no impairment loss on intangibles during the year ended December 31, 2024.

Interest expense, net

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
Interest expense, net	\$ 1,421	\$ 949	\$ (472)	(33.2)%

The decrease in interest expense, net of \$0.5 million is primarily relating to a decrease in interest expense of \$0.9 million and an increase in interest income of \$0.4 million compared to the prior period due to lower average borrowings.

Change in fair market value of warrant liabilities

	December 31, 2023	December 31, 2024	Change	
			Amount	%
	(in thousands, except percentages)			
Change in fair market value of warrant liabilities	\$ (2,440)	\$ (924)	\$ 1,516	62.1%

The 2023 and 2024 activity is related to the change in fair market value of the warrant liabilities from the common stock warrants from our March 2022 equity raise of capital. The change in fair value of warrant liabilities during the year ended December 31, 2024 primarily relates to the reduced share price compared to the prior period.

Liquidity and Capital Resources**Cash Flows for Years-Ended December 31, 2023 and 2024**

The following table provides information regarding our cash flows for the years-ended December 31, 2023 and 2024:

	December 31, 2023	December 31, 2024
	(in thousands)	
Cash (used in) provided by operating activities	\$ (13,388)	\$ 2,165
Cash used in investing activities	(244)	(242)
Cash used in financing activities	(11,108)	(4,914)
Effect of exchange rate on cash	306	(61)
Net change in cash and restricted cash for the period	<u>\$ (24,434)</u>	<u>\$ (3,052)</u>

Net Cash (Used in) Provided by Operating Activities

Net cash used in operating activities was \$13.4 million for the year ended December 31, 2023, resulting primarily from our net cash losses from operations of \$28.9 million, offset by an inflow from working capital of \$15.5 million from changes in accounts receivable, purchases of inventory and payments of accounts payable. The reduction of gross inventory of \$26.4 million from December 31, 2022 to December 31, 2023 primarily relates to the liquidation of high priced excess inventory and a reduction of purchases for the period.

Net cash provided by operating activities was \$2.2 million for the year ended December 31, 2024, resulting primarily from our net cash losses from operations of \$6.0 million, offset by an inflow from working capital of \$8.2 million from changes in accounts receivable, purchases of inventory and payments of accounts payable. The working capital benefit primarily relates to a decrease in inventory due to a reduction in purchases for the period.

Net Cash Used in Investing Activities

Net cash used in investing activities was \$0.2 million for the year ended December 31, 2023, resulting primarily from the remaining payment for the purchase of Step and Go assets which was acquired during the three months ending December 31, 2022.

Net cash used in investing activities was \$0.2 million for the year ended December 31, 2024, resulting primarily from the purchase of a minority equity investment in 4th and Heart during the year ended December 31, 2024.

Net Cash Used in Financing Activities

For the year ended December 31, 2023, cash used in financing activities of \$11.1 million primarily from the net repayments for our MidCap credit facility of \$10.4 million, repayment of seller notes of \$0.6 million and net payments of insurance financing of \$0.1 million.

For the year ended December 31, 2024, cash used in financing activities of \$4.9 million primarily from the net repayments for our MidCap credit facility of \$4.3 million and repayment of seller notes of \$0.6 million.

Liquidity and Going Concern

As a company in the early commercialization stage of its lifecycle, we are subject to inherent risks and uncertainties associated with the development of our enterprise. In this regard, substantially all of our efforts to date have been devoted to the development and sale of our products in the marketplace, which includes our investment in organic growth at the expense of short-term profitability, our investment in incremental growth through mergers & acquisitions (“M&A strategy”), our recruitment of management and technical staff, and raising capital to fund the development of our enterprise. As a result of these efforts, we have incurred significant losses and negative cash flows from operations since our inception and expect to continue to incur such losses, at a reduced level, and negative cash flows in the near term. However, we anticipate improvements over time as we work toward achieving a sustainable scale of profitability. We have also experienced declining revenues due to macroeconomic factors, including increased interest rates and reduced consumer discretionary spending, and other factors, and we intend to focus our efforts on a more limited number of products. In addition, our recent financial performance has been adversely impacted by inflationary pressures and reduced consumer spending.

In order to execute our growth strategy, we have historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively “outside capital”) to fund our cost structure, and we expect to continue to rely on outside capital for the foreseeable future, specifically if we pursue material M&A opportunities. While we believe we will eventually reach a level of profitability to sustain our operations, there can be no assurance we will be able to achieve such profitability or do so in a manner that does not require our continued reliance on outside capital. Moreover, while we have historically been successful in raising outside capital, there can be no assurance we will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to us.

As of the date the accompanying Consolidated Financial Statements were issued (the “issuance date”), we evaluated the significance of the following adverse financial conditions in accordance with Accounting Standard Codification 205-40, Going Concern:

- Since our inception, we have incurred significant losses and used cash flows from operations to fund our enterprise. In this regard, during the year ended December 31, 2024, we incurred a net loss of \$11.9 million and generated net cash flows from operations of \$2.2 million. In addition, as of December 31, 2024, we had unrestricted cash and cash equivalents of \$18.0 million available to fund our operations and an accumulated deficit of \$711.7 million.
- We are required to remain in compliance with certain financial covenants required by the MidCap Credit facility (See Note 9, *Credit Facility, Term Loans and Warrants*). We were in compliance with these financial covenants as of December 31, 2024, and expect to remain in compliance through at least March 31, 2026. During February 2024, the Company amended its terms with Midcap Credit Facility extending the term until December 2026 and amending certain financial covenants with favorable terms. We can provide no assurances that we will remain in compliance with our financial covenants. Further, absent of our ability to generate cash inflows from our operations or secure additional outside capital, we will be unable to remain in compliance with these financial covenants. In the event we are unable to remain in compliance with these financial covenants (or other non-financial covenants required by the MidCap Credit Facility), and we are unable to secure a waiver or forbearance, MidCap may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among others, accelerating repayment of the outstanding borrowings and/or asserting its rights in the assets securing the loan.
- As of the issuance date, we have no firm commitments to secure additional outside capital from lenders or investors. While we expect to continue to explore raising additional outside capital, specifically if we pursue material M&A opportunities, there can be no assurance we will be able to obtain capital or do so on terms that are acceptable to us. Accordingly, absent our ability to generate cash inflows from our operations and/or secure additional outside capital in the near term, we may be unable to meet our obligations as they become due over the next twelve months beyond the issuance date.
- The Company's plan is to continue to closely monitor our operating forecast, to pursue additional sources of outside capital on terms that are acceptable to us, and to secure a waiver or forbearance from MidCap if we are unable to remain in compliance with one or more of the covenants required by the MidCap Credit Facility. Further, the Company has enacted a strategy to reduce the number of SKUs it sells and will no longer be pursuing future sales of SKUs that are either not profitable or not core to the Company's strategy. If some or all of our plans prove unsuccessful, we may need to implement short-term changes to our operating plan, including but not limited to delaying expenditures, reducing investments in new products, or reducing our sale and distribution infrastructure. We may also need to seek long-term strategic alternatives, such as a significant curtailment of our operations, a sale of certain of our assets, a divestiture of certain product lines, a sale of the entire enterprise to strategic or financial investors, and/or allow our enterprise to become insolvent.

The Company has completed two restructuring programs over the last two years to reduce operating costs and right size the workforce to align with the scale of our streamlined operations. In addition, we have reduced our SKU count to focus on profitable products that are core to the Company's strategy. During February 2024, we extended the term with Midcap Credit Facility until December 2026 (See Note 9, *Credit Facility, Term Loans and Warrants*) and amended key terms which will add more flexibility to liquidity and strengthen our balance sheet. In consideration of these factors, the Company will monitor profitability and cash flow over the next several quarters to evaluate our ability to continue as a going concern.

Although significant strides have been made in reducing our operating losses and strengthening our balance sheet, uncertainties persist in our business operations and the forecasting of our business. These uncertainties raise substantial doubt about our ability to continue as a going concern. The accompanying Consolidated Financial Statements have been prepared on the basis that we will continue to operate as a going concern, which contemplates that we will be able to realize assets and settle liabilities and commitments in the normal course of business for the foreseeable future. Accordingly, the accompanying Consolidated Financial Statements do not include any adjustments that may result from the outcome of these uncertainties.

Nasdaq Listing—On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC (“Nasdaq”) indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company is currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2) (the “Bid Price Notice”). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement (the “Extension Notice”).

Nasdaq notified the Company in the Compliance Notice that from March 22, 2024 to April 5, 2024 the closing bid price of the Company's common stock had been \$1.00 per share or greater and, accordingly, the Company had regained compliance with Nasdaq Listing Rule 5450(a)(1) and that the matter was now closed.

On August 11, 2023, Aterian's shareholders approved discretionary authority to our Board to (A) amend our Amended and Restated Certificate of Incorporation to effect one or more consolidations of the issued and outstanding shares of our common stock, par value \$0.0001 per share, pursuant to which the shares of Common Stock would be combined and reclassified at ratios within the range from 1-for-2 up to 1-for-30 and (B) determine whether to arrange for the disposition of fractional interests by stockholders entitled thereto, to pay in cash the fair value of fractions of a share of Common Stock as of the time when those entitled to receive such fractions are determined, or to entitle stockholders to receive from our transfer agent, in lieu of any fractional share, the number of shares of Common Stock rounded up to the next whole number, and to amend our Amended and Restated Certificate of Incorporation in connection therewith.

On March 20, 2024, the Company filed a Certificate of Amendment to its Amended and Restated Certificate of Incorporation of the Company with the Secretary of State of Delaware (the “Certificate of Amendment”) to effect a 1-for-12 reverse stock split (the “Reverse Stock Split”) of the shares of the Company's common stock, par value \$0.0001 per share (the “Common Stock”). The Certificate of Amendment did not decrease the number of authorized shares of Common Stock or change the par value thereof. No fractional shares were issued in connection with the Reverse Stock Split. Any fractional shares that would otherwise have resulted from the Reverse Stock Split were rounded up to the nearest whole number. The Reverse Stock Split impacted all holders of the Common Stock proportionally and did not impact any stockholder's percentage ownership of Common Stock (except to the extent the Reverse Stock Split results in any stockholder owning fractional shares).

The Common Stock began trading on a Reverse Stock Split-adjusted basis on the Nasdaq on March 22, 2024. All share and per share data in this Annual Report on Form 10-K have been retroactively adjusted to reflect the Reverse Stock Split.

Restructuring—On May 9, 2023, the Company announced a plan to reduce expenses by implementing a reduction in its current workforce impacting approximately 50 employees and 15 contractors, primarily in the Philippines. The Company recognized restructuring charges of \$1.6 million for the year ended December 31, 2023.

On February 8, 2024, the Company committed to a fixed cost-cutting plan, including a reduction in workforce which resulted in the termination of approximately 17 employees and 26 contractors globally. The Company recognized restructuring charges of \$0.6 million for the year ended December 31, 2024, respectively.

MidCap Credit Facility—On December 22, 2021, we entered into a Credit Facility with MidCap, pursuant to which, among other things, (i) the lenders party thereto as lenders (the “Lenders”) agreed to provide a revolving credit facility in a principal amount of up to \$40.0 million subject to a borrowing base consisting of, among other things, inventory and sales receivables (subject to certain reserves), and (ii) we agreed to issue to MidCap Funding XXVII Trust a warrant to purchase up to an aggregate of 16,667 shares of our common stock, in exchange for the Lenders extending loans and other extensions of credit to us under the Credit Facility.

Prior to the February 2024 amendment, The Credit Facility contained a financial covenant that required us to maintain a minimum unrestricted cash balance of (a) \$12.5 million during the period from February 1st through and including May 31st of each calendar year, and (b) \$15.0 million at all other times.

On February 23, 2024, the Company amended its asset backed credit facility with MidCap Financial Trust. The Credit Facility term has been extended to December 2026 and gives Aterian access to \$17 million in current commitments which can be increased, subject to certain conditions, to \$30.0 million. The Credit Facility extension reduces the minimum liquidity financial covenant from a peak of \$15.0 million to \$6.8 million of cash on hand and/or availability in the Credit Facility. The extension fee was less than \$0.1 million. At our election, we may elect to comply with an alternative financial covenant that would require us to maintain a minimum borrowing availability under the credit facility of \$5.0 million at all times. We currently do not anticipate electing the alternative financial covenant over the next twelve months and are in compliance with the minimum liquidity covenant as of the date these Consolidated Financial Statements were issued.

On March 25, 2025 (the “Third Amendment Effective Date”) the Company entered into Amendment No. 3 (the “Amendment”) to that certain Credit and Security Agreement, dated as of December 22, 2021 (as amended from time to time, the “Credit Agreement”) by and among the Company, certain of its subsidiaries thereto, the lenders thereto (the “Lenders”) and Midcap Funding IV Trust, as administrative agent. Capitalized terms used in this section and not otherwise defined shall have the meanings assigned in the Credit Agreement. Material changes contained in the Amendment include among other things, adding repurchase of the Company’s common stock as a permitted distribution subject to certain conditions:

- During the period from the Third Amendment Effective Date through December 22, 2025 (the “2025 Repurchase Period”), up to \$750,000 of stock repurchases are permitted.
- During the period from December 23, 2025 through the maturity date (the “2026 Repurchase Period”), up to another \$750,000 is permitted.
- Additional repurchases may be made, provided that, among other conditions, no Event of Default exists or would result, and the Company maintains at least \$10,000,000 in Credit Party Liquidity (as evidenced by a timely delivered Liquidity Certificate). The total combined repurchases in each period may not exceed \$1,500,000 except that up to \$500,000 in unused amounts from the 2025 Repurchase Period may carry over to the 2026 Repurchase Period.

The outstanding balance on the MidCap credit facility as of December 31, 2023 and December 31, 2024 was \$11.1 million and \$6.9 million, respectively. The Company did not have any availability on the Midcap credit facility as of December 31, 2024. We are in compliance with the financial covenants contained within the Credit Agreement as of December 31, 2024.

Share Repurchase—On March 14, 2025, the Board of Directors authorized a share repurchase program to acquire up to \$3.0 million of the Company’s common stock. The Company may purchase common stock on the open market, through privately negotiated transactions, or by other means including through the use of trading plans intended to qualify under Rule 10b-18 under the Securities Exchange Act of 1934, as amended, in accordance with applicable securities laws and other restrictions. The timing and total amount of stock repurchases will depend upon business, economic and market conditions, corporate and regulatory requirements, prevailing stock prices, and other considerations. The share repurchase program will have a term of 24 months and may be suspended or discontinued at any time and does not obligate the company to acquire any amount of common stock. The objective of this program is to repurchase shares of common stock opportunistically when management believes that the Company’s stock is trading below the Company’s determination of long-term fair value.

Emerging Growth Company Status—As of December 31, 2024, we no longer qualify as an Emerging Growth Company (“EGC”) due to the expiration of the five-year eligibility period under the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). Although the Company is no longer an EGC, we are still eligible for certain scaled disclosure accommodations, including reduced executive compensation disclosures and exemptions from some of the enhanced financial reporting requirements applicable to larger registrants.

Open Inventory Purchase Orders—As of December 31, 2023 and 2024, the Company had open inventory purchase orders of \$6.5 million and \$9.2 million, respectively, placed with vendors waiting to be fulfilled.

Non-GAAP Financial Measures

We believe that our financial statements and the other financial data included in this Annual Report have been prepared in a manner that complies, in all material respects, with generally accepted accounting principles in the U.S. (“GAAP”). However, for the reasons discussed below, we have presented certain non-GAAP measures herein.

We have presented the following non-GAAP measures to assist investors in understanding our core net operating results on an on-going basis: (i) Contribution margin; (ii) Contribution margin as a percentage of net revenue; (iii) EBITDA (iv) Adjusted EBITDA; and (v) Adjusted EBITDA as a percentage of net revenue. These non-GAAP financial measures may also assist investors in making comparisons of our core operating results with those of other companies.

As used herein, Contribution margin represents gross profit less e-commerce platform commissions, online advertising, selling and logistics expenses (included in sales and distribution expenses). As used herein, Contribution margin as a percentage of net revenue represents Contribution margin divided by net revenue. As used herein, EBITDA represents net loss plus depreciation and amortization, interest expense, net and provision for income taxes. As used herein, Adjusted EBITDA represents EBITDA plus stock-based compensation expense, changes in fair-market value of warrant liabilities, impairment on intangibles, restructuring expenses, reserve on barter credits, and other expenses, net. As used herein, Adjusted EBITDA as a percentage of net revenue represents Adjusted EBITDA divided by net revenue. Contribution margin, EBITDA and Adjusted EBITDA do not represent and should not be considered as alternatives to loss from operations or net loss, as determined under GAAP.

We present Contribution margin and Contribution margin as a percentage of net revenue, as we believe each of these measures provides an additional metric to evaluate our operations and, when considered with both our GAAP results and the reconciliation to gross profit, provides useful supplemental information for investors. Specifically, Contribution margin and Contribution margin as a Non-GAAP Financial Measure percentage of net revenue are two of our key metrics in running our business. All product decisions made by us, from the approval of launching a new product and to the liquidation of a product at the end of its life cycle, are measured primarily from Contribution margin and/or Contribution margin as a percentage of net revenue. Further, we believe these measures provide improved transparency to our stockholders to determine the performance of our products prior to fixed costs as opposed to referencing gross profit alone.

In the reconciliation to calculate contribution margin, we add e-commerce platform commissions, online advertising, selling and logistics expenses (“sales and distribution variable expense”) to gross profit to inform users of our financial statements of what our product profitability is at each period prior to fixed costs (such as sales and distribution expenses such as salaries as well as research and development expenses and general administrative expenses). By excluding these fixed costs, we believe this allows users of our financial statements to understand our products performance and allows them to measure our products performance over time.

We present EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue because we believe each of these measures provides an additional metric to evaluate our operations and, when considered with both our GAAP results and the reconciliation to net loss, provide useful supplemental information for investors. We use these measures with financial measures prepared in accordance with GAAP, such as sales and gross margins, to assess our historical and prospective operating performance, to provide meaningful comparisons of operating performance across periods, to enhance our understanding of our operating performance and to compare our performance to that of our peers and competitors. We believe EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue are useful to investors in assessing the operating performance of our business without the effect of non-cash items.

Contribution margin, Contribution margin as a percentage of net revenue, EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue should not be considered in isolation or as alternatives to net loss, loss from operations or any other measure of financial performance calculated and prescribed in accordance with GAAP. Neither EBITDA, Adjusted EBITDA or Adjusted EBITDA as a percentage of net revenue should be considered a measure of discretionary cash available to us to invest in the growth of our business. Our Contribution margin, Contribution margin as a percentage of net revenue, EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue may not be comparable to similar titled measures in other organizations because other organizations may not calculate Contribution margin, Contribution margin as a percentage of net revenue, EBITDA, Adjusted EBITDA or Adjusted EBITDA as a percentage of net revenue in the same manner as we do. Our presentation of Contribution margin and Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by the expenses that are excluded from such terms or by unusual or non-recurring items.

We recognize that EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue, have limitations as analytical financial measures.

For example, neither EBITDA nor Adjusted EBITDA reflects:

- our capital expenditures or future requirements for capital expenditures or mergers and acquisitions;
- the interest expense or the cash requirements necessary to service interest expense or principal payments, associated with indebtedness;
- depreciation and amortization, which are non-cash charges, although the assets being depreciated and amortized will likely have to be replaced in the future, or any cash requirements for the replacement of assets;
- changes in cash requirements for our working capital needs; or
- changes in warrant liabilities.

Additionally, Adjusted EBITDA excludes non-cash stock-based compensation expense, which is and is expected to remain a key element of our overall long-term incentive compensation package.

We also recognize that Contribution margin and Contribution margin as a percentage of net revenue have limitations as analytical financial measures. For example, Contribution margin does not reflect:

- general and administrative expense necessary to operate our business;

- research and development expenses necessary for the development, operation and support of our software platform;
- the fixed costs portion of our sales and distribution expenses including stock-based compensation expense; or

Contribution Margin

The following table provides a reconciliation of Contribution margin to gross profit and Contribution margin as a percentage of net revenue to gross profit as a percentage of net revenue, which are the most directly comparable financial measures presented in accordance with GAAP:

	December 31, 2023	December 31, 2024
Gross Profit	\$ 70,285	\$ 61,495
Less:		
Reserve on barter credits	323	—
E-commerce platform commissions, online advertising, selling and logistics expenses	(68,864)	(44,553)
Contribution margin	<u>\$ 1,744</u>	<u>\$ 16,942</u>
Gross Profit as a percentage of net revenue	49.3%	62.1%
Contribution margin as a percentage of net revenue	1.2%	17.1%

Adjusted EBITDA

The following table provides a reconciliation of EBITDA and Adjusted EBITDA to net loss, which is the most directly comparable financial measure presented in accordance with GAAP:

	December 31, 2023	December 31, 2024
Net loss	\$ (74,564)	\$ (11,862)
Add:		
Benefit for income taxes	(867)	(47)
Interest expense, net	1,421	949
Depreciation and amortization	3,886	1,689
EBITDA	<u>(70,124)</u>	<u>(9,271)</u>
Other expense, net	260	61
Impairment loss on intangibles	39,728	—
Change in fair market value of warrant liabilities	(2,440)	(924)
Reserve on barter credits	323	—
Restructuring expense ⁽¹⁾	1,633	565
Stock-based compensation expense	8,336	7,510
Adjusted EBITDA	<u>\$ (22,284)</u>	<u>\$ (2,059)</u>
Net loss as a percentage of net revenue	(52.3)%	(12.0)%
Adjusted EBITDA as a percentage of net revenue	(15.6)%	(2.1)%

(1) Restructuring expenses include non-recurring employee severance costs relating to the Company reorganization executed during the year ended December 31, 2024 and 2023.

Critical Accounting Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these Consolidated Financial Statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and the related disclosures. We base our estimates on historical experience and on other assumptions that we believe to be reasonable under the circumstances. These estimates and assumptions form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in more detail in the notes to our financial statements appearing elsewhere in this Annual Report, we believe the following accounting policies used in the preparation of our financial statements require the most significant judgments and estimates.

Inventory valuation—Inventories, consisting of products available for sale, are primarily accounted for using the first-in first-out method, and are valued at the lower of cost and net realizable value. This valuation requires us to make judgments, based on available information such as historical data, about the likely method of disposition, such as through sales to individual customers or liquidations, and expected recoverable values of each disposition category. Changes to the relevant assumptions and projections would impact our consolidated financial results in periods subsequent to recording these estimates. If we anticipate a change in assumptions such as future demand or market conditions to be less favorable than our previous estimates, additional inventory write-downs may be required. Conversely, if we are able to sell inventories that had been written down to a level below the ultimate realized selling price in a previous period, sales would be recorded with a lower or no offsetting charge to cost of sales. A 10% change to our current reserve for excess and obsolete inventory would not result in a material change to our consolidated financial statements; however, given the value of inventory on hand, a significant change in demand or market conditions could result in a material adjustment to our reserve in future periods.

Warrant Liabilities—The fair values of the outstanding warrants were measured using the Black Scholes model. Inputs used to determine estimated fair value of the warrant liabilities include the fair value of the underlying stock at the valuation date, the term of the warrants, and the expected volatility of the underlying stock. The significant unobservable input used in the fair value measurement of the warrant liabilities is the estimated term of the warrants. Generally, increases (decreases) in the fair value of the underlying stock and estimated term result in a directionally similar impact to the periodic fair value measurement of the outstanding warrant liabilities, and are recorded within the Change in fair market value of warrant line item on the statement of operations.

The fair value of warrant liabilities was \$1.0 million and \$0.1 million at December 31, 2023 and 2024, which is included in accrued expenses and other current liabilities on the Consolidated Balance Sheets.

Intangible asset valuation —We review long-lived assets for impairment when performance expectations, events, or changes in circumstances indicate that the asset's carrying value may not be recoverable. The evaluation is performed at the lowest level of identifiable cash flows by comparing the carrying value of the asset group to the undiscounted cash flows. If the evaluation indicates that the carrying amount of the assets may not be recoverable, any potential impairment is measured based upon the fair value of the related asset or asset group as determined by an appropriate market appraisal or other valuation technique.

On March 20, 2023, the Company made certain leadership changes in our essential oil business resulting in a change in strategy and outlook for the business which resulted in a reduced portfolio offering. This reduction in the portfolio was impactful to our essential oil business's future revenues and profitability and as a result the Company made revisions to our internal forecasts. The Company concluded that this change was an interim triggering event for the three months ending March 31, 2023 indicating the carrying value of our essential oil business's long-lived assets including trademarks may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$16.7 million during the three months ending March 31, 2023 within impairment loss on intangibles on the consolidated statement of operations.

During the three months ended June 30, 2023, the Company had a substantial decrease in its market capitalization, primarily relating to a decrease in share price. Further, the Company continued to see reduced net revenues across its portfolio due primarily to the then current macroeconomic environment reducing demand for consumer discretionary goods. Finally, during the three months ending June 30, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering, specifically related to its kitchen appliance products. As a result of this rationalization, along with the reduced demand for its products, the Company made certain revisions to its internal forecasts for its Paper business and Kitchen appliance business. The Company concluded that these factors were an interim triggering event for the three months ending June 30, 2023 indicating the carrying value of our Paper and Kitchen appliance business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$22.8 million for the Paper business and Kitchen appliance business during the three months ending June 30, 2023 within impairment loss on intangibles on the consolidated statement of operations.

During the three months ended December 31, 2023, the Company continued to see reduced revenue in its paper business resulting in certain revisions to its internal forecasts. Due to these revisions in forecast due to reduced demand, the Company concluded this was an interim triggering event for the three months ending December 31, 2023 indicating the carrying value of our Paper business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$0.3 million for the Paper business during the three months ending December 31, 2023 within impairment loss on intangibles on the consolidated statement of operations.

These fair value measurements require significant judgements using Level 3 inputs, such as discounted projected future cash flows, which are not observable from the market, directly or indirectly. There is uncertainty in the projected future cash flows used in the Company's impairment analysis, which requires the use of estimates and assumptions. If actual performance does not achieve the projections, or if the assumptions used in the analysis change in the future, the Company may be required to recognize additional impairment charges in future periods. Key assumptions in the impairment models included a discount and royalty rate. The Company believes our procedures for determining fair value are reasonable and consistent with current market conditions as of December 31, 2024.

There were no triggering events to test intangibles for impairment loss during the year ended December 31, 2024.

We will continue to closely monitor actual results versus expectations as well as whether and to what extent any significant changes in current events or conditions result in corresponding changes to our expectations about future estimated cash flows. If our adjusted expectations of the operating results do not materialize, we may be required to record intangible impairment charges, which may be material.

JOBS Act

As of December 31, 2024, we no longer qualify as an Emerging Growth Company ("EGC") due to the expiration of the five-year eligibility period under the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). Although the Company is no longer an EGC, we are still eligible for certain scaled disclosure accommodations, including reduced executive compensation disclosures and exemptions from some of the enhanced financial reporting requirements applicable to larger registrants as we are still a Smaller Reporting Company.

Adopted Accounting Standards and Recent Accounting Pronouncements

See Note 2, *Summary of Significant Accounting Policies* for more information.

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

We are exposed to market risk related to changes in interest rates. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates, particularly because our investments, including cash equivalents, are in the form, or may be in the form of, money market funds or marketable securities and are or may be invested in U.S. Treasury and U.S. government agency obligations. Due to the short-term maturities and low risk profiles of our investment, an immediate 100 basis point change in interest rates would not have a material effect on the fair market value of our investments. We do not currently use or plan to use financial derivatives in our investment portfolio or engage in hedging transactions to manage our exposure to interest rate risk.

In addition, we have outstanding debt under the Credit Facility with MidCap that bears interest. As of December 31, 2024, our outstanding indebtedness under the Credit Facility was \$6.9 million, which bears interest at a rate of Term Secured Overnight Financing Rate ("Term SOFR"), which is defined as SOFR plus 0.10%, plus 5.50%. We do not believe that an immediate 10% increase in interest rates would have a material effect on interest expense for the Credit Facility, and therefore we do not expect our operating results or cash flows to be materially affected to any degree by a sudden change in market interest.

We are currently exposed to market risk related to changes in foreign currency exchange rates. We do not currently engage in hedging transactions to manage our exposure to foreign currency exchange rate risk as we do not currently believe our exposure is material. Sales outside of the U.S. represented approximately 4% and 6% of our net revenue for the years-ended December 31, 2023 and 2024, respectively. Currently, our revenue-producing transactions are primarily denominated in U.S. dollars; however, as we continue to expand internationally, our results of operations and cash flows may increasingly become subject to fluctuations due to changes in foreign currency exchange rates. In periods when the U.S. dollar declines in value as compared to foreign currencies in which we incur expenses, our foreign-currency based expenses will increase when translated into U.S. dollars. In addition, future fluctuations in the value of the U.S. dollar may affect the price at which we sell our products outside the U.S. To date, our foreign currency risk has been minimal, and we have not historically hedged our foreign currency risk; however, we may consider doing so in the future.

Inflation would generally affect us by increasing our cost of labor and overhead costs. We do not believe that inflation had a material effect on our business, financial condition or results of operations for the years-ended December 31, 2023 and December 31, 2024.

Item 8. Financial Statements and Supplementary Data.

ATERIAN, INC.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Aterian, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Aterian, Inc. and subsidiaries (the "Company") as of December 31, 2023, the related consolidated statement of operations and comprehensive loss, stockholders' equity, and cash flows, for the year ended December 31, 2023, 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 the result of its operations and its cash flows for the year ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying consolidated financial statements have been prepared assuming the Company will be able to continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has incurred recurring losses from operations and recurring negative operating cash flows since inception and may be unable to fund day-to-day company operations and remain in compliance with certain financial covenants required by the agreement governing the Company's credit facility which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

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 audit. 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the 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 audit, 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 audit 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 audit 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 audit provides a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

New York, New York

March 19, 2024 (March 25, 2025, as to the effects of the adoption of ASU No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, described in Note 2, and the Reverse Stock Split described in Note 1)

We began serving as the Company's auditor in 2017. In 2024 we became the predecessor auditor.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and
Stockholders of Aterian, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Aterian, Inc. (the Company) as of December 31, 2024, and the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for year ended December 31, 2024, and the related notes (collectively referred to as the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2024, and the results of its operations and its cash flows for the year ended December 31, 2024, in conformity with accounting principles generally accepted in the United States of America.

The Company's Ability to Continue as a Going Concern

The accompanying consolidated financial statements have been prepared assuming the Company will be able to continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has incurred recurring losses from operations and recurring negative operating cash flows since inception and may be unable to fund day-to-day company operations and remain in compliance with certain financial covenants required by the agreement governing the Company's credit facility which raises substantial doubt about its ability to continue as a going concern. Management's plans regarding these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audit. 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. 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 audit, 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 audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Inventory Valuation

As described in Note 2 the Company estimates the net realizable value for inventory based on past and future sales, which involves a high level of judgement on the part of management. Inventories, consisting of products available for sale, are primarily accounted for using the first-in first-out method, and are valued at the lower of cost and net realizable value. This valuation requires the Company to make judgments, based on available information, such as historical sales data and forecasted future sales data for the next twelve months, about the likely method of disposition, such as through sales to individual customers or liquidations, and expected recoverable values of each disposition category. Changes to the relevant assumptions and projections would impact the consolidated financial results in periods subsequent to the recording these estimates.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. Our audit procedures related to the evaluation of the Company's inventory valuation included the following, among others:

- Obtaining an understanding of the Company's accounting policy related to inventory, specifically as it relates to the excess and obsolete inventory reserve and ensure it is relevant to the accounting standards and consistent applied to prior periods.
- Recalculate the inventory reserve based on the Company's policy and our knowledge obtained above. Ensure mathematical accuracy and test the computations for a sample of inventory items
- Evaluating management's methodology and process for developing the excess and obsolete inventory reserve, including estimating assumptions related to future product sales based on historical usage and current market conditions.
- Testing management's calculation of the excess and obsolete inventory reserve, which included evaluating the completeness and accuracy of underlying data used by management in the calculation, principally inputs such as actual sales of products and management's determination of future estimated sales of inventory and comparing them to historical sale amounts.
- Perform observations of inventory at various locations to ensure the quantities are in working order and identify damaged or poor conditioned inventory and confirmed balances at various third-party warehouses.

/s/ UHY LLP

We have served as the Company's auditor since 2024.

Melville, New York

March 25, 2025

ATERIAN, INC.
Consolidated Balance Sheets
(in thousands, except share and per share data)

	<u>December 31, 2023</u>	<u>December 31, 2024</u>
<u>ASSETS</u>		
Current assets:		
Cash	\$ 20,023	\$ 17,998
Accounts receivable, net	4,225	3,782
Inventory	20,390	13,749
Prepaid and other current assets	4,998	3,190
Total current assets	<u>49,636</u>	<u>38,719</u>
Property and equipment, net	775	685
Intangibles, net	11,320	9,757
Other non-current assets	138	381
Total assets	<u>\$ 61,869</u>	<u>\$ 49,542</u>
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>		
Current liabilities:		
Credit facility	\$ 11,098	\$ 6,948
Accounts payable	4,190	3,080
Seller notes	1,049	466
Accrued and other current liabilities	9,110	8,804
Total current liabilities	<u>25,447</u>	<u>19,298</u>
Other liabilities	391	227
Total liabilities	<u>25,838</u>	<u>19,525</u>
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Common stock, \$0.0001 par value, 500,000,000 shares authorized and 7,508,246 and 8,750,741 shares outstanding at December 31, 2023 and December 31, 2024, respectively(*)	9	9
Additional paid-in capital	736,675	742,591
Accumulated deficit	(699,815)	(711,677)
Accumulated other comprehensive loss	(838)	(906)
Total stockholders' equity	<u>36,031</u>	<u>30,017</u>
Total liabilities and stockholders' equity	<u>\$ 61,869</u>	<u>\$ 49,542</u>

(*) The number of shares and per share amounts have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

See notes to Consolidated Financial Statements.

ATERIAN, INC.
Consolidated Statements of Operations
(in thousands, except share and per share data)

	Year Ended December 31,	
	2023	2024
Net revenue	\$ 142,566	\$ 99,045
Cost of goods sold	72,281	37,550
Gross profit	70,285	61,495
Operating expenses:		
Sales and distribution	81,911	55,979
Research and development	4,616	—
General and administrative	20,220	17,339
Impairment loss on intangibles	39,728	—
Total operating expenses	146,475	73,318
Operating loss	(76,190)	(11,823)
Interest expense, net	1,421	949
Change in fair value of warrant liabilities	(2,440)	(924)
Other expense, net	260	61
Loss before income taxes	(75,431)	(11,909)
Benefit for income taxes	(867)	(47)
Net loss	\$ (74,564)	\$ (11,862)
Net loss per share, basic and diluted	\$ (11.43)	\$ (1.68)
Weighted-average number of shares outstanding, basic and diluted(*)	6,524,589	7,069,404

(*) The number of shares and per share amounts have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

See notes to Consolidated Financial Statements.

ATERIAN, INC.
Consolidated Statements of Comprehensive Loss
(in thousands)

	Year Ended December 31,	
	2023	2024
Net loss	\$ (74,564)	\$ (11,862)
Other comprehensive loss:		
Foreign currency translation adjustments	306	(68)
Other comprehensive income (loss)	306	(68)
Comprehensive loss	<u>\$ (74,258)</u>	<u>\$ (11,930)</u>

See notes to Consolidated Financial Statements.

ATERIAN, INC.
Consolidated Statements of Stockholders' Equity
(in thousands, except share and per share data)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares(*)	Amount				
BALANCE—December 31, 2022	6,729,533	\$ 8	\$ 728,339	\$ (625,251)	\$ (1,144)	\$ 101,952
Net loss	—	—	—	(74,564)	—	(74,564)
Issuance of shares of restricted common stock	1,095,011	1	—	—	—	1
Forfeiture of shares of restricted common stock	(341,298)	—	—	—	—	—
Issuance of common stock	25,000	—	290	—	—	290
Stock-based compensation expense	—	—	8,046	—	—	8,046
Other comprehensive income	—	—	—	—	306	306
BALANCE—December 31, 2023	7,508,246	\$ 9	\$ 736,675	\$ (699,815)	\$ (838)	\$ 36,031
Net loss	—	—	—	(11,862)	—	(11,862)
Issuance of shares of restricted common stock	1,395,974	—	—	—	—	—
Forfeiture of shares of restricted common stock	(332,259)	—	—	—	—	—
Issuance of common stock	178,780	—	670	—	—	670
Stock-based compensation expense	—	—	5,246	—	—	5,246
Other comprehensive income	—	—	—	—	(68)	(68)
BALANCE—December 31, 2024	8,750,741	\$ 9	\$ 742,591	\$ (711,677)	\$ (906)	\$ 30,017

(*) The number of shares and per share amounts have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

See notes to Consolidated Financial Statements.

ATERIAN, INC.
Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,	
	2023	2024
OPERATING ACTIVITIES:		
Net loss	\$ (74,564)	\$ (11,862)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation and amortization	3,886	1,689
(Recovery) provision for sales returns	(413)	57
Amortization of deferred financing cost and debt discounts	429	198
Stock-based compensation	8,336	7,510
Change in deferred tax expense	(1,153)	(5)
Change in inventory provisions	(3,149)	(2,738)
Change in fair value of warrant liabilities	(2,440)	(924)
Impairment loss on intangibles	39,728	—
Provision for barter credits	323	—
Allowance for credit losses	85	16
Changes in assets and liabilities:		
Accounts receivable	205	427
Inventory	26,426	9,378
Prepaid and other current assets	2,597	762
Accounts payable, accrued and other liabilities	(13,684)	(2,343)
Cash (used in) provided by operating activities	(13,388)	2,165
INVESTING ACTIVITIES:		
Purchase of fixed assets	(119)	(42)
Purchase of Step and Go assets	(125)	—
Purchase of minority equity investment	—	(200)
Cash used in investing activities	(244)	(242)
FINANCING ACTIVITIES:		
Repayments on seller notes	(668)	(633)
Borrowings from MidCap credit facilities	79,806	60,866
Repayments for MidCap credit facilities	(90,190)	(65,165)
Insurance obligation payments	(1,042)	(682)
Insurance financing proceeds	986	700
Cash used in financing activities	(11,108)	(4,914)
Foreign currency effect on cash, cash equivalents, and restricted cash	306	(61)
Net change in cash and restricted cash for the year	(24,434)	(3,052)
Cash and restricted cash at beginning of year	46,629	22,195
Cash and restricted cash at end of year	<u>\$ 22,195</u>	<u>\$ 19,143</u>
RECONCILIATION OF CASH AND RESTRICTED CASH:		
Cash	20,023	17,998
Restricted cash—Prepaid and other current assets	2,043	1,015
Restricted cash—Other non-current assets	129	130
TOTAL CASH AND RESTRICTED CASH	<u>\$ 22,195</u>	<u>\$ 19,143</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION		
Cash paid for interest	\$ 1,718	\$ 1,141
Cash paid for taxes	\$ 94	\$ 152
NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Non-cash consideration paid to contractors	\$ 321	\$ 620
Non-cash minority equity investment	\$ —	\$ 50

See notes to Consolidated Financial Statements.

Aterian, Inc.
Notes to Consolidated Financial Statements
FOR THE YEARS-ENDED DECEMBER 31, 2023 AND 2024
(In thousands, except share and per share data)

1. COMPANY OVERVIEW

Aterian, Inc. (the "Company") is a technology-enabled consumer products company that predominantly operates through online retail channels such as Amazon, Walmart, and Target and its own direct to consumer websites. The Company operates its owned brands, which were either incubated or purchased, selling products in multiple categories, including home and kitchen appliances, kitchenware, air quality appliances, health and beauty products and essential oils.

Our primary brands include Squatty Potty, HomeLabs, Mueller Living, PurSteam, Healing Solutions, and Photo Paper Direct ("PPD"). We generate revenue primarily through the online sales of our various consumer products with substantially all of our sales being made through the Amazon U.S. marketplace.

Headquartered in New Jersey, the Company also maintains offices in China, the Philippines, and the United Kingdom.

Liquidity and Going Concern

We are subject to inherent risks and uncertainties associated with the development of our enterprise. In this regard, substantially all of our efforts to date have been devoted to the development and sale of our products in the marketplace, which includes our investment in organic growth at the expense of short-term profitability, our investment in incremental growth through mergers & acquisitions ("M&A strategy"), our recruitment of management and technical staff, and raising capital to fund the development of our enterprise. As a result of these efforts, we have incurred significant losses and negative cash flows from operations since our inception and expect to continue to incur such losses, at a reduced level, and negative cash flows in the near term. However, we anticipate improvements over time as we work toward achieving a sustainable scale of profitability. We have also experienced declining revenues due to macroeconomic factors, including increased interest rates and reduced consumer discretionary spending, and other factors, and we are focusing our efforts on a more limited number of products. In addition, our recent financial performance has been adversely impacted by inflationary pressures and reduced consumer spending.

In order to execute our growth strategy, we have historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively "outside capital") to fund our cost structure, and we expect to continue to rely on outside capital for the foreseeable future, specifically if we pursue material M&A opportunities. While we believe we will eventually reach a level of profitability to sustain our operations, there can be no assurance we will be able to achieve such profitability or do so in a manner that does not require our continued reliance on outside capital. Moreover, while we have historically been successful in raising outside capital, there can be no assurance we will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to us.

As of the date the accompanying Consolidated Financial Statements were issued (the "issuance date"), we evaluated the significance of the following adverse financial conditions in accordance with Accounting Standard Codification 205-40, Going Concern:

- Since our inception, we have incurred significant losses and used cash flows from operations to fund our enterprise. In this regard, during the year ended December 31, 2024, we incurred a net loss of \$11.9 million and generated net cash flows from operations of \$2.2 million. In addition, as of December 31, 2024, we had unrestricted cash and cash equivalents of \$18.0 million available to fund our operations and an accumulated deficit of \$711.7 million.
- We are required to remain in compliance with certain financial covenants required by the MidCap Credit facility (See Note 9, *Credit Facility, Term Loans and Warrants*). We were in compliance with these financial covenants as of December 31, 2024, and expect to remain in compliance through at least March 31, 2026. During February 2024, the Company amended its terms with Midcap Credit Facility extending the term until December 2026 and amending certain financial covenants with favorable terms. We can provide no assurances that we will remain in compliance with our financial covenants. Further, absent of our ability to generate cash inflows from our operations or secure additional outside capital, we will be unable to remain in compliance with these financial covenants. In the event we are unable to remain in compliance with these financial covenants (or other non-financial covenants required by the MidCap Credit Facility), and we are unable to secure a waiver or forbearance, MidCap may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among others, accelerating repayment of the outstanding borrowings and/or asserting its rights in the assets securing the loan.
- As of the issuance date, we have no firm commitments to secure additional outside capital from lenders or investors. While we expect to continue to explore raising additional outside capital, specifically if we pursue material M&A opportunities, there can be no assurance we will be able to obtain capital or do so on terms that are acceptable to us. Accordingly, absent our ability to generate cash inflows from our operations and/or secure additional outside capital in the near term, we may be unable to meet our obligations as they become due over the next twelve months beyond the issuance date.
- The Company's plan is to continue to closely monitor our operating forecast, to pursue additional sources of outside capital on terms that are acceptable to us, and to secure a waiver or forbearance from MidCap if we are unable to remain in compliance with one or more of the covenants required by the MidCap Credit Facility. Further, the Company has enacted a strategy to reduce the number of SKUs it sells and will no longer be pursuing future sales of SKUs that are either not profitable or not core to the Company's strategy. If some or all of our plans prove unsuccessful, we may need to implement short-term changes to our operating plan, including but not limited to delaying expenditures, reducing investments in new products, or reducing our sale and distribution infrastructure. We may also need to seek long-term strategic alternatives, such as a significant curtailment of our operations, a sale of certain of our assets, a divestiture of certain product lines, a sale of the entire enterprise to strategic or financial investors, and/or allow our enterprise to become insolvent.

The Company has completed two restructuring programs over the last two years to reduce operating costs and right size the workforce to align with the scale of our streamlined operations. In addition, we have reduced our SKU count to focus on profitable products that are core to the Company's strategy. During February 2024, we extended the term with Midcap Credit Facility until December 2026 (See Note 9, *Credit Facility, Term Loans and Warrants*) and

amended key terms which will add more flexibility to liquidity and strengthen our balance sheet. In consideration of these factors, the Company will monitor profitability and cash flow over the next several quarters to evaluate our ability to continue as a going concern.

Although significant strides have been made in reducing our operating losses and strengthening our balance sheet, uncertainties persist in our business operations and the forecasting of our business. These uncertainties raise substantial doubt about our ability to continue as a going concern. The accompanying Consolidated Financial Statements have been prepared on the basis that we will continue to operate as a going concern, which contemplates that we will be able to realize assets and settle liabilities and commitments in the normal course of business for the foreseeable future. Accordingly, the accompanying Consolidated Financial Statements do not include any adjustments that may result from the outcome of these uncertainties.

Nasdaq Listing—On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC (“Nasdaq”) indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company is currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2) (the “Bid Price Notice”). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement (the “Extension Notice”).

Nasdaq notified the Company in the Compliance Notice that from March 22, 2024 to April 5, 2024 the closing bid price of the Company’s common stock had been \$1.00 per share or greater and, accordingly, the Company had regained compliance with Nasdaq Listing Rule 5450(a)(1) and that the matter was now closed.

On August 11, 2023, Aterian's shareholders approved discretionary authority to our Board to (A) amend our Amended and Restated Certificate of Incorporation to effect one or more consolidations of the issued and outstanding shares of our common stock, par value \$0.0001 per share, pursuant to which the shares of Common Stock would be combined and reclassified at ratios within the range from 1-for-2 up to 1-for-30 and (B) determine whether to arrange for the disposition of fractional interests by stockholders entitled thereto, to pay in cash the fair value of fractions of a share of Common Stock as of the time when those entitled to receive such fractions are determined, or to entitle stockholders to receive from our transfer agent, in lieu of any fractional share, the number of shares of Common Stock rounded up to the next whole number, and to amend our Amended and Restated Certificate of Incorporation in connection therewith.

On March 20, 2024, the Company filed a Certificate of Amendment to its Amended and Restated Certificate of Incorporation of the Company with the Secretary of State of Delaware (the “Certificate of Amendment”) to effect a 1-for-12 reverse stock split (the “Reverse Stock Split”) of the shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”). The Certificate of Amendment did not decrease the number of authorized shares of Common Stock or change the par value thereof. No fractional shares were issued in connection with the Reverse Stock Split. Any fractional shares that would otherwise have resulted from the Reverse Stock Split were rounded up to the nearest whole number. The Reverse Stock Split impacted all holders of the Common Stock proportionally and did not impact any stockholder’s percentage ownership of Common Stock (except to the extent the Reverse Stock Split results in any stockholder owning fractional shares).

The Common Stock began trading on a Reverse Stock Split-adjusted basis on the Nasdaq on March 22, 2024. All share and per share data in this Annual Report on Form 10-K have been retroactively adjusted to reflect the Reverse Stock Split.

Restructuring - On May 9, 2023, the Company announced a plan to reduce expenses by implementing a reduction in its current workforce impacting approximately 50 employees and 15 contractors, primarily in the Philippines. The Company recognized restructuring charges of \$1.6 million for the year ended December 31, 2023.

On February 8, 2024, the Company committed to a fixed cost-cutting plan, including a reduction in workforce which resulted in the termination of approximately 17 employees and 26 contractors globally. The Company recognized restructuring charges of \$0.6 million for the year ended December 31, 2024, respectively.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation—The Consolidated Financial Statements and accompanying notes have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

Use of Estimates—Preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period covered by the financial statements and accompanying notes. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment, and makes adjustments when facts and circumstances dictate. As future events and their effects cannot be determined with precision, actual results could differ from those estimates.

Principles of Consolidation—The Consolidated Financial Statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Restricted Cash—As of December 31, 2023, the Company has classified the following as restricted cash: \$0.1 million related to its Chinese subsidiary within “Other Non-current Assets” on the consolidated balance sheets and \$2.0 million related to a letter of credit within “Prepaid and Other Current Assets” on the consolidated balance sheets.

As of December 31, 2024, the Company has classified the following as restricted cash: \$0.1 million related to its Chinese subsidiary within “Other Non-current Assets” on the Consolidated Balance Sheets and \$1.0 million related to a letter of credit within “Prepaid and Other Current Assets” on the Consolidated Balance Sheets.

Accounts Receivable—Accounts receivable are stated at historical cost less allowance for credit losses. On a periodic basis, management evaluates its accounts receivable and determines whether to provide an allowance or if any accounts should be written off based on a past history of write-offs, collections and current credit conditions. A receivable is considered past due if the Company has not received payments based on agreed-upon terms. The Company generally does not require any security or collateral to support its receivables. The Company performs ongoing evaluations of its customers and maintains an allowance for credit losses. As of December 31, 2023 and December 31, 2024, the Company had an allowance for credit losses of \$0.1 million.

Concentration of Credit Risk—Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and accounts receivable. The Company maintains cash and restricted cash with various domestic and foreign financial institutions of high credit quality. The Company performs periodic evaluations of the relative credit standing of all of the aforementioned institutions. The Company does have cash deposits at financial institutions in excess of the insured amount of \$0.3 million by the Federal Deposit Insurance Corporation.

The Company’s accounts receivables are derived from sales contracts with a large number of customers. The Company maintains reserves for potential credit losses on customer accounts when deemed necessary. Significant customers are those which represent more than 10% of the Company’s total net revenue or gross accounts receivable balance at the balance sheet date. During the years-ended December 31, 2023 and 2024, the Company had zero customers that accounted for 10% or more of total net revenue. In addition, as of December 31, 2023 and 2024, the Company had four customers at 24%, 13%, 12% and 12% and three customers at 37%, 20%, and 11% that accounted for 10% or more of gross accounts receivable. As of December 31, 2023 and 2024, approximately 32% and 31%, respectively, of its accounts receivable is held by the Company’s sales platform vendor, Amazon, which collects money on the Company’s behalf from its customers.

The Company’s business is reliant on one key vendor which currently provides the Company with its sales platform, logistics and fulfillment operations, including certain warehousing for the Company’s net goods, and invoicing and collection of its revenue from the Company’s end customers. In 2023, approximately 88% of the Company’s revenue was through or with the Amazon sales platform and in 2024, 92% of its net revenue was through or with the Amazon sales platform.

Property and Equipment—Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is provided for using the straight-line method over the estimated useful lives of the assets. Capital leases and leasehold improvements are amortized using the straight-line method over the shorter of the lease term or estimated useful life of the asset. Costs of maintenance and repairs that do not improve or extend the lives of the respective assets are expensed as incurred.

Income Taxes—The Company accounts for income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to operating loss carry-forwards and temporary differences between financial statement bases of existing assets and liabilities and their respective income tax bases. Deferred tax assets and liabilities are measured using enacted income tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in the income tax rates on deferred tax asset and liability balances is recognized in income in the period that includes the enactment date of such rate change. A valuation allowance is recorded for loss carry-forwards and other deferred tax assets when it is determined that it is more likely than not that such loss carry-forwards and deferred tax assets will not be realized. The Company recognizes the tax benefits on any uncertain tax positions taken or expected to be taken in the Consolidated Financial Statements when it is more likely than not the position will be realized upon ultimate settlement with the tax authority assuming full knowledge of the position and relevant facts. The tax benefits recognized in the Consolidated Financial Statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Company recognizes estimated interest and penalties related to uncertain tax positions as a part of the provision for income taxes.

Revenue Recognition—The Company accounts for revenue in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standard Codification (“ASC”) Topic 606, Revenue from Contracts with Customers (“ASC Topic 606”). The Company derives its revenue from the sale of consumer products. The Company sells its products directly to consumers through online retail channels and through wholesale channels.

For direct-to-consumer sales, the Company considers customer order confirmations to be a contract with the customer. Customer confirmations are executed at the time an order is placed through third-party online channels. For wholesale sales, the Company considers the customer purchase order to be the contract.

For all of the Company’s sales and distribution channels, revenue is recognized when control of the product is transferred to the customer (i.e., when the Company’s performance obligation is satisfied), which typically occurs at shipment date. As a result, the Company has a present and unconditional right to payment and record the amount due from the customer in accounts receivable.

Revenue from consumer product sales is recorded at the net sales price (transaction price), which includes an estimate of future returns based on historical return rates. There is judgment in utilizing historical trends for estimating future returns. The Company’s refund liability for sales returns was \$0.2 million and \$0.3 million at December 31, 2023 and 2024, which is included in accrued expenses and other current liabilities on the Consolidated Balance Sheets and represents the expected value of the refund that will be due to its customers.

The Company evaluated principal versus agent considerations to determine whether it is appropriate to record platform fees paid to Amazon as an expense or as a reduction of revenue. Platform fees are recorded as sales and distribution expenses and are not recorded as a reduction of revenue because the Company owns and controls all the goods before they are transferred to the customer. The Company can, at any time, direct Amazon, or similarly, direct other third-party logistics providers (“Logistics Providers”), to return the Company’s inventory to any location specified by the Company. It is the Company’s responsibility to make customers whole following any returns made by customers directly to Logistic Providers and the Company retains the back-end inventory risk. Further, the Company is subject to credit risk (i.e., credit card charge backs), establishes prices of its products, can determine who fulfills the goods to the customer (Amazon or the Company) and can limit quantities or stop selling the goods at any time. Based on these considerations, the Company is the principal in this arrangement.

Performance Obligations. A performance obligation is a promise in a contract to transfer a distinct good to the customer and is the unit of account in ASC Topic 606. A contract’s transaction price is recognized as revenue when the performance obligation is satisfied. Each of the Company’s contracts have a single distinct performance obligation, which is the promise to transfer individual goods.

For consumer product sales, the Company has elected to treat shipping and handling as fulfillment activities, and not a separate performance obligation. Accordingly, the Company recognizes revenue for its single performance obligation related to product sales at the time control of the merchandise passes to the customer, which is generally at the time of shipment. The Company bills customers for charges for shipping and handling on certain sales and such charges are recorded as part of net revenue. Shipping and handling revenue for each of the years-ended December 31, 2023 and 2024 were de minimis.

For each contract, the Company considers the promise to transfer products to be the only identified performance obligation. In determining the transaction price, the Company evaluates whether the price is subject to refund or adjustment to determine the net consideration to which the Company expects to be entitled.

Sales taxes—Consistent with prior periods, sales taxes collected from customers are presented on a net basis and as such are excluded from net revenue.

Net Revenue by Category: The following tables set forth the Company’s net revenue disaggregated by sales channel and geographic region based on the billing addresses of its customers:

	December 31, 2023		
	(in thousands)		
	Direct	Wholesale/Other	Total
North America	\$ 133,101	\$ 4,156	\$ 137,257
Other	5,309	—	5,309
Total net revenue	\$ 138,409	\$ 4,156	\$ 142,566

	December 31, 2024		
	(in thousands)		
	Direct	Wholesale/Other	Total
North America	\$ 91,815	\$ 1,704	\$ 93,519
Other	5,526	—	5,526
Total net revenue	\$ 97,341	\$ 1,704	\$ 99,045

Net Revenue by Product Categories: The following table sets forth the Company's net revenue disaggregated by product categories:

	December 31, 2023	December 31, 2024
	(in thousands)	
Heating, cooling and air quality	\$ 34,686	\$ 26,398
Kitchen appliances	24,181	9,565
Health and beauty	16,025	13,467
Cookware, kitchen tools and gadgets	11,696	5,924
Home office	9,781	8,017
Housewares	26,093	22,521
Essential oils and related accessories	17,204	12,719
Other	2,900	434
Total net revenue	<u>\$ 142,566</u>	<u>\$ 99,045</u>

Fair Value of Financial Instruments—The Company's financial instruments, including net accounts receivable, accounts payable, and accrued and other current liabilities are carried at historical cost. At December 31, 2024, the carrying amounts of these instruments approximated their fair values because of their short-term nature. The Company's credit facility is carried at amortized cost at December 31, 2023 and December 31, 2024 and the carrying amount approximates fair value as the stated interest rate approximates market rates currently available to the Company.

The fair value of the stock purchase warrants issued in connection with the Company's common stock offering on March 1, 2022 were measured using the Black-Scholes model. Inputs used to determine the estimated fair value of the warrant liabilities include the fair value of the underlying stock at the valuation date, the term of the warrants, and the expected volatility of the underlying stock. The significant unobservable input used in the fair value measurement of the warrant liabilities is the estimated term of the warrants. Upon the issuance of the stock purchase warrants, the Company evaluated the terms of each warrant to determine the appropriate accounting and classification pursuant to FASB ASC Topic 480, *Distinguishing Liabilities from Equity* ("ASC 480"), and FASB Accounting Standards Codification Topic 815, *Derivatives and Hedging* ("ASC 815"). Based on the Company's evaluation and due to certain terms in the warrant agreements, it concluded the stock purchase warrants should be classified as liability with subsequent remeasurement as long as such warrants continue to be classified as liabilities.

Assets and liabilities recorded at fair value on a recurring basis in the consolidated balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;

Level 2—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities; and

Level 3—Unobservable inputs that are supported by little or no market data for the related assets or liabilities.

Intangibles—We review long-lived assets for impairment when performance expectations, events, or changes in circumstances indicate that the asset's carrying value may not be recoverable. The evaluation is performed at the lowest level of identifiable cash flows by comparing the carrying value of the asset group to the undiscounted cash flows. If the evaluation indicates that the carrying amount of the assets may not be recoverable, any potential impairment is measured based upon the fair value of the related asset or asset group as determined by an appropriate market appraisal or other valuation technique.

On March 20, 2023, the Company made certain leadership changes in our essential oil business resulting in a change in strategy and outlook for the business which resulted in a reduced portfolio offering. This reduction in the portfolio was impactful to our essential oil business's future revenues and profitability and as a result the Company made revisions to our internal forecasts. The Company concluded that this change was an interim triggering event for the three months ending March 31, 2023 indicating the carrying value of our essential oil business's long-lived assets including trademarks may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$16.7 million during the three months ending March 31, 2023 within impairment loss on intangibles on the consolidated statement of operations.

During the three months ended June 30, 2023, the Company had a substantial decrease in its market capitalization, primarily relating to a decrease in share price. Further, the Company continued to see reduced net revenues across its portfolio due primarily to the then current macroeconomic environment reducing demand for consumer discretionary goods. Finally, during the three months ending June 30, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering, specifically related to its kitchen appliance products. As a result of this rationalization, along with the reduced demand for its products, the Company made certain revisions to its internal forecasts for its Paper business and Kitchen appliance business. The Company concluded that these factors were an interim triggering event for the three months ending June 30, 2023 indicating the carrying value of our Paper and Kitchen appliance business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$22.8 million for the Paper business and Kitchen appliance business during the three months ending June 30, 2023 within impairment loss on intangibles on the consolidated statement of operations.

During the three months ended December 31, 2023, the Company continued to see reduced revenue in its paper business resulting in certain revisions to its internal forecasts. Due to these revisions in forecast due to reduced demand, the Company concluded this was an interim triggering event for the three months ending December 31, 2023 indicating the carrying value of our Paper business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-lived trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$0.3 million for the Paper business during the three months ending December 31, 2023 within impairment loss on intangibles on the consolidated statement of operations.

These fair value measurements require significant judgements using Level 3 inputs, such as discounted projected future cash flows, which are not observable from the market, directly or indirectly. There is uncertainty in the projected future cash flows used in the Company's impairment analysis, which requires the use of estimates and assumptions. If actual performance does not achieve the projections, or if the assumptions used in the analysis change in the future, the Company may be required to recognize additional impairment charges in future periods. Key assumptions in the impairment models included a discount and royalty rate. The Company believes our procedures for determining fair value are reasonable and consistent with current market conditions as of December 31, 2024.

There were no triggering events to test intangibles for impairment loss during the year ended December 31, 2024.

We will continue to closely monitor actual results versus expectations as well as whether and to what extent any significant changes in current events or conditions result in corresponding changes to our expectations about future estimated cash flows. If our adjusted expectations of the operating results do not materialize, we may be required to record intangible impairment charges, which may be material.

Inventory and Cost of Goods Sold—The Company's inventory consists almost entirely of finished goods. The Company currently records inventory on its balance sheet on a first-in first-out basis, or net realizable value, if it is below the Company's recorded cost. The Company's costs include the amounts it pays manufacturers for product, tariffs and duties associated with transporting product across national borders, and freight costs associated with transporting the product from its manufacturers to its warehouses, as applicable. The valuation of our inventory requires us to make judgments, based on available information such as historical data, about the likely method of disposition, such as through sales to individual customers or liquidations, and expected recoverable values of each disposition category. Changes to the relevant assumptions and projections would impact our consolidated financial results in periods subsequent to recording these estimates. If we anticipate a change in assumptions such as future demand or market conditions to be less favorable than our previous estimates, additional inventory write-downs may be required. Conversely, if we are able to sell inventories that had been written down to a level below the ultimate realized selling price in a previous period, sales would be recorded with a lower or no offsetting charge to cost of sales.

The "Cost of goods sold" line item in the consolidated statements of operations consists of the book value of inventory sold to customers during the reporting period. When circumstances dictate that the Company use net realizable value as the basis for recording inventory, it bases its estimates on expected future selling prices less expected disposal costs.

Sales and Distribution—Sales and distribution expenses consist of online advertising costs, marketing and promotional costs, sales and ecommerce platform commissions, fulfillment, including shipping and handling, and warehouse costs (i.e., sales and distribution variable expenses). Sales and distribution expenses also include employee compensation and benefits and other related fixed costs. Shipping and handling expenses are included in our consolidated statements of operations in sales and distribution expenses. This includes inbound, pick and pack costs and outbound transportation costs to ship goods to customers performed by e-commerce platforms or incurred directly by us, through our own direct fulfillment platform, which leverages our technology platform and third-party logistics partners. The Company's expense for shipping and handling was \$32.4 million and \$19.0 million during fiscal years 2023 and 2024, respectively. Our sales and distribution expenses, specifically our logistics expenses and online advertising, will vary quarter to quarter as they are dependent on our sales volume, our product mix and whether we fulfill products ourselves, i.e., fulfillment by merchant ("FBM"), or through e-commerce platform service providers, i.e., fulfillment by Amazon ("FBA") or fulfilled by Walmart ("WFS"). Products with less expensive fulfillment costs as a percentage of net revenue may allow for a lower gross margin, while still maintaining their targeted profitability level. Conversely, products with higher fulfillment costs will need to achieve a higher gross margin to maintain their targeted level of profitability. We are FBM One Day and Two Day Prime certified, allowing us to deliver our sales through Amazon to most customers within one or two days. We periodically review the locations and capacity of our third-party warehouses to ensure we have the appropriate geographic reach, which helps to reduce the average last mile shipping zones to the end customer and as such our speed of delivery improves while our shipping costs to customers decrease, prior to the impacts on shipping providers' rates. For the years-ended December 31, 2023 and 2024, the Company recognized \$9.1 million and \$7.4 million, respectively, for advertising costs, which consists primarily of online advertising expense.

Research and Development—Research and development expenses include compensation and employee benefits for technology development employees, travel-related costs and fees paid to outside consultants related to the development of our intellectual property. During the year ended December 31, 2024, the Company shifted its technology platform away from a fully internally developed model to an integrated third party model. For the year ended December 31, 2024, technology and employee related costs have been presented in general and administrative costs on the Consolidated Statement of Operations.

General and Administrative—General and administrative expenses include compensation and employee benefits for executive management, finance administration, legal, and human resources, facility costs, insurance, travel, professional service fees, and other general overhead costs, including the costs of being a public company. For the year ended December 31, 2023, technology and employee-related costs were classified within research and development expenses. For the year ended December 31, 2024, these costs have been presented within general and administrative expenses.

Stock-Based Compensation—Stock-based compensation expense to employees is measured based on the grant-date fair value of the awards and recognized in the consolidated statements of operations over the period during which the employee is required to perform services in exchange for the award (the vesting period of the award). The fair value of restricted stock awards is based on the stock price on the date of the grant. The Company estimates the fair value of stock options granted using the Black-Scholes option valuation model.

Foreign Currency—The functional currency of the Company's foreign subsidiaries is the local currency. All assets and liabilities of foreign subsidiaries are translated at the current exchange rate as of the end of the period, and revenues and expenses are translated at the average exchange rates in effect during the period. The gain or loss resulting from the process of translating foreign currency financial statements into U.S. dollars is reflected as a foreign

currency cumulative translation and reported as a component of accumulated other comprehensive income loss. Foreign currency transaction gains and losses resulting from or expected to result from transactions denominated in a currency other than the functional currency are recognized in other expense, net in the consolidated statements of operations. The Company recorded net gain from foreign currency transactions of \$0.2 million for the year ended December 31, 2023 and a net gain from foreign currency transactions of \$0.1 million for the year ended December 31, 2024.

Net Loss Per Share—The Company computes basic earnings per share using the weighted-average number of shares of common stock outstanding during the period. For periods in which the Company reports net losses, diluted net loss per share attributable to stockholders is the same as basic net loss per share attributable to stockholders, because potentially dilutive common shares are not assumed to have been issued if their effect is anti-dilutive.

Segment Information—The Company reports segment information in accordance with ASC Topic No. 280 “Segment Reporting.” The Company has one reportable segment. See Note 18, *Segment Information*, in the accompanying notes to our consolidated financial statements for further detail.

Warrant Liabilities—The fair values of the outstanding warrants were measured using the Black Scholes model. Inputs used to determine estimated fair value of the warrant liabilities include the fair value of the underlying stock at the valuation date, the term of the warrants, and the expected volatility of the underlying stock. The significant unobservable input used in the fair value measurement of the warrant liabilities is the estimated term of the warrants. Generally, increases (decreases) in the fair value of the underlying stock and estimated term result in a directionally similar impact to the periodic fair value measurement of the outstanding warrant liabilities, and are recorded within the Change in fair market value of warrant line item on the consolidated statement of operations.

The fair value of warrant liabilities was \$1.0 million and \$0.1 million at December 31, 2023 and 2024, which is included in accrued expenses and other current liabilities on the Consolidated Balance Sheets.

Recent Accounting Pronouncements

The JOBS Act permits an emerging growth company ("EGC") to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. As of December 31, 2024, we are no longer able to qualify as an EGC due to the expiration of the five-year eligibility period under the JOBS Act.

In August 2023, the FASB finalized ASU 2023-09, *Income Taxes (Topic 740)*. This ASU provides for certain updates to enhance the transparency about companies' exposure to changes in tax legislation and the global tax risk they may face. Under the guidance, companies will be required to provide a breakout of amounts paid for taxes between federal, state, and foreign taxing jurisdictions, rather than a lump sum amount. Further, the rate reconciliation will require disaggregation into eight specific categories, with these categories further disaggregated by jurisdiction and for amounts exceeding 5 percent of their domestic tax rate. The rate reconciliation will need to also disclose both dollar amounts and percentages. This standard is effective for fiscal years beginning after December 15, 2024. The Company is currently evaluating the impact of adopting ASU 2023-09.

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, requiring public entities to disclose information about their reportable segments' significant expenses and other segment items on an interim and annual basis. Public entities with a single reportable segment are required to apply the disclosure requirements in ASU 2023-07, as well as all existing segment disclosures and reconciliation requirements in ASC 280 on an interim and annual basis. The Company adopted ASU 2023-07 during the year ended December 31, 2024. See Note 18, *Segment Information* in the accompanying notes to the consolidated financial statements for further detail.

In November 2024, the FASB issued ASU 2024-03, *Income Statement-Reporting Comprehensive Income-Expense Disaggregation Disclosures (Subtopic 220-40)*: Disaggregation of Income Statement Expenses, requiring public entities to disclose additional information about specific expense categories in the notes to the financial statements on an interim and annual basis. ASU 2024-03 is effective for fiscal years beginning after December 15, 2026, and for interim periods beginning after December 15, 2027, with early adoption permitted. The Company is currently evaluating the impact of adopting ASU 2024-03.

We have reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the consolidated financial statements.

3. INVENTORY

Inventory consisted of the following as of December 31, 2023 and 2024 (in thousands):

	December 31, 2023	December 31, 2024
Inventory on-hand	\$ 18,980	\$ 12,484
Inventory in-transit	1,410	1,265
Inventory	<u>\$ 20,390</u>	<u>\$ 13,749</u>

The Company's inventory on-hand is held either with Amazon or the Company's other third-party warehouses. The Company does not have any contractual right of returns with its contract manufacturers. The Company's inventory on-hand held by Amazon was approximately \$5.0 million and \$3.5 million as of December 31, 2023 and December 31, 2024, respectively.

4. ACCOUNTS RECEIVABLE, NET

Accounts receivable consisted of the following as of December 31, 2023 and 2024 (in thousands):

	December 31, 2023	December 31, 2024
Trade accounts receivable	\$ 4,356	\$ 3,929
Allowance for credit losses	(131)	(147)
Accounts receivable--net	<u>\$ 4,225</u>	<u>\$ 3,782</u>

5. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following as of December 31, 2023 and 2024 (in thousands):

	December 31, 2023	December 31, 2024
Computer equipment and software	\$ 452	\$ 455
Furniture, fixtures and equipment	23	24
Leasehold improvements	2	—
Building	796	783
Subtotal	<u>1,273</u>	<u>1,262</u>
Less: accumulated depreciation and amortization	(498)	(577)
Property and equipment--net	<u>\$ 775</u>	<u>\$ 685</u>

Depreciation expense for property and equipment totaled \$0.2 million and \$0.1 million during the years-ended December 31, 2023 and 2024, respectively.

6. FAIR VALUE MEASUREMENTS

The Company's financial instruments consist of Level 1 assets at December 31, 2023 and 2024. The Company's cash and restricted cash was \$22.2 million and \$19.1 million at December 31, 2023 and 2024, respectively, and included savings deposits and overnight investments.

The Company's credit facility is carried at amortized cost at December 31, 2023 and December 31, 2024 and the carrying amount approximates fair value as the stated interest rate approximates market rates currently available to the Company.

The Company categorizes its warrants potentially settleable in cash as Level 3 fair value measurements. The warrants potentially settleable in cash are measured at fair value on a recurring basis and are being marked to fair value at each reporting date until they are completely settled or meet the requirements to be accounted for as a component of stockholders' equity.

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The following table summarizes the fair value of the Company's financial assets that are measured at fair value for the years-ended December 31, 2023 and 2024 (in thousands):

	December 31, 2023		
	Fair Value Measurement Category		
	Level 1	Level 2	Level 3
Assets:			
Cash and cash equivalents	\$ 20,023	\$ —	\$ —
Restricted cash	2,172	—	—
Liabilities:			
Fair value of warrant liabilities	—	—	1,033
	December 31, 2024		
	Fair Value Measurement Category		
	Level 1	Level 2	Level 3
Assets:			
Cash and cash equivalents	\$ 17,998	\$ —	\$ —
Restricted cash	1,145	—	—
Liabilities:			
Fair value of warrant liabilities	—	—	109

The following table summarizes the Company's warrant activity during the year ended December 31, 2024 (in thousands):

	December 31, 2024
Warrants liabilities as of January 1, 2024	\$ 1,033
Change in fair value of warrants	(924)
Warrants liabilities as of December 31, 2024	<u>\$ 109</u>

The fair value of the stock purchase warrants issued in connection with the Company's common stock offering on March 1, 2022 were measured using the Black-Scholes model. Inputs used to determine the estimated fair value of the warrant liabilities include the fair value of the underlying stock at the valuation date, the term of the warrants, and the expected volatility of the underlying stock. The significant unobservable input used in the fair value measurement of the warrant liabilities is the estimated term of the warrants. Upon the issuance of the stock purchase warrants, the Company evaluated the terms of each warrant to determine the appropriate accounting and classification pursuant to FASB ASC Topic 480, *Distinguishing Liabilities from Equity* ("ASC 480"), and FASB Accounting Standards Codification Topic 815, *Derivatives and Hedging* ("ASC 815"). Based on the Company's evaluation and due to certain terms in the warrant agreements, it concluded the stock purchase warrants should be classified as liability with subsequent remeasurement as long as such warrants continue to be classified as liabilities.

7. PREPAID AND OTHER CURRENT ASSETS

Prepaid and other current assets consisted of the following as of December 31, 2023 and 2024 (in thousands):

	December 31, 2023	December 31, 2024
Prepaid inventory	\$ 619	\$ 904
Restricted cash	2,043	1,015
Prepaid insurance	1,355	528
Prepaid freight forwarder	100	145
Other	881	598
Prepaid and Other Current Assets	<u>\$ 4,998</u>	<u>\$ 3,190</u>

8. ACCRUED AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consisted of the following as of December 31, 2023 and 2024 (in thousands):

	December 31, 2023	December 31, 2024
Accrued compensation costs	\$ 140	\$ 2,500
Accrued professional fees and consultants	310	235
Accrued logistics costs	149	98
Product related accruals	644	312
Sales tax payable	1,019	989
Sales return reserve	233	290
Accrued fulfillment expense	821	499
Accrued insurance	187	341
Federal payroll taxes payable	1,243	1,063
Accrued interest payable	146	81
Warrant liabilities	1,033	109
All other accruals	3,185	2,287
Accrued and other current liabilities	<u>\$ 9,110</u>	<u>\$ 8,804</u>

The Company sponsors, through its professional employer organization provider, a 401(k) defined contribution plan covering all eligible U.S. employees. Contributions to the 401(k) plan are discretionary. Currently, the Company does not match or make any contributions to the 401(k) plan.

9. CREDIT FACILITY, TERM LOANS, AND WARRANTS

Midcap Credit Facility

On December 22, 2021, the Company entered into a Credit and Security Agreement (the "Credit Agreement") together with certain of its subsidiaries party thereto as borrowers, the entities party thereto as lenders, and Midcap Funding IV Trust, as administrative agent, pursuant to which, among other things, (i) the Lenders agreed to provide a three year revolving credit facility in a principal amount of up to \$40.0 million subject to a borrowing base consisting of, among other things, inventory and sales receivables (subject to certain reserves), and (ii) the Company agreed to issue to MidCap Funding XXVII Trust a warrant (the "Midcap Warrant") to purchase up to an aggregate of 16,667 shares of common stock of the Company, par value \$0.0001 per share, in exchange for the Lenders extending loans and other extensions of credit to the Company under the Credit Agreement.

The obligations under the Credit Agreement are a senior secured obligation of the Company and rank senior to all indebtedness of the Company. Borrowings under the Credit Agreement bear interest at a rate of Term Secured Overnight Financing Rate ("Term SOFR"), which is defined as SOFR plus 0.10%, plus 5.50%. The Company will also be required to pay a commitment fee of 0.50% in respect of the undrawn portion of the commitments, which is generally based on average daily usage of the facility during the immediately preceding fiscal quarter. The Credit Agreement does not require any amortization payments.

The Credit Agreement minimum liquidity covenant, which includes the Company's unrestricted U.S. cash plus the revolving loan availability, requires that Midcap shall not permit the credit party liquidity at any time to be less than (a) during the period commencing on February 1st through and including May 31st of each calendar year, \$12.5 million and (b) at all other times, \$15.0 million. The Credit Agreement includes events of default that are customary for these types of credit facilities, including the occurrence of a change of control.

The Midcap Warrant has an exercise price of \$56.40 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, is immediately exercisable, has a term of ten years from the date of issuance and is exercisable on a cash or cashless basis.

On February 23, 2024, the Company amended its asset backed credit facility with MidCap Financial Trust. The Credit Facility term was extended to December 2026 and gives the Company access to \$17 million in current commitments which can be increased, subject to certain conditions, to \$30.0 million. The Credit Facility extension reduced the minimum liquidity financial covenant from a peak of \$15.0 million to \$6.8 million of U.S. cash on hand and/or availability in the Credit Facility. The extension fee was less than \$0.1 million.

The Company is in compliance with the financial covenants contained within the Credit Agreement as of December 31, 2024.

The Company's credit facility consisted of the following as of December 31, 2023 and 2024 (in thousands):

	December 31, 2023	December 31, 2024
MidCap Credit Facility	\$ 11,515	\$ 7,252
Less: deferred debt issuance costs	(226)	(192)
Less: discount associated with issuance of warrants	(191)	(112)
Total MidCap Credit Facility	<u>\$ 11,098</u>	<u>\$ 6,948</u>

Interest Expense, Net

Interest expense, net consisted of the following for the years-ended December 31, 2023 and 2024 (in thousands):

	December 31, 2023	December 31, 2024
Interest expense	\$ 2,125	\$ 1,218
Interest income	(704)	(269)
Total interest expense, net	<u>\$ 1,421</u>	<u>\$ 949</u>

Securities Purchase Agreement and Warrants

On March 1, 2022, the Company entered into Securities Purchase Agreements (the “Purchase Agreements”) with certain accredited investors identified on the signature pages to the Purchase Agreements (collectively, the “Purchasers”) pursuant to which, among other things, the Company issued and sold to the Purchasers, in a private placement transaction (the “2022 Private Placement”), (i) 536,361 shares of the Company’s Common Stock (the “Shares”), and accompanying warrants to purchase an aggregate of 402,271 shares of common stock, and (ii) prefunded warrants to purchase up to an aggregate of 251,155 shares of common stock (the “Prefunded Warrants”) and accompanying warrants to purchase an aggregate of 188,366 shares of common stock. The accompanying warrants to purchase common stock are referred to herein collectively as the “Common Stock Warrants”, and the Common Stock Warrants and the Prefunded Warrants are referred to herein collectively as the “Warrants”. Under the Purchase Agreements, each Share and accompanying Common Stock Warrant were sold together at a combined price of \$34.92, and each Prefunded Warrant and accompanying Common Stock Warrant were sold together at a combined price of \$34.92, for gross proceeds of approximately \$27.5 million. In connection with the 2022 Private Placement, the Company entered into a registration rights agreement (the “Registration Rights Agreement”) with the Purchasers, pursuant to which the Company agreed to register for resale the Shares, as well as the shares of common stock issuable upon exercise of the Warrants (the “Warrant Shares”). Under the Registration Rights Agreement, the Company agreed to file a registration statement covering the resale by the Purchasers of the Shares and Warrant Shares within 30 days following the agreement date. The Company filed such resale registration statement on March 28, 2022, and it was declared effective by the SEC on April 8, 2022.

Upon the issuance of the Prefunded Warrants and stock purchase warrants, the Company evaluated the terms of each Warrant to determine the appropriate accounting and classification pursuant to ASC 480 and ASC 815. Based on the Company’s evaluation and due to certain terms in the warrant agreements, it concluded the Prefunded Warrant and the stock purchase warrants should be classified as liabilities with subsequent remeasurement at each quarter so long as such warrants remain to be classified as liabilities. The Company recorded an initial liability on issuance of \$19.0 million from this conclusion. As of December 31, 2024, the Company has \$0.1 million as the liability related to the Warrants.

10. STOCKHOLDERS’ EQUITY

Common Shares—The Company has one class of common shares issued and available. Each share of common stock has the right to one vote per share.

On March 1, 2022, the Company entered into Securities Purchase Agreements (the “Purchase Agreements”) with certain accredited investors identified on the signature pages to the Purchase Agreements (collectively, the “Purchasers”) pursuant to which, among other things, the Company issued and sold to the Purchasers, in a private placement transaction (the “2022 Private Placement”), (i) 536,361 shares of the Company’s Common Stock (the “Shares”), and accompanying warrants to purchase an aggregate of 402,271 shares of common stock, and (ii) prefunded warrants to purchase up to an aggregate of 251,155 shares of common stock (the “Prefunded Warrants”) and accompanying warrants to purchase an aggregate of 188,366 shares of common stock. The accompanying warrants to purchase common stock are referred to herein collectively as the “Common Stock Warrants”, and the Common Stock Warrants and the Prefunded Warrants are referred to herein collectively as the “Warrants”. Under the Purchase Agreements, each Share and accompanying Common Stock Warrant were sold together at a combined price of \$34.92, and each Prefunded Warrant and accompanying Common Stock Warrant were sold together at a combined price of \$34.92, for gross proceeds of approximately \$27.5 million.

On September 29, 2022, we entered into securities purchase agreements (the “September Purchase Agreements”) with certain accredited investors, pursuant to which, among other things, we agreed to sell and issue, in a registered direct offering (the “Registered Direct Offering”), an aggregate of 886,920 shares of its Shares and accompanying warrants to purchase an aggregate of 886,920 shares of its common stock. 877,197 of the shares and the accompanying warrants to purchase 877,197 shares of common stock were sold to certain accredited purchasers that are not affiliated with us at a combined offering price of \$22.80 per share and accompanying warrant to purchase one share of common stock. The remaining 9,722 shares of Common Stock and the accompanying warrants to purchase 9,722 shares of Common Stock were sold to certain of our insiders, at a combined offering price of \$25.20 per share and accompanying warrant to purchase one share of common stock.

The Registered Direct Offering closed on October 4, 2022 and the Company issued and sold an aggregate of 886,920 shares of common stock to the Purchasers. The gross proceeds to us from the Registered Direct Offering were approximately \$20.2 million, before deducting fees payable to the placement agent and other estimated offering expenses payable by us. We intended to use the net proceeds from the Registered Direct Offering for working capital purposes, the conduct of its business and other general corporate purposes, which may include acquisitions, investments in or licenses of complementary products, technologies or businesses.

Pursuant to the ASC 815-40, the September Purchase Agreement represents a legally binding contract that meets the definition of a firm commitment and as such we recorded a derivative related to the offering of common stock (“forward contract”). Additionally, we recorded \$12.8 million derivative expense derived from the excess of the fair-value of the issuances of equity of common shares and common stock warrants over the anticipated proceeds to be received by us. This expense was recorded in loss on initial issuance of equity on the consolidated statement of operations for the year ended December 31, 2023.

11. STOCK-BASED COMPENSATION

The Company has three equity plans:

2014 Amended and Restated Equity Incentive Plan

The board of directors of Aterian Group, Inc., a subsidiary of the Company (“AGI”), adopted, and AGI’s stockholders approved, the Aterian Group, Inc. 2014 Equity Incentive Plan on June 11, 2014. On March 1, 2017, AGI’s board of directors adopted, and AGI’s stockholders approved, an amendment and restatement of the 2014 Equity Incentive Plan (as amended, the “Aterian 2014 Plan”). As of December 31, 2024, there were no shares reserved for future issuance under the Aterian 2014 Plan.

2018 Equity Incentive Plan

The Company’s board of directors (the “Board”) adopted the Aterian, Inc. 2018 Equity Incentive Plan (the “2018 Plan”) on October 11, 2018. The 2018 Plan was approved by its stockholders on May 24, 2019. As of December 31, 2024, 453,549 shares were reserved for awards available for future issuance under the 2018 Plan.

Options granted to date under the Aterian 2014 Plan and the 2018 Plan generally vest either: (i) over a four-year period with 25% of the shares underlying the options vesting on the first anniversary of the vesting commencement date with the remaining 75% of the shares vesting on a pro-rata basis over the succeeding thirty-six months, subject to continued service with the Company through each vesting date, or (ii) over a three-year period with 33 1/3% of the shares underlying the options vesting on the first anniversary of the vesting commencement date with the remaining 66 2/3% of the shares vesting on a pro-rata basis over the succeeding twenty-four months, subject to continued service with the Company through each vesting date. Options granted are generally exercisable for up to 10 years subject to continued service with the Company.

Inducement Equity Incentive Plan

On May 27, 2022, the Compensation Committee of the Board (the “Compensation Committee”) adopted the Aterian, Inc. 2022 Inducement Equity Incentive Plan (the “Inducement Plan”). The Inducement Plan will serve to advance the interests of the Company by providing a material inducement for the best available individuals to join the Company as employees by affording such individuals an opportunity to acquire a proprietary interest in the Company.

The Inducement Plan provides for the grant of equity-based awards in the form of stock options, stock appreciation rights, restricted stock, restricted stock units, performance units and performance shares solely to prospective employees of the Company or an affiliate of the Company provided that certain criteria are met. Awards under the Inducement Plan may only be granted to an individual, as a material inducement to such individual to enter into employment with the Company or an affiliate of the Company, who (i) has not previously been an employee or director of the Company or (ii) is rehired following a bona fide period of non-employment with the Company. The maximum number of shares available for grant under the Inducement Plan is 225,000 shares of the Company’s common stock (subject to adjustment for recapitalizations, stock splits, reorganizations and similar transactions). The Inducement Plan is administered by the Compensation Committee and expires ten years from the date of effectiveness. As of December 31, 2024, 193,476 shares were reserved for future issuance under the Inducement Plan.

The Inducement Plan has not been and will not be approved by the Company’s stockholders. Awards under the Inducement Plan will be made pursuant to the exemption from Nasdaq stockholder approval requirements for equity compensation provided by Nasdaq Listing Rule 5635(c)(4), which permits Nasdaq listed companies to make inducement equity awards to new employees without first obtaining stockholder approval of the award.

Reverse Stock Split

On March 20, 2024, the Company filed a Certificate of Amendment to its Amended and Restated Certificate of Incorporation of the Company with the Secretary of State of Delaware (the “Certificate of Amendment”) to effect a 1-for-12 reverse stock split (the “Reverse Stock Split”) of the shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”). The Certificate of Amendment did not decrease the number of authorized shares of Common Stock or change the par value thereof. No fractional shares were issued in connection with the Reverse Stock Split. Any fractional shares that would otherwise have resulted from the Reverse Stock Split were rounded up to the nearest whole number. The Reverse Stock Split impacted all holders of the Common Stock proportionally and did not impact any stockholder’s percentage ownership of Common Stock (except to the extent the Reverse Stock Split results in any stockholder owning fractional shares).

The reverse stock split is deemed an equity restructuring pursuant to ASC 718, Compensation - Stock Compensation. The Company’s equity plans incorporate anti-dilutive provisions for existing equity awards, including restricted stock and stock options, to maintain the value of all awards post-reverse stock split. Consequently, there were no changes in the fair value of the awards attributable to the reverse stock split, and no impact on stock-based compensation for the year ended December 31, 2024.

The Common Stock began trading on a Reverse Stock Split-adjusted basis on the Nasdaq on March 22, 2024. All share and per share data in this Annual Report on Form 10-K have been retroactively adjusted to reflect the Reverse Stock Split.

The following is a summary of stock options activity during the year ended December 31, 2024:

	Options Outstanding		
	Number of Options(*)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (years)
Balance—January 1, 2024	16,365	\$ 110.51	5.00
Options granted	—	\$ —	—
Options exercised	—	\$ —	—
Options canceled	(3,314)	\$ 114.02	—
Balance—December 31, 2024	13,051	\$ 109.62	4.00
Exercisable as of December 31, 2024	13,051	\$ 109.62	4.00
Vested and expected to vest as of December 31, 2024	13,051	\$ 109.62	4.00

(*) The number of options and exercise price per share have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

As of December 31, 2024, all options have been fully expensed.

A summary of restricted stock activity within the Company’s equity plans and changes for the year ended December 31, 2024, is as follows:

Restricted Stock Awards	Shares(*)	Weighted Average Grant-Date Fair Value
Nonvested at January 1, 2024	840,815	\$ 9.73
Granted	1,395,974	\$ 2.45
Vested	(593,541)	\$ 9.24
Forfeited	(332,259)	\$ 4.88
Nonvested at December 31, 2024	1,310,989	\$ 3.43

(*) The number of shares and grant date fair value per share have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

As of December 31, 2024, the total unrecognized compensation expense related to unvested shares of restricted common stock was \$3.9 million, which the Company expects to recognize over an estimated weighted-average period of 2.1 years.

Stock-based compensation expense is allocated based on the cost center to which the award holder belongs. The following table summarizes the total stock-based compensation expense by function, including expense related to consultants for years-ended December 31, 2023 and 2024.

	<u>December 31,</u> <u>2023</u>	<u>December 31,</u> <u>2024</u>
	(in thousands)	
Sales and distribution expenses	\$ 2,439	\$ 1,783
Research and development expenses	1,414	—
General and administrative expenses	4,483	5,727
Total stock-based compensation expense	<u>\$ 8,336</u>	<u>\$ 7,510</u>

12. COMMITMENT AND CONTINGENCIES

Inventory Purchases—As of December 31, 2023 and 2024, the Company had \$6.5 million and \$9.2 million, respectively, of inventory purchase orders placed with vendors waiting to be fulfilled.

Sales or Other Similar Taxes—Based on the location of the Company's current operations, the majority of sales tax is collected and remitted either by the Company or on its behalf by e-commerce marketplaces in most states within the U.S. To date, the Company has had no actual or threatened sales and use tax claims from any state where it does not already claim nexus or any state where it sold products prior to claiming nexus. However, the Company believes that the likelihood of incurring a liability as a result of sales tax nexus being asserted by certain states where it sold products prior to claiming nexus is probable. As of December 31, 2023 and December 31, 2024, the Company estimates that the potential liability, including current sales tax payable is approximately \$1.0 million, respectively, which has been recorded as an accrued liability. The Company believes this is the best estimate of an amount due to taxing agencies, given that such a potential loss is an unasserted liability that would be contested and subject to negotiation between the Company and the state, or decided by a court.

Settlement Agreement—On May 2, 2021, the Company entered into a settlement agreement with one of the Company's suppliers who agreed to pay the amount of \$3.0 million to the Company in three installments of \$1.0 million each, with the first payment to be paid on or before May 31, 2021, the second payment to be paid on or before September 30, 2021, and the third payment to be paid on or before November 30, 2021. Further, the supplier agreed to deliver certain goods as part of this settlement by September 30, 2021. Through the date of the accompanying Consolidated Financial Statements, the supplier has not paid in full its required first payment of \$1.0 million nor has it delivered the required quantity of goods. The Company fully reserved \$4.1 million within prepaid and other current assets on its Consolidated Financial Statements during the year ended December 31, 2023 and December 31, 2024. The Company has commenced legal action against the supplier and certain other parties to the matter. One of the parties to the matter has filed for bankruptcy and such legal action is being stayed until the resolution of such bankruptcy. In February 2025, the case was referred to the New York Supreme Court Civil Commercial Mediation Program. The Company continues to reserve its legal options and rights on this matter as of December 31, 2024.

Legal Proceedings—From time to time, the Company is party to various actions and claims arising in the normal course of business. The Company does not believe that the final outcome of these matters will have a material adverse effect on the Company's financial position or results of operations. In addition, the Company maintains what it believes is adequate insurance coverage to further mitigate risk. However, no assurance can be given that the final outcome of such proceedings will not materially impact the Company's financial condition or results of operations. Further, no assurance can be given that the amount or scope of existing insurance coverage will be sufficient to cover losses arising from such matters.

Mueller Action—In October 2021, the Company received a class action notification and pre-lawsuit demand letter demanding corrective action with respect to the marketing, advertising and labeling of certain products under the Mueller brand (the "Mueller Action"). In April 2022, the parties reached an agreement in principle to resolve this potential action for \$0.5 million in cash and \$0.3 million worth of coupons, which the Company accrued \$0.8 million in the three months ended March 31, 2022, subject to court approval. The court preliminarily approved the settlement on August 3, 2023 and final approval was granted May 8, 2024.

Earn-out Payment Dispute—On February 24, 2022, the Company received a notice disputing the Company's calculation of the earn-out payment to be paid to Josef Eitan and Ran Nir pursuant to the Stock Purchase Agreement (the "PPD Stock Purchase Agreement"), dated as of May 5, 2021, by and among the Company, Truweo, LLC, Photo Paper Direct Ltd, Josef Eitan and Ran Nir. The Company is in discussions with representatives of Mr. Eitan and Mr. Nir, who believe they are entitled to the full earn-out amount (£6,902,816 or approximately \$8.8 million) under the terms of the PPD Stock Purchase Agreement, whereas the Company believes they are not. Mr. Eitan and Mr. Nir filed a motion to compel arbitration in the Southern District of New York on September 14, 2022, which was granted on May 18, 2023. The parties engaged an independent accountant to resolve the dispute, as required by the PPD Stock Purchase Agreement and the Southern District of New York. In February 2024, the independent accountant ruled in favor of the Company and determined that the Company owes no earn-out. Therefore, the Company believes it has no liability to the sellers.

Leases—The Company's minimum lease liabilities are not material to the Company's consolidated financial statements as of December 31, 2023 and December 31, 2024.

13. INCOME TAXES

Loss before provision for income taxes consisted of the following for the periods indicated (in thousands):

	December 31, 2023	December 31, 2024
Domestic	\$ (71,600)	\$ (11,896)
International	(3,831)	(13)
Total	<u>\$ (75,431)</u>	<u>\$ (11,909)</u>

The components of the Company's income tax provision were as follows for the periods indicated (in thousands):

	December 31, 2023	December 31, 2024
Current:		
Federal	\$ —	\$ —
State	73	37
Foreign	213	(79)
Total current income tax expense	<u>286</u>	<u>(42)</u>
Deferred:		
Federal	—	—
State	—	—
Foreign	(1,153)	(5)
Total deferred income tax benefit	<u>(1,153)</u>	<u>(5)</u>
Total income tax benefit	<u>\$ (867)</u>	<u>\$ (47)</u>

The reconciliation of the Federal statutory income tax provision to the Company's effective income tax provision is as follows for the periods indicated (in thousands):

	December 31, 2023	December 31, 2024
Income tax benefit at statutory rates	\$ (15,839)	\$ (2,501)
Warrant liabilities	(482)	(177)
Stock compensation	1,949	883
Other permanent differences	3	—
Foreign rate differential	(95)	(1)
State income taxes, net of federal tax benefit	(2,052)	(311)
Other	(431)	404
Prior year true-up adjustments	2,827	(757)
Valuation allowance	13,253	2,413
Total income tax benefit	<u>\$ (867)</u>	<u>\$ (47)</u>

The Company's effective tax rate was 1.15% and 0.40% for the years-ended December 31, 2023 and December 31, 2024, respectively. The effective tax rate for 2023 was principally due to tax expense incurred on the operations of the Company's UK business, non-deductible executive stock compensation expense, and the change in fair value of the warrant liabilities. The effective tax rate for 2024 was principally due to tax benefits incurred related to the operations of the Company's UK business, the change in fair value of the warrant liabilities, and true-up adjustments recorded in connection with the Company's filed tax returns, primarily offset by the impact of non-deductible executive stock compensation expense and changes in the valuation allowance.

The Company's deferred tax assets and liabilities as of the dates indicated were as follows (in thousands):

	December 31, 2023	December 31, 2024
Deferred tax assets:		
Allowance for credit losses	\$ 31	\$ 35
Inventory Reserve	1,671	325
Other Accruals	1,402	320
Accrued Bonus	—	618
Net operating loss carryforwards	53,361	58,459
Stock options	2,239	567
Interest expense limitation	11,317	11,058
Intangibles (definite life)	9,422	8,909
Intangibles (indefinite life)	19,749	19,669
Other	2,060	2,211
Total deferred tax assets before valuation allowance	101,252	102,171
Valuation allowance	(99,477)	(101,890)
Net deferred tax assets	1,775	281
Deferred tax liabilities:		
Fixed assets	(22)	—
Prepaid expenses	—	(281)
Intangibles	(1,759)	—
Net deferred tax liabilities	(1,781)	(281)
Deferred tax liability, net	\$ (6)	\$ (0)

The Company has temporary differences due to differences in recognition of revenue and expenses for tax and financial reporting purposes, principally related to net operating losses, inventory, depreciation, and other expenses that are not currently deductible or realizable. As of December 31, 2023, the Company had federal net operating loss carryforwards of approximately \$222.2 million, \$31 million of which, if not utilized, begin to expire in 2034 and approximately \$191 million can be carried forward indefinitely but are limited to 80% of Federal taxable income. The Company also has approximately \$128.1 million apportioned state and local NOLs. As of December 31, 2024, the Company had federal net operating loss carryforwards of approximately \$241.7 million, \$31 million of which, if not utilized, begin to expire in 2034 and approximately \$210.6 million can be carried forward indefinitely but are limited to 80% of Federal taxable income. The company also had state and local net operating losses of \$150.3 million that expire between 2035 and 2044, depending on the state, if not used. The Company's ability to utilize its NOL carryforwards may be limited pursuant to Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), if the Company has had a change in ownership of more than 50% of its capital stock over a three-year period pursuant to Section 382 of the Code. These complex changes of ownership rules generally focus on ownership changes involving stockholders owning directly or indirectly 5% or more of a company's stock, including certain public "groups" of stockholders as set forth by Section 382 of the Code, including those arising from new stock issuances and other equity transactions.

In response to COVID-19, various governments worldwide have enacted, or are in the process of enacting, measures to provide relief to businesses negatively affected by the pandemic. On March 27, 2021, the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was signed into law in the U.S. The CARES Act provides relief to U.S. corporations through financial assistance programs and modifications to certain payroll and income tax provisions. In connection with the CARES Act and other financial relief measures worldwide, the Company received \$1.3 million of payroll related credits, of which \$0.2 million has been utilized during the year ended December 31, 2024, with the remaining credits to be utilized over the next two years. The payroll related credits are recorded in other current liabilities within the consolidated balance sheet.

The Company regularly assesses the realizability of its deferred tax assets and establishes a valuation allowance if it is more-likely-than-not that some portion of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Due primarily to the Company's history of net operating losses, the Company believes it is more likely than not its federal, state and foreign deferred tax assets will not more likely than not be realized as of December 31, 2024. Accordingly, the deferred tax assets have been fully offset by a valuation allowance. The valuation allowance for the year ending December 31, 2024 increased by \$2.4 million.

The Company's major taxing jurisdictions are New Jersey, New York, Florida, Texas, Pennsylvania, Tennessee, Virginia, California, and the United Kingdom. The Company files a U.S. Consolidated income tax return as well as tax returns in certain foreign jurisdictions. The Company is subject to examination in these jurisdictions for all years since inception. Fiscal years outside the normal statute of limitations remain open to audit due to tax attributes generated in the early years which have been carried forward and may be audited in subsequent years when utilized. The Company is not currently under examination for income taxes in any jurisdiction. The Company may be subject to audits covering a variety of tax matters by taxing authorities in any taxing jurisdiction where the Company conducts business. While the Company believes that the tax returns filed, and tax positions taken are supportable and accurate, some tax authorities may not agree with the positions taken. This can give rise to tax uncertainties which, upon audit, may not be resolved in the Company's favor. As of December 31, 2023 and 2024, the Company has not recorded any tax contingency accruals for uncertain tax positions.

14. RELATED PARTY TRANSACTION

None.

15. NET LOSS PER SHARE

Basic net loss per share is determined by dividing net loss by the weighted-average shares of common stock outstanding during the period. Diluted net loss per share is determined by dividing net loss by diluted weighted-average shares outstanding. Diluted weighted-average shares reflect the dilutive effect, if any, of potentially dilutive shares of common stock, such as options to purchase common stock calculated using the treasury stock method and convertible notes using the “if-converted” method. In periods with reported net operating losses, all options to purchase common stock are deemed anti-dilutive such that basic net loss per share and diluted net loss per share are equal.

The Company’s shares of restricted common stock are entitled to receive dividends and hold voting rights applicable to the Company’s common stock, irrespective of any vesting requirement. Accordingly, although the vesting commences upon the elimination of the contingency, the shares of restricted common stock are considered a participating security and the Company is required to apply the two-class method to consider the impact of the shares of restricted common stock on the calculation of basic and diluted earnings per share. The Company is currently in a net loss position and is therefore not required to present the two-class method; however, in the event the Company is in a net income position, the two-class method must be applied by allocating all earnings during the period to shares of common stock and shares of restricted common stock.

The following table sets forth the computation of basic and diluted net loss per share (in thousands, except share and per share data):

	December 31, 2023	December 31, 2024
Net loss	\$ (74,564)	\$ (11,862)
Weighted-average number of shares used in computing net loss per share, basic and diluted(*)	6,524,589	7,069,404
Net loss per share, basic and diluted	\$ (11.43)	\$ (1.68)
Anti-dilutive shares excluded from computation of net loss per share (in shares)(*)	1,878,457	2,007,676

(*) The number of shares and per share amounts have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

16. INTANGIBLES

The following tables summarize the changes in the Company’s intangible assets as of December 31, 2023 and December 31, 2024 (in thousands):

	January 1, 2023	Year-Ended December 31, 2023		December 31, 2023	December 31, 2023
	Gross Carrying Amount	Additions	Impairments (1)	Accumulated Amortization	Net Book Value
Trademarks	\$ 62,202	—	\$ (39,728)	\$ (15,335)	\$ 7,140
Non-competition agreement	11	—	—	(11)	—
Transition services agreement	12	—	—	(12)	—
Customer relations	5,700	—	—	(1,520)	4,180
Other	700	—	—	(700)	—
Total intangibles	\$ 68,625	\$ —	\$ (39,728)	\$ (17,578)	\$ 11,320
	January 1, 2024	Year Ended December 31, 2024		December 31, 2024	December 31, 2024
	Gross Carrying Amount	Additions	Impairments	Accumulated Amortization	Net Book Value
Trademarks(2)	\$ 21,285	\$ —	\$ —	\$ (15,166)	\$ 6,119
Non-competition agreement	11	—	—	(11)	—
Transition services agreement	12	—	—	(12)	—
Customer relations(2)	5,700	—	—	(2,090)	3,610
Software	—	38	—	(10)	28
Other	700	—	—	(700)	—
Total intangibles(2)	\$ 27,708	\$ 38	\$ —	\$ (17,989)	\$ 9,757

(1) See Note 2, *Summary of Significant Accounting Policies* for more information on intangibles impairments which occurred during the year ended December 31, 2023.

(2) As of December 31, 2024, the weighted-average remaining amortization period for Trademarks and Customer Relationships was 6.25 years and 6.33 years, respectively. The weighted-average remaining amortization period for total intangibles was 6.28 years.

The Company recognized \$3.7 million and \$1.6 million in intangibles amortization expense during the year ended December 31, 2023 and December 31, 2024.

The following table sets forth the estimated aggregate amortization of our in-place intangible assets and favorable intangible assets for the next five years and thereafter (amounts in thousands):

2025	\$	1,564
2026		1,564
2027		1,554
2028		1,551
2029		1,551
Thereafter		1,973
Total	\$	<u>9,757</u>

17. RESTRUCTURING

On May 9, 2023, the Company announced a plan to reduce expenses and re-align the organization's structure by implementing a reduction in its current workforce impacting approximately 50 employees and 15 contractors, primarily in the Philippines. The headcount reduction is part of the Company's cost saving initiatives to navigate challenges in the industry and to better position itself for future growth opportunities. The Company incurred \$1.6 million of restructuring charges during the year ended December 31, 2023.

On February 8, 2024, the Company committed to a fixed cost-cutting plan, including a reduction in workforce which resulted in the termination of approximately 17 employees and 26 contractors globally. The Company incurred \$0.6 million of restructuring charges during the year ended December 31, 2024.

The accounting for the restructuring costs follows the provisions of ASC 420, "Accounting for Costs Associated with Exit or Disposal Activities," which requires the recognition of a liability once the restructuring plan is communicated to affected employees and meets the criteria of being probable and reasonably estimable. The Company recognizes a liability for employee severance, other benefits, and involuntary terminations on the communication date.

The following table provides a summary of the restructuring costs incurred:

	December 31, 2023	December 31, 2024
	<i>(in thousands)</i>	<i>(in thousands)</i>
Employee severance	\$ 916	\$ 674
Retention bonus settled	411	—
Other restructuring costs ⁽¹⁾	306	(109)
Total restructuring costs	<u>\$ 1,633</u>	<u>\$ 565</u>

(1) Includes reversal of costs associated with a contract settlement during the year ended December 31, 2024.

The following table provides a summary of the Company's total restructuring reserve:

	Employee Severance	Contract Termination Costs	Other	Total
Balance – December 31, 2023	\$ —	\$ 193	\$ —	\$ 193
Charges	674	(118)	9	565
Usage-cash	(674)	(75)	(9)	(758)
Balance – December 31, 2024	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

As of December 31, 2023, the Company had a liability of \$0.2 million for restructuring costs, of which \$0.1 million was included in accrued expenses and other current liabilities and \$0.1 million was included in other liabilities on the consolidated balance sheet.

As of December 31, 2024, the Company did not have any liability for restructuring costs.

18. SEGMENT INFORMATION

Aterian, Inc. is a technology-enabled consumer products company that predominantly operates through online retail channels such as Amazon, Walmart, and Target and its own direct to consumer websites. The Company operates its owned brands, which were either incubated or purchased, selling products in multiple categories, including home and kitchen appliances, kitchenware, air quality appliances, health and beauty products and essential oils.

The Company has determined that it has one operating segment. The Company's chief operating decision maker ("CODM") is its chief executive officer, who reviews financial information presented on a consolidated basis. The CODM uses consolidated operating margin and net income to assess financial performance and allocate resources. These financial metrics are used by the CODM to make key operating decisions, such as the determination of the rate at which the Company seeks to grow operating margin and the allocation of budget between cost of sales, variable sales costs, and other vendor and payroll expenses.

	December 31, 2023	December 31, 2024
Net revenue	\$ 142,566	\$ 99,045
Less:		
Cost of Sales	72,281	37,550
Variable sales costs (1)	68,864	44,553
Other vendor and payroll expenses	25,661	19,566
Depreciation and amortization	3,886	1,689
Impairment loss on intangibles	39,728	—
Stock-based compensation expense	8,336	7,510
Other segment items (2)	(1,626)	39
Net loss	<u>\$ (74,564)</u>	<u>\$ (11,862)</u>

(1) Variable sales costs primarily include e-commerce platform commissions, online advertising, and selling and logistics expenses.

(2) Other segment items primarily include incomes taxes, interest expense, and the change in fair value of warrant liabilities.

The CODM does not use total assets as a financial metric when making key operating decisions.

19. SUBSEQUENT EVENTS

On March 14, 2025, the Board of Directors authorized a share repurchase program to acquire up to \$3.0 million of the Company's common stock. The Company may purchase common stock on the open market, through privately negotiated transactions, or by other means including through the use of trading plans intended to qualify under Rule 10b-18 under the Securities Exchange Act of 1934, as amended, in accordance with applicable securities laws and other restrictions. The timing and total amount of stock repurchases will depend upon business, economic and market conditions, corporate and regulatory requirements, prevailing stock prices, and other considerations. The share repurchase program will have a term of 24 months and may be suspended or discontinued at any time and does not obligate the company to acquire any amount of common stock. The objective of this program is to repurchase shares of common stock opportunistically when management believes that the Company's stock is trading below the Company's determination of long-term fair value.

On March 25, 2025 (the "Third Amendment Effective Date") the Company entered into Amendment No. 3 (the "Amendment") to that certain Credit and Security Agreement, dated as of December 22, 2021 (as amended from time to time, the "Credit Agreement") by and among the Company, certain of its subsidiaries thereto, the lenders thereto (the "Lenders") and Midcap Funding IV Trust, as administrative agent. Capitalized terms used in this section and not otherwise defined shall have the meanings assigned in the Credit Agreement. Material changes contained in the Amendment include among other things, adding repurchase of the Company's common stock as a permitted distribution subject to certain conditions:

- During the period from the Third Amendment Effective Date through December 22, 2025 (the "2025 Repurchase Period"), up to \$750,000 of stock repurchases are permitted.
- During the period from December 23, 2025 through the maturity date (the "2026 Repurchase Period"), up to another \$750,000 is permitted.
- Additional repurchases may be made, provided that, among other conditions, no Event of Default exists or would result, and the Company maintains at least \$10,000,000 in Credit Party Liquidity (as evidenced by a timely delivered Liquidity Certificate). The total combined repurchases in each period may not exceed \$1,500,000 except that up to \$500,000 in unused amounts from the 2025 Repurchase Period may carry over to the 2026 Repurchase Period.

The foregoing summary is qualified in its entirety by reference to the full text of the Amendment, which is filed as Exhibit 10.31 hereto.

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

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f)). Our principal executive officer and principal financial officer have concluded, based on their evaluation, that our disclosure controls and procedures were effective as of December 31, 2024. This Annual Report does not include an attestation report of our registered public accounting firm.

Management Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f)). Our management, with the participation of our CEO and CFO, evaluated the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this Annual Report. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their control objectives.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2024. In making this assessment, management used the criteria set forth in 2013 by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in “Internal Control-Integrated Framework.” Based on management’s assessment using the COSO criteria, management has concluded that our internal control over financial reporting was effective as of December 31, 2024.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the year ended December 31, 2024, that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures and internal control over financial reporting, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

In addition, the design of disclosure controls and procedures and internal control over financial reporting must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Item 9B. Other Information.

Insider Trading Arrangements and Related Disclosure

During the three months ended December 31, 2024, none of our directors or officers adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

Executive Severance & Change in Control Policy

On March 21, 2025, (the “Effective Date”), the Board of Directors of the Company adopted the Aterian, Inc. Executive Severance Plan (the “Plan”) to provide Participants, as defined therein, with the opportunity to receive severance benefits in the event of certain terminations of employment. The Plan is intended to be a Top Hat welfare benefit plan under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and is designed to attract and retain qualified executives. The Administrator of the Plan is the Board of Directors or a duly authorized committee thereof. The Administrator has the exclusive right, power and authority, in its sole and absolute discretion, to administer and interpret the Plan. The Administrator has the exclusive power to determine who is eligible to receive benefits under the Plan and to designate Participants.

The Plan specifically provides that eligibility to receive benefits under the Plan is limited to a select group of management or highly compensated employees within the meaning of Sections 201, 301, and 404 of ERISA, each an “Eligible Employee.” Eligible Employee is more specifically defined as a full time executive of the Company who is designated a Participant by the Administrator and identified on Appendix A of the Plan. Appendix A is to be updated from time to time and remain current at all times. As of the Effective Date, all of the named executive officers are designated as Participants under the Plan on Appendix A.

The Plan provides for certain severance benefits to be paid to Participants when they experience a “Qualifying Termination” or a “Change in Control Qualifying Termination” (as both terms are defined in the Plan and described below).

A Qualifying Termination means the termination of a Participant’s employment either (a) by the Company other than for Cause, the Participant’s death, or the Participant’s Disability; or (b) by the Participant for Good Reason; in each case, other than a termination of employment that qualifies as a “Change in

Control Qualifying Termination.

Similarly, a Change in Control Qualifying Termination means the termination of a Participant's employment either (a) by the Company other than for Cause, the Participant's death, or the Participant's Disability; or (b) by the Participant for Good Reason that occurred either (i) after a Change in Control and on or before the first anniversary thereof or (ii) at the request of a third party who had taken steps reasonably calculated to effect a Change in Control or in connection with or anticipation of a Change in Control.

The terms "Cause", "Good Reason," and "Change in Control" are all more specifically defined either in an in-force employment agreement entered into between the Company and the executive, or in the absence thereof, in the Plan.

In the event a Participant experiences a Qualifying Termination after the Effective Date, that Participant is entitled to severance in an amount equal to the Participant's annual base salary in effect immediately prior to the date of the Qualifying Termination ("Severance"), plus a prorated annual bonus equal to the product of (i) the Annual Target Bonus, if any, for the Participant for the entire fiscal year in which the Qualifying Termination occurs; and (ii) a fraction, the numerator of which is the number of days the Participant was employed by the Company during the fiscal year in which the Qualifying Termination occurs and the denominator of which is the number of days in such year (a "Pro-Rata Bonus").

Additionally, subject to certain terms and conditions, for the twelve months following the date of Qualifying Termination, the Company shall cause the Company's welfare plans to continue medical and dental benefits to the Participant and/or the Participant's family on the same terms applicable to similarly situated active employees.

In the event a Participant experiences a Change in Control Qualifying Termination, the Participant shall be entitled to receive severance in an amount equal to the Participant's base salary in effect immediately prior to the date of the Change in Control Qualifying Termination plus the Participant's Annual Target Bonus for the year in which the Change in Control Qualifying Termination occurs ("Change in Control Severance"), plus a prorated annual bonus equal to the product of (i) the Annual Target Bonus, if any, for the Participant for the entire fiscal year in which the Change in Control Qualifying Termination occurs; and (ii) a fraction, the numerator of which is the number of days the Participant was employed by the Company during the fiscal year in which the Change in Control Qualifying Termination occurs and the denominator of which is the number of days in such year (a "Change in Control Pro-Rata Bonus").

Additionally, subject to certain terms and conditions, for the twelve months following the date of the Change in Control Qualifying Termination, the Company shall cause the Company's welfare plans to continue medical and dental benefits to the Participant and/or the Participant's family on the same terms applicable to similarly situated active employees.

For any equity awards outstanding at the time of a Qualifying Termination, such awards shall not be terminated but shall continue to vest during the twelve month period following the Qualifying Termination. Notwithstanding the foregoing, for the Participant serving as the Company's Chief Executive Officer at the Effective Date, any outstanding equity awards shall not be terminated and shall immediately become fully vested upon a Qualifying Termination. If a Participant experiences a Change in Control Qualifying Termination, the Participant's outstanding unvested time-based equity awards shall become fully vested.

Payments under the Plan are designed, if applicable, to comply with Section 280G and 4999 of Internal Revenue Code of 1986, as amended (the "Code"). Nothing in the Plan provides for any "gross up" or similar payment for any excise taxes that may become payable in connection with a change in control, and payments may under certain circumstances be reduced in an effort to provide the Participant the best after-tax benefit. The Plan is intended to comply with Section 409A of the Code or an exemption thereunder and shall be construed and administered accordingly. Notwithstanding any other provision of the Plan, payments provided under the Plan may only be made upon an event and in a manner that complies with Section 409A of the Code or an applicable exemption. Lastly, amounts payable under the Plan are also subject to any policy established by the Company at any time, providing for clawback or recovery of amounts that were paid to the Participant. All benefits provided under the Plan are further conditioned on the Participant executing customary releases of liability and restrictive covenants in favor of the Company.

The foregoing is only a summary of the Plan and is qualified in its entirety by reference to the full and complete terms of the Plan, a copy of which is attached to this Annual Report on Form 10-K as Exhibit 10.30 and is incorporated herein by reference.

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

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The following table provides information regarding our executive officers and directors as of December 31, 2024:

Name	Age	Position(s)
<i>Executive Officers:</i>		
Arturo Rodriguez	49	Chief Executive Officer
Joshua Feldman	47	Chief Financial Officer
Roi Zahut	37	Chief Technology Officer
Phillip Lepper	35	Chief Revenue Officer
<i>Non-Employee Directors:</i>		
Bari A. Harlam	63	Director
William Kurtz	67	Director
Susan Lattmann	57	Director
Sarah Liebel	42	Director

There are no family relationships among any of the directors or executive officers.

Executive Officers

Arturo Rodriguez has served as our Chief Executive Officer since June 2024. Mr. Rodriguez also served as our Co-CEO from July 2023 until June 2024 and our Chief Financial Officer from March 2021 until June 2024. Prior to that, he served as our Senior Vice President of Finance since September 2017. Prior to joining the Company, Mr. Rodriguez served as Chief Accounting Officer and Global Controller for Pikel, Inc. from July 2012 to September 2017 and also held the role of Interim Chief Operating Officer in 2017. From 2000 to 2011, Mr. Rodriguez held several financial leadership roles with the Atari Group, most notably Acting Chief Financial Officer of Atari, Inc. (Nasdaq: ATAR) from 2007 to 2008, and Deputy CFO of Atari SA (Euronext: ATA) from 2008 to 2010. Mr. Rodriguez started his career at Arthur Andersen LLP in 1997 and is a CPA in the State of New York. Mr. Rodriguez holds a Bachelor of Business Administration – Accounting from Hofstra University.

Joshua Feldman has served as our Chief Financial Officer since June 2024 and our Senior Vice President of Finance since May 2022. Prior to joining the Company, Mr. Feldman was the Head of Finance for Olivela Inc., a luxury goods e-commerce company, from February 2021 to May 2022. Previously, he served as Vice President of Financial Operations for Hugo Boss North America from January 2018 to October 2020. From 2007 to 2018, Mr. Feldman held several senior finance roles at Saks Fifth Avenue and Hudson's Bay Company. Prior to joining Saks Fifth Avenue, Mr. Feldman was an Assurance Manager at KPMG. Mr. Feldman is a Certified Public Accountant in New York.

Roi Zahut has served as our Chief Technology Officer since January 2019. Prior to joining Aterian, he served in a number of roles, including as the CTO of the Advanced Analytics global consulting team at IBM and as the architect of IBM Metropulse, a retail & CPG analytics platform, from October 2016 to January 2019. Prior to that, Mr. Zahut lived in Israel where he held senior technical, business and data science roles in startups and consulting companies including IBM Israel from January 2015 to October 2016, Brainbow Ltd from October 2013 to January 2015 and Matrix IT Ltd, an information technology company, from October 2008 to October 2011, working across industries (CPG, industrial and defense). Mr. Zahut also served in the Israeli Air Force from September 2005 to October 2008 where he obtained the rank of Sergeant First Class. Mr. Zahut holds an MSc in Neuroscience with distinction from Bar Ilan University.

Phillip Lepper has been Aterian's Chief Revenue Office since September 2023, following his role as Senior Vice President of Revenue which he held since January 2023. Mr. Lepper joined Aterian in June 2021 as Vice President of Revenue. Prior to joining Aterian, Mr. Lepper served as the Senior Director of eCommerce at Packable from June 2020 until June 2021. Mr. Lepper previously worked at Oriental Trading Company as Head of Marketplace from April 2019 to June 2020 and at Spreetail as Director of New Channels from July 2018 until April of 2019. Mr. Lepper also previously held roles at Kaspian, Mister Car Wash and the Coca-Cola Company. Mr. Lepper holds a B.S. in Business Administration from Eastern Washington University.

Non-Employee Directors

Bari A. Harlam has served as a director since February 2020, and is a business leader, marketer, educator, and author. In February 2020, she co-founded Trouble LLC, a pro-social, experience brand. Ms. Harlam has served on the Boards of Directors of Eastern Bank since February 2014, OneWater Marine Inc. (Nasdaq: ONEW) since May 2020, Mattress Warehouse since February 2023, and Rite Aid (NYSE: RAD) from September 2020 through August 2024. Ms. Harlam currently serves as the chair of the Compensation Committee for OneWater Marine Inc., as the chair of the Trust, and a member of the Nominating & Governance, Innovation, and Charitable Foundation Committees of Eastern Bank, and a member of the Nominating & Governance Committee of Rite Aid until the end of her tenure in August 2024. From April 2018 to March 2020, she served as EVP, Chief Marketing Officer North America at Hudson's Bay Company (TSX: HBC). Prior to her time at Hudson's Bay Company, she was EVP, Membership, Marketing & Analytics at BJ's Wholesale Club (NYSE: BJ) from July 2012 to December 2016. Before joining BJ's Wholesale Club, she served as Chief Marketing Officer at Swipely, now called Upserve, from August 2011 to July 2012, and prior to that, she served as SVP, Marketing at CVS Health (NYSE: CVS) from 2000 to August 2011. Early in her career, she was a Professor at Columbia University from July 1989 to July 1992 and The University of Rhode Island from July 1992 to July 2000. In addition, she was an Adjunct Professor at The Wharton School at The University of Pennsylvania from January 2015 to May 2018. She received a Bachelor of Science, a Master of Science, and a Ph.D. in Marketing from the University of Pennsylvania, The Wharton School. We believe Ms. Harlam is qualified to serve as a member of our Board due to her experience in the consumer packaged goods and retail industries as well as her expertise in marketing.

William Kurtz has served as a director since August 2019. Mr. Kurtz is a senior financial and operations executive with over 30 years of experience operating as chief financial officer or chief operating officer at several private and public technology companies on the East Coast and in Silicon Valley. Since 2016, he has served as a member of the board of directors of Verint Systems Inc., a customer experience software SaaS company, and he currently serves as its lead independent director and as a member of the Audit Committee and the Nominating & Governance Committee. Since May 2023, he has served as a member of the board of directors of Sportradar Group, AG, a data analytics and content provider to sports betting operators, and he currently serves as the chairman of the Audit Committee. Mr. Kurtz has served as the interim Chief Financial Officer of LightForce Orthodontics Inc since October

2024 and has served as a member of the board of directors of LightForce Orthodontics Inc since January 2024 and is chairman of its Audit Committee. Mr. Kurtz has served as the Chief Financial and Commercial Officer for Ripcord, Inc., since January 2021 and as its Chief Commercial Officer since April 2021, and served as its interim Chief Executive Officer from June 2021 through January 2022 while the company conducted a search for a chief executive officer. He is also a member of the Board of Ripcord Inc. Mr. Kurtz also served as a Strategic Advisor for Bloom Energy Corporation, a manufacturer of on-site power generation platforms, from January 2019 to January 2021 and previously served as its Chief Commercial Officer (from May 2015 to December 2018) and Chief Commercial & Financial Officer (from March 2008 to May 2015). Mr. Kurtz has also held several CFO or other senior finance and operations roles at a variety of organizations, including Novellus Systems, Inc. (from September 2005 to February 2008), Engenio Information Technologies, Inc. (from March 2004 to August 2005), 3PARdata, Inc. (from July 2001 to February 2004), Scient Corporation (from August 1998 to June 2001), AT&T Corporation (from July 1983 to July 1998) and Price Waterhouse & Co./Brout & Company (from June 1979 to July 1983). Mr. Kurtz also served as a member of the board of directors and chair of the audit committee of Violin Memory Inc. (from November 2014 to February 2017), PMC-Sierra, Inc. (from April 2003 to January 2016), AuraSound, Inc. (from August 2010 to April 2012), ONStor, Inc. (from January 2008 to July 2009) and Redback Networks Inc. (from October 1999 to January 2007). Mr. Kurtz holds a Bachelor of Science in Commerce from Rider University and a Master of Science in Management Sciences from Stanford University. We believe Mr. Kurtz is qualified to serve as a member of our Board due to his experience as chief financial officer and chief operating officer and his experience in private and public technology companies.

Susan Lattmann has served as a director since February 2022. Ms. Lattmann currently serves on the board of directors of Superior Group of Companies (Nasdaq: SGC) since February 2024, Landsea Homes Corporation (Nasdaq: LSEA) since January 2025 (and from January 2022 to June 2023), and Farmer Focus, a private organic chicken company, since November 2021. She currently serves as a member of the Nominating and Governance Committee of SGC, the co-chair of the Compensation Committee for LSEA and a member of its Nominating and Governance Committee, and the chair of the Audit Committee for Farmer Focus. Ms. Lattmann is currently the Chief Financial Officer for The Row, an international luxury apparel retailer, since July 2021. Previously, she worked for Bed Bath & Beyond Inc. from 1996 to 2019, where she held several roles, including Chief Financial Officer and Chief Administrative Officer. She began her professional career in 1990 with Arthur Andersen LLP. Ms. Lattmann received her Bachelor of Science degree with honors from Bucknell University and is a certified public accountant. We believe Ms. Lattmann is qualified to serve as a member of our Board due to her extensive financial and business leadership experience in both public and private companies.

Sarah Liebel has served as a director since February 2022. Ms. Liebel currently serves as the President and COO of Nayya, a technology company simplifying the benefits experience for employees, employers, and suppliers like insurance companies since June 2024. She served as the Chief Growth Officer and President of Consumer Products at BetterUp, a digital coaching company, from March 2022 to June 2024. Prior to joining BetterUp, Ms. Liebel served as Chief Revenue Officer at 1stdibs.com, Inc. (Nasdaq: DIBS) from January 2019 to March 2022, where she oversaw the sales and operations teams at the company, including Customer Experience, Logistics, Business Operations, Trade & Private Client sales. Before joining 1stdibs in 2015, Ms. Liebel was most recently at Groupon, Inc. (Nasdaq: GRPN). During her five year tenure at Groupon, she held a number of leadership roles, including running operations & sales at Ideeli, a fashion flash sales e-commerce company, after it was acquired by Groupon, as well as leading deals on the corporate development team. Ms. Liebel received her Bachelor of Science from Tulane University and her MBA from Northwestern's Kellogg School of Management. We believe Ms. Liebel is qualified to serve as a member of our Board due to her experience in revenue generation, e-commerce and business leadership.

Legal Proceedings with Directors or Executive Officers

There are no legal proceedings related to any of our directors or executive officers that require disclosure pursuant to Items 103 or 401(f) of Regulation S-K.

Code of Conduct and Ethics

Our Board has adopted a Code of Conduct and Ethics that applies to all of our employees, officers and directors, including our Chief Executive Officer and other employees. We have posted the Code of Conduct and Ethics on our website at <https://ir.aterian.io/corporate-governance/governance-highlights> under "Governance Documents". The Code of Conduct and Ethics can only be amended by the approval of our audit committee of the Board (the "Audit Committee") and any waiver to the Code of Conduct and Ethics for an executive officer or director may only be granted by the Audit Committee and must be timely disclosed as required by applicable law. We expect that any amendments to the Code of Conduct and Ethics, or any waivers of its requirements, will be disclosed on our website.

Stock Ownership Guidelines

The Board of Directors believes that it is in the best interests of the Company and its shareholders that directors and executive officers have a meaningful proprietary stake in the Company so that their interests are aligned with the interests of shareholders. Accordingly, the Compensation Committee of the Board has adopted Stock Ownership Guidelines applicable to our non-employee directors and our Section 16 executive officers (the "Participants").

Under our Stock Ownership Guidelines, the Participants are expected to hold stock in accordance with the below table:

Chief Executive Officer	Three times the individual's annual base salary
Board Members	Two times the individual's annual cash retainer (not including any chair, lead independent director, committee or committee chair service retainers)
Other Officers	Two times the individual's annual base salary

Under our Stock Ownership Guidelines, the Participants are required to achieve the applicable stock ownership level within five years of first becoming subject to the Stock Ownership Guidelines. If an individual becomes subject to a greater ownership amount due to promotion or an increase in base salary, such individual is expected to meet the higher ownership amount within five years from the effective date of such promotion or increase in base salary.

Audit Committee

We have a separately designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Exchange Act. Our Audit Committee is comprised of Mr. Kurtz, Ms. Lattmann and Ms. Liebel. Ms. Lattmann serves as Chairperson of the committee. Each member of the Audit Committee must be independent as defined under the applicable rules and listings standards of The Nasdaq Stock Market LLC (the "Nasdaq Rules") and SEC rules and financially literate under the Nasdaq Rules. Our Board has determined that each member of the Audit Committee is "independent" and "financially literate" under the Nasdaq Rules and the SEC rules and that Ms. Lattmann is an "audit committee financial expert" under the rules of the SEC. The responsibilities of the Audit Committee are included in a written charter. The Audit Committee acts on behalf of our Board in fulfilling our Board's oversight responsibilities with respect to our accounting and financial reporting processes, the systems of internal control over financial reporting and audits of financial statements and reports, and also assists our Board in its oversight of the quality and integrity of our financial statements and reports and the qualifications, independence and performance of our independent registered public accounting firm. For this purpose, the Audit Committee performs several functions. The Audit Committee's responsibilities include, among others:

- appointing, determining the compensation of, retaining, overseeing and evaluating our independent registered public accounting firm and any other registered public accounting firm engaged for the purpose of performing other review or attest services for us;
- prior to commencement of the audit engagement, reviewing and discussing with the independent registered public accounting firm a written disclosure by the prospective independent registered public accounting firm of all relationships between us, or persons in financial oversight roles with us, and such independent registered public accounting firm or their affiliates;
- determining and approving engagements of the independent registered public accounting firm, prior to commencement of the engagement, and the scope of and plans for the audit;
- monitoring the rotation of partners of the independent registered public accounting firm on our audit engagement;
- reviewing with management and the independent registered public accounting firm any fraud that includes management or other employees who have a significant role in our internal control over financial reporting and any significant changes in internal controls;
- establishing and overseeing procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters and the confidential and anonymous submission by employees of concerns regarding questionable accounting or auditing matters;

- reviewing the results of management’s efforts to monitor compliance with our programs and policies designed to ensure compliance with laws and rules; and
- reviewing and discussing with management and the independent registered public accounting firm the results of the annual audit and the independent registered public accounting firm’s assessment of the quality and acceptability of our accounting principles and practices and all other matters required to be communicated to the Audit Committee by the independent registered public accounting firm under generally accepted accounting standards, the results of the independent registered public accounting firm’s review of our quarterly financial information prior to public disclosure and our disclosures in our periodic reports filed with the SEC.

The Audit Committee reviews, discusses and assesses its own performance and composition at least annually. The Audit Committee also periodically reviews and assesses the adequacy of its charter, including its role and responsibilities as outlined in its charter, and recommends any proposed changes to our Board for its consideration and approval.

Typically, the Audit Committee meets at least quarterly and with greater frequency if necessary. Our Board has adopted a written charter of the Audit Committee that is available to stockholders on our internet website at <https://ir.aterian.io/corporate-governance/governance-highlights> under “Governance Charters”.

Director Nominations

No material changes have been made to the procedures by which security holders may recommend nominees to our Board from those that were described in our Definitive Proxy Statement for our 2024 Annual Meeting of Stockholders that was filed with the SEC on July 5, 2024.

Insider Trading Arrangements and Policies

The Company has adopted an Insider Trading Policy governing the purchase, sale, and other dispositions of its securities by its directors, officers, and employees. We believe this policy is reasonably designed to promote compliance with insider trading laws, rules, and regulations, as well as the standards of the Nasdaq Stock Exchange. A copy of the policy is attached hereto as Exhibit 19.1. Additionally, it is our policy to comply with applicable securities laws when engaging in transactions involving our own securities.

Item 11. Executive Compensation.

The following overview describes the material elements of compensation for the following individuals who served as our name executive officers for the year that ended on December 31, 2024 (“Named Executive Officer”), which consists of our Chief Executive Officer, up to two other most highly compensated executive officers who were serving as executive officers as of December 31, 2024, and up to two additional individuals who would have been most highly compensated executive officers but for the fact that such individual was not serving as an executive officer as of December 31, 2024 are:

- Joseph A. Risico, our Former Co-Chief Executive Officer;
- Arturo Rodriguez, our Chief Executive Officer;
- Joshua Feldman, our Chief Financial Officer; and
- Phillip Lepper, our Chief Revenue Officer

Summary Compensation Table

The following table sets forth certain information with respect to the compensation paid to our Named Executive Officers for the fiscal years-ended December 31, 2023 and 2024:

<u>Name and principal position</u>	<u>Year</u>	<u>Salary/Fees</u>	<u>Bonus</u>	<u>Stock Awards</u>	<u>All Other Compensation</u>	<u>Total</u>
		<u>\$</u>	<u>\$</u>	<u>\$(1)</u>	<u>\$</u>	<u>\$</u>
Joseph A. Risico ⁽²⁾	2024	162,500	—	406,560	138,421	707,481
<i>Former Co-Chief Executive Officer</i>	2023	314,403	—	834,059	8,680	1,157,142
Arturo Rodriguez	2024	342,916	264,308	774,400	759	1,382,383
<i>Chief Executive Officer</i>	2023	314,393	—	834,059	859	1,149,311
Joshua Feldman	2024	296,124	151,733	271,895	21,443	741,195
<i>Chief Financial Officer</i>	2023	—	—	—	—	—
Phillip Lepper	2024	310,010	151,733	237,930	21,355	721,028
<i>Chief Revenue Officer</i>	2023	—	—	—	—	—

- (1) The amounts in this column represent the aggregate grant date fair value of the restricted stock awards computed in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standard Codification (“ASC”) Topic 718. Assumptions used in the calculation of these amounts are included in Note 11 to our Consolidated Financial Statements included in this Annual Report on Form 10-K. These amounts do not reflect the actual economic value that will be realized by the Named Executive Officer upon the vesting of the restricted stock awards or the sale of the common stock underlying such restricted stock awards.
- (2) On June 26, 2024, Joseph Risico resigned as Co-Chief Executive Officer of the Company and from the Board, effective as of June 26, 2024. In connection with Mr. Risico’s resignation, effective as of June 26, 2024, the Company entered into a consulting agreement with Mr. Risico (the “Consulting Agreement”) for services as a consultant (the “Consulting Services”). The Consulting Agreement, provided that, commencing June 26, 2024, Mr. Risico would provide Consulting Services to the Company for three months (the “Term”). As consideration for the Consulting Services to be provided by Mr. Risico to the Company pursuant to the Consulting Agreement, (i) the Company paid Mr. Risico \$43,333.33 per month during the Term (included in All Other Compensation above), (ii) the Company paid COBRA premiums for Mr. Risico for a period of up to six months (included in All Other Compensation above) and (iii) Mr. Risico’s outstanding unvested restricted stock awards would continue vesting according to the original vesting schedules during the Term (included in Stock Awards above). Additionally, if Mr. Risico continued to provide the Consulting Services through September 24, 2024, complied with his obligations to the Company and re-executed the Consulting Agreement after the termination of the Consulting Services to release claims against the Company through the date of re-execution of the Consulting Agreement by no earlier than December 25, 2024 and no later than December 31, 2024, then, effective as of the date of re-execution, an additional 30,364 unvested shares of the Company’s common stock (subject to adjustment or stock splits and other changes in capitalization) that were subject to Mr. Risico’s unvested restricted stock awards would vest (included in Stock Awards above). Mr. Risico did continue to provide the Consulting Services through such period and re-executed in a timely manner. As such those additional shares vested.

Narrative Disclosure to Summary Compensation Table

Employment and Severance Agreements

Joseph A. Risico —We entered into an offer letter with Mr. Risico, dated February 8, 2018. Pursuant to the offer letter, Mr. Risico’s base salary was initially \$250,000 per year. During his employment, Mr. Risico has received various base salary adjustments and his salary at the beginning of 2024 was \$325,000 per year. On June 26, 2024, Joseph Risico resigned as Co-Chief Executive Officer of the Company and from the Board, effective as of June 26, 2024. In connection with Mr. Risico’s resignation, effective as of June 26, 2024, the Company entered into a consulting agreement with Mr. Risico for services as a consultant. See footnote 2 to the Summary Compensation Table for a description of the consulting agreement.

Arturo Rodriguez —We entered into an offer letter with Mr. Rodriguez, dated September 18, 2017. Pursuant to the offer letter, Mr. Rodriguez’s base salary was initially \$250,000 per year. During his employment, Mr. Rodriguez has received various base salary adjustments and his salary at the beginning of 2024 was \$325,000 per year. Effective June 26, 2024, Mr. Rodriguez received an increase in base salary to \$360,000.

Joshua Feldman —We entered into an offer letter with Mr. Feldman, dated March 30, 2022. Pursuant to the offer letter, Mr. Feldman's base salary was initially \$270,000 per year. During his employment, Mr. Feldman has received various base salary adjustments and his salary at the beginning of 2024 was \$277,500 per year. Effective April 1, 2024, Mr. Feldman received an increase in base salary to \$285,825 and effective June 26, 2024, Mr. Feldman received an increase in base salary to \$310,000.

Phillip Lepper —We entered into an offer letter with Mr. Lepper, dated May 10, 2021. Pursuant to the offer letter, Mr. Lepper's base salary was initially \$200,000 per year. During his employment, Mr. Lepper has received various base salary adjustments and his salary at the beginning of 2024 was \$310,000 per year.

Base Salaries/Compensation

Our salaries recognize the experience, skills, knowledge, and responsibilities required of all employees, including our Named Executive Officers. Base salaries and base compensation are reviewed annually, typically in connection with our annual performance review process, and adjusted from time to time to realign salaries and compensation with market levels after taking into account individual responsibilities, performance and experience.

Bonuses

For the year ended December 31, 2024, the Compensation Committee approved bonuses for the Named Executive Officers based on the Company's financial performance and individual contributions. These bonuses will be paid in the form of shares of the Company's common stock and are expected to be granted in May 2025. The number of shares awarded will be determined based on the closing stock price on the grant date.

Equity Compensation

Although we do not have a formal policy with respect to the grant of equity incentive awards to our executive officers, we believe that equity grants provide our executives with a strong link to our long-term performance, create an ownership culture and help to align the interests of our executives and our stockholders. In addition, we believe that equity grants with a time-based vesting feature promote executive retention because this feature incentivizes our executive officers to remain in our employment during the vesting period. Accordingly, our Board periodically reviews the equity incentive compensation of our Named Executive Officers and from time to time may grant equity incentive awards to them.

On April 26, 2024, we granted 176,000 restricted shares to each of Mr. Risico and Mr. Rodriguez and 103,000 restricted shares to Mr. Lepper pursuant to the Aterian, Inc. 2018 Equity Incentive Plan (the "2018 Plan"). One-third of the restricted shares shall vest on June 11, 2025, and 1/12th of the restricted shares shall vest each quarterly period thereafter, as described in more detail in the "Outstanding Equity Awards at December 31, 2024" table below. All 176,000 shares granted to Mr. Risico were forfeited on June 26, 2024 when he resigned from the Company.

On May 6, 2024, we granted 41,667 restricted shares to Mr. Feldman pursuant to the 2018 Plan. One-third of the restricted shares shall vest on June 11, 2025, and 1/12th of shares of restricted common stock shall vest each quarterly period thereafter, as described in more detail in the "Outstanding Equity Awards at December 31, 2024" table below.

On May 16, 2024, we granted 13,875 restricted shares of our common stock to Mr. Feldman pursuant to the 2018 Plan. All 13,875 shares vested immediately.

In connection with Mr. Rodriguez's promotion to Chief Executive Officer on June 26, 2024, we granted 176,000 restricted shares to Mr. Rodriguez, pursuant to the 2018 Plan. One-third of the restricted shares shall vest on June 11, 2025, and 1/12th of shares of restricted common stock shall vest each quarterly period thereafter, as described in more detail in the "Outstanding Equity Awards at December 31, 2024" table below.

In connection with Mr. Feldman's promotion to Chief Financial Officer on June 26, 2024, we granted 61,333 restricted shares to Mr. Feldman, pursuant to the 2018 Plan. One-third of the restricted shares shall vest on June 11, 2025, and 1/12th of shares of restricted common stock shall vest each quarterly period thereafter, as described in more detail in the "Outstanding Equity Awards at December 31, 2024" table below.

Perquisites, Health, Welfare and Retirement Plans and Benefits

We provide healthcare coverage to our employees. In addition, we have adopted a 401(k) plan for eligible employees. However, we do not currently match any portion of the contributions made by our employees to the 401(k) plan.

Outstanding Equity Awards at December 31, 2024

The following table presents certain information concerning outstanding equity awards held by each of the Named Executive Officers at December 31, 2024:

Name	Grant date	Option awards				Stock awards	
		Number of securities underlying unexercised options (#) exercisable(*)	Number of securities underlying unexercised options (#) unexercisable	Option exercise price per share (\$)	Option expiration date	Number of shares or units of stock that have not vested (#)(*)	Market value of shares or units of stock that have not vested (1) (\$)
Joseph A. Risico ⁽²⁾	12/28/2018	—	—	—	—	—	—
	5/27/2022	—	—	—	—	—	—
	6/12/2023	—	—	—	—	—	—
	9/13/2023	—	—	—	—	—	—
	4/26/2024	—	—	—	—	—	—
Arturo Rodriguez	9/15/2018	1,895	—	81.48	9/15/2028	—	—
	12/28/2018	8,547	—	116.64	12/28/2028	—	—
	5/27/2022	—	—	—	—	3,882	\$ 9,317
	6/12/2023	—	—	—	—	38,520	\$ 92,448
	9/13/2023	—	—	—	—	45,984	\$ 110,362
	4/26/2024	—	—	—	—	176,000	\$ 422,400
Joshua Feldman	6/26/2024	—	—	—	—	176,000	\$ 422,400
	5/27/2022	—	—	—	—	1,392	\$ 3,341
	6/12/2023	—	—	—	—	7,293	\$ 17,503
	10/16/2023	—	—	—	—	6,975	\$ 16,740
	5/6/2024	—	—	—	—	41,667	\$ 100,001
Phillip Lepper	6/26/2024	—	—	—	—	61,333	\$ 147,199
	5/13/2022	—	—	—	—	487	\$ 1,169
	6/12/2023	—	—	—	—	12,501	\$ 30,002
	9/13/2023	—	—	—	—	30,356	\$ 72,854
	4/26/2024	—	—	—	—	103,000	\$ 247,200

- (*) The number of shares and per share amounts have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.
- (1) Represents the market value of the unvested shares underlying the restricted stock awards as of December 31, 2024, based on the closing price of our common stock on such date, as reported on the Nasdaq Capital Market, which was \$2.40 per share. These amounts do not reflect the actual economic value that will be realized by the Named Executive Officer upon the vesting of the restricted stock awards or the sale of the common stock underlying such restricted stock awards.
- (2) On June 26, 2024, Joseph Risico resigned as Co-Chief Executive Officer of the Company and from the Board, effective as of June 26, 2024. In connection with Mr. Risico's resignation, effective as of June 26, 2024, the Company entered into a consulting agreement with Mr. Risico for services as a consultant. See footnote 2 to the Summary Compensation Table for a description of the consulting agreement.

Non-Employee Director Compensation

Effective August 1, 2021, our compensation committee of the Board (the "Compensation Committee") approved a formal non-employee director compensation policy, which was amended on August 16, 2024. Pursuant to such policy, our non-employee directors were paid the amounts in the table below for the year ended December 31, 2024. At the beginning of 2024 the non-employee director compensation (prorated for service for a partial year), which, at each director's election was payable one-third in cash and two-thirds in shares of restricted common stock, was as follows: (i) \$150,000 per year to each director; (ii) \$25,000 per year to the chairperson of the Board; (iii) \$15,000 per year to the chairperson of the Audit Committee; (iv) \$10,000 per year to the chairperson of the Compensation Committee; (v) \$7,500 per year to other members of the Audit Committee; and (vi) \$5,000 to other members of the Compensation Committee. As revised on August 16, 2024, non-employee director compensation (prorated for service for a partial year), which, at each director's election was payable one-third in cash and two-thirds in shares of restricted common stock, was as follows: (i) \$150,000 per year to each director; (ii) \$55,000 per year to the chairperson of the Board; (iii) \$20,000 per year to the chairperson of the Audit Committee; (iv) \$15,000 per year to the chairperson of the Compensation Committee ; (v) \$10,000 per year to other members of the Audit Committee; and (vi) \$7,500 to other members of the Compensation Committee.

On and effective, July 26, 2023, in connection with the appointment of Messrs. Risico and Rodriguez as Co-Chief Executive Officers, Mr. Kurtz and the Company entered into an Advisor Agreement, effective July 26, 2023, pursuant to which Mr. Kurtz acted as an advisor to senior management of the Company. The initial term of the Advisor Agreement was six months and, subject to the agreement of the Company and Mr. Kurtz the Advisor Agreement was extended for an additional six-month period. Mr. Kurtz was paid \$10,000 per month for his services pursuant to the Advisor Agreement.

On August 16, 2024, Mr. William Kurtz and the Company entered into an Advisor Agreement effective August 1, 2024 (the "Advisor Agreement"), pursuant to which Mr. Kurtz acts as an advisor to senior management of the Company. The initial term of the Advisor Agreement shall be six months and, subject to the agreement of the Company and Mr. Kurtz, may be extended for an additional six-month period. Mr. Kurtz is paid \$8,750 per month for his services pursuant to the Advisor Agreement.

The following table sets forth summary information concerning compensation paid or accrued to the members of our Board for services rendered to us for the fiscal year ended December 31, 2024:

Name ⁽¹⁾	Fees Earned or Paid in Cash \$	Option Awards \$	Stock Awards \$(2)	All Other Compensation \$	Total \$
William H. Kurtz	\$ 214,375	—	\$ 93,330	—	\$ 307,705
Bari A. Harlam	\$ 61,875	—	\$ 93,330	—	\$ 155,205
Cynthia Williams ⁽³⁾	\$ 34,375	—	—	—	\$ 34,375
Sarah Liebel	\$ 58,438	—	\$ 93,330	—	\$ 151,768
Susan Lattmann	\$ 69,688	—	\$ 93,330	—	\$ 163,018

- (1) Joseph A. Risico, our former Co-Chief Executive Officer and Arturo Rodriguez, Chief Executive Officer did not receive compensation for service as directors as they were employees of the Company while serving on the Board. Mr. Risico's and Mr. Rodriguez's compensation is included in the section entitled "Summary Compensation Table" of this Annual Report on Form 10-K above.
- (2) The amounts in this column represent the aggregate grant date fair value of the restricted stock awards computed in accordance with FASB ASC Topic 718. Assumptions used in the calculation of these amounts are included in Note 11 to our Consolidated Financial Statements included in this Annual Report on Form 10-K. These amounts do not reflect the actual economic value that will be realized by the director upon the vesting of the restricted stock awards or the sale of the common stock underlying such restricted stock awards. As of December 31, 2024, our non-employee directors held the following number of shares of restricted common stock: Ms. Harlam 59,226 shares; Ms. Lattmann 58,876 shares; Ms. Liebel 51,625 shares; and Mr. Kurtz 47,216 shares.
- (3) On July 1, 2024, Cynthia Williams notified the Board of Directors of her intent to not stand for reelection at the Company's 2024 Annual Meeting of Stockholders and to retire from the Board effective as of the conclusion of the Annual Meeting on August 16, 2025.

Compensation Committee Interlocks and Insider Participation

Our Compensation Committee consists of three directors, each of whom is a non-employee director: Ms. Harlam, Mr. Kurtz and Ms. Lattmann with Ms. Harlam serving as the Chairperson of the Compensation Committee. During 2024, none of the foregoing were an officer or employee of ours, was formerly an officer of ours or had any relationship requiring disclosure by us under Item 404 of Regulation S-K. No interlocking relationship as described in Item 407(e)(4) of Regulation S-K exists between any of our executive officers or Compensation Committee members, on the one hand, and the executive officers or compensation committee members of any other entity, on the other hand, nor has any such interlocking relationship existed in the past.

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

Securities Authorized for Issuance under Equity Compensation Plans

The following table sets forth additional information as of December 31, 2024 with respect to the shares of common stock that may be issued upon the exercise of options and other rights under our existing equity compensation plans and arrangements in effect as of December 31, 2024. The information includes the number of shares covered by, and the weighted average exercise price of, outstanding options and the number of shares remaining available for future grant, excluding the shares to be issued upon exercise of outstanding options.

	Number of securities to be issued upon exercise of outstanding options, warrants and rights(a)(*)	Weighted-average exercise price of outstanding options, warrants and rights(b)(1)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a)(c)(2) (*)
Equity compensation plans approved by security holders ⁽³⁾⁽⁴⁾	10,633	\$ 117.19	453,549
Equity compensation plans not approved by security holders ⁽⁵⁾	2,418	\$ 76.32	193,482
Total	13,051	\$ 109.62	647,031

(*) The number of shares and per share amounts have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

- (1) Consists of the weighted average exercise price of outstanding options as of December 31, 2024.
- (2) Consists entirely of shares of common stock that remain available for future issuance under the 2018 Plan as of December 31, 2024.
- (3) Consists of options outstanding as of December 31, 2024 under the 2018 Plan.
- (4) The number of shares of our common stock available for issuance under the 2018 Plan will automatically increase on January 1st of each year, for a period of not more than nine years, beginning January 1, 2020 and ending on (and including) January 1, 2028 by the lesser of (i) 15% of the shares deemed outstanding as of the preceding December 31, minus the number of shares in the share reserve (which for this purpose includes shares issued and issuable pursuant to the Aterian Group, Inc. Amended and Restated 2014 Equity Incentive Plan (the “2014 Plan”) as of immediately prior to the increase, or (ii) such number of shares as determined by our Board.
- (5) Consists of options outstanding as of December 31, 2024 under the 2014 Plan and securities remaining available for future issuance for the 2014 Plan and the Inducement Equity Incentive Plan.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information as of March 21, 2025, with respect to the beneficial ownership of shares of our common stock by:

- each of our directors;
- each of the Named Executive Officers;
- all of our current directors and executive officers as a group; and
- each person, or group of affiliated persons, known to us to be the beneficial owner of more than five percent of our common stock.

This table is based upon information supplied by officers, directors and principal stockholders and a review of Section 16 filings and/or Schedules 13D and 13G, if any, filed with the SEC. Other than as set forth below, we are not aware of any beneficial owner of more than five percent of our common stock as of March 21, 2025. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons and entities named in the table below have sole voting and investment power with respect to all shares of common stock that they beneficially own, subject to applicable community property laws.

We have determined beneficial ownership in accordance with the rules of the SEC. We have deemed shares of our common stock subject to warrants and options that are currently exercisable or exercisable within 60 days of March 21, 2025 to be outstanding and to be beneficially owned by the person holding the option for the purpose of computing the percentage ownership of that person but have not treated them as outstanding for the purpose of computing the percentage ownership of any other person. Percentage ownership of our common stock is based on 8,750,741 shares of our common stock outstanding as of March 21, 2025.

Changes in Control

The Company is not aware of any arrangements, including by pledge by any person of securities of the Company, of any operation which may at a subsequent date result in a change in control of the Company.

Unless otherwise noted below, the address of each beneficial owner listed in the table is c/o Aterian, Inc., 350 Springfield Avenue, Suite 200, Summit, NJ 07901.

	Beneficial Ownership of Common Stock	
	Number of Shares^(*)	%⁽¹⁾
Greater than 5% Stockholders:		
Armistice Capital Master Fund Ltd.	1,173,359 (2)	11.8%
Named Executive Officers and Directors:		
Arturo Rodriguez	543,221 (3)	6.2%
Joshua Feldman	145,969 (4)	1.7%
Phillip Lepper	177,934 (5)	2.0%
William Kurtz	47,216 (6)	*
Bari A. Harlam	59,226 (7)	*
Susan Lattmann	58,876 (8)	*
Sarah Liebel	51,625 (9)	*
All current executive officers and directors as a group (8 persons)	1,284,226(10)	14.7%

(*) The number of shares and per share amounts have been retroactively restated to reflect the one-for-twelve (1-for-12) reverse stock split, which was effective on March 22, 2024.

** Denotes less than 1%.

- (1) For each person and group included in this table, percentage ownership is calculated by dividing the number of shares beneficially owned by such person or group by the sum of the number of shares of common stock outstanding as of March 21, 2025, plus the number of shares of common stock that such person or group had the right to acquire within 60 days after March 21, 2025.
- (2) Comprises 1,173,359 warrants that are exercisable within 60 days after March 21, 2025. The securities are directly held by Armistice Capital Master Fund Ltd. (the “Master Fund”), a Cayman Islands exempted company, and may be deemed to be indirectly beneficially owned by (i) Armistice Capital, LLC (“Armistice”), as the investment manager of the Master Fund; and (ii) Steven Boyd, as the Managing Member of Armistice Capital. Armistice and Steven Boyd disclaim beneficial ownership of the reported securities except to the extent of their respective pecuniary interest therein. The address of Armistice Capital Master Fund Ltd. is c/o Armistice Capital, LLC, 510 Madison Avenue, 7th Floor, New York, NY 10022.
- (3) Mr. Rodriguez’s holdings consist of (i) 91,202 shares of common stock held directly, (ii) 10,442 shares of common stock issuable pursuant to stock options that are exercisable within 60 days after March 21, 2025, (iii) 440,386 shares of restricted common stock that are subject to vesting, and (iv) 1,190 of warrants that are exercisable within 60 days after March 15, 2054. The shares of restricted common stock have voting rights irrespective of any vesting requirements.
- (4) Mr. Feldman's holdings consist of (i) 27,309 shares of common stock held directly, and (ii) 118,660 shares of restricted common stock that are subject to vesting. The shares of restricted common stock have voting rights irrespective of any vesting requirements.
- (5) Mr. Lepper's holdings consist of (i) 31,590 shares of common stock held directly, and (ii) 146,344 shares of restricted common stock that are subject to vesting. The shares of restricted common stock have voting rights irrespective of any vesting requirements.
- (6) Mr. Kurtz’s holdings consist of (i) 30,370 shares of common stock held directly, and (ii) 16,846 shares of restricted common stock that are subject to vesting. The shares of restricted common stock have voting rights irrespective of any vesting requirements.
- (7) Ms. Harlam’s holdings consist of (i) 42,380 shares of common stock held directly, and (ii) 16,846 shares of restricted common stock that are subject to vesting. The shares of restricted common stock have voting rights irrespective of any vesting requirements.
- (8) Ms. Lattmann's holdings consist of (i) 42,030 shares of common stock held directly, and (ii) 16,846 shares of restricted common stock that are subject to vesting. The shares of restricted common stock have voting rights irrespective of any vesting requirements.
- (9) Ms. Liebel's holdings consist of (i) 34,779 shares of common stock held directly, and (ii) 16,846 shares of restricted common stock that are subject to vesting. The shares of restricted common stock have voting rights irrespective of any vesting requirements.
- (10) Comprised of shares included under “Named Executive Officers and Directors”, and the following held by one of our other executive officers: (i) 52,398 shares of common stock held directly, (ii) 1,764 shares of common stock issuable pursuant to stock options that are exercisable within 60 days after March 21, 2025, (iii) 145,402 shares of restricted common stock that are subject to vesting, and (iv) 595 of warrants that are exercisable within 60 days after March 15, 2025. The shares of restricted common stock have voting rights irrespective of any vesting requirements.

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

Related Party Transactions

Other than the director and executive officer compensation arrangements discussed in Part II, Item 8 of this Annual Report on Form 10-K, there have not been any transactions since January 1, 2024 that need to be reported.

Policies and Procedures for Related Party Transactions

Our Board has adopted a written related person transaction policy, effective as of June 14, 2019, administered by the Audit Committee. This policy applies, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act of 1933, as amended (the “Securities Act”), to any transaction or series of transactions in which the Company is a participant, the amount involved exceeds the lesser of \$120,000 and the average of our total assets at year-end for the last two completed fiscal years, and a related person has or will have a direct or indirect material interest, including, without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. A related person is any individual who is, or who has been at any time since the beginning of our last fiscal year, one of our directors or executive officers, or a nominee to become one of our directors, any person known to be the beneficial owner of more than 5% of any class of our voting securities or any immediate family member of any of the foregoing persons. Additionally, any firm, corporation or other entity by which any of the foregoing persons is employed or in which such person is a general partner or principal, or in a similar position, or in which such person has a 10% or greater beneficial ownership interest, will also be deemed to be a related person. Transactions involving compensation for services provided to us as an employee, consultant or director are not considered related-person transactions under this policy. As provided by our audit committee charter, our Audit Committee is responsible for reviewing and approving in advance any related party transaction.

Transactions requiring review are referred to the Audit Committee for approval, ratification or other action.

Corporate Governance

Director Independence

Under the Nasdaq Rules, a majority of the members of our Board must satisfy the Nasdaq criteria for “independence.” No director qualifies as independent under the Nasdaq Rules unless our Board affirmatively determines that the director does not have a relationship with us that would impair independence (directly or as a partner, stockholder or officer of an organization that has a relationship with us). Our Board has determined that Mses. Harlam, Lattmann, Liebel and Mr. Kurtz are independent directors as defined under the Nasdaq Rules. Mr. Rodriguez is not independent under the Nasdaq Rules as a result of his position as our Chief Executive Officer.

Item 14. Principal Accounting Fees and Services

On June 26, 2024, the Audit Committee of the Board of Directors of Aterian, Inc. (the "Company") approved the dismissal of Deloitte & Touche LLP ("Deloitte") as the Company's independent registered public accounting firm and engaged UHY LLP ("UHY") as the Company's independent registered public accounting firm.

The following table represents aggregate fees billed to us for the fiscal years-ended December 31, 2023 and December 31, 2024 by Deloitte and UHY, our independent registered public accounting firms for such periods. All fees described below were approved by the Audit Committee.

	December 31, 2023	December 31, 2024
Audit Fees(1)	\$ 979,611	\$ 678,764
Tax Fees(2)	65,500	48,675
Total Fees	<u>\$ 1,045,111</u>	<u>\$ 727,439</u>

(1) Audit fees consist of actual fees for professional services performed by Deloitte & Touche LLP and UHY LLP for the audit of our 2023 and 2024 annual financial statements and the review of quarterly financial statements for 2023 and 2024. For the year ended December 31, 2024, we incurred \$90,514 in audit fees related to professional services performed by Deloitte & Touche LLP and \$528,250 in audit fees related to professional services performed by UHY LLP. For the year ended December 31, 2023, all audit fees incurred were related to professional services performed by Deloitte & Touche LLP. Audit fees also include \$60,000 of 2024 fees for professional services performed by Deloitte & Touche LLP for reviews of registration statements and issuances of consents, comfort letters and services that are normally provided in connection with regulatory filings or engagements. No such fees were incurred during 2023.

(2) Consists of fees for tax compliance and consulting performed by Deloitte & Touche LLP.

Audit Committee's Pre-Approval Policies and Procedures

The Audit Committee has adopted a policy for the pre-approval of audit and non-audit services rendered by our independent registered public accounting firm, UHY LLP. The policy generally allows for pre-approval of specified services in the defined categories of audit services, audit-related services and tax services up to specified amounts. Pre-approval may also be given as part of the Audit Committee's approval of the scope of the engagement of the independent registered public accounting firm or on an individual case-by-case basis before the independent registered public accounting firm is engaged to provide each service. The pre-approval of services may be delegated to one or more of the Audit Committee's members, but the decision must be reported to the full Audit Committee at its next scheduled meeting. By the adoption of this policy, the Audit Committee has delegated the authority to pre-approve services to the Chairperson of the Audit Committee, subject to certain limitations.

The Audit Committee has determined that the rendering of the services other than audit services by UHY LLP is compatible with maintaining the independent registered public accounting firm's independence.

PART IV

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

The Company's consolidated financial statements are included beginning on page F-1.

Financial Statement Schedules

Financial statement schedules have been omitted because they are not applicable, not required or the information required is included in the Company's consolidated financial statements or notes thereto.

Exhibits

The following exhibits have been filed or are being filed herewith and are numbered in accordance with Item 601 of Regulation S-K:

Exhibit Number	Description	Incorporated by Reference			
		Form	File Number	Filing Date	Exhibit
2.1+	Asset Purchase Agreement, dated December 1, 2020, by and among (i) Aterian, Inc. and Truweo, LLC, as Purchaser, (ii) 9830 Macarthur LLC, Reliance Equities Group, LLC and ZN Direct LLC, as Sellers and (iii) Jelena Puzovic, as Founder.	8-K	001-38937	12/1/2020	2.1
2.2+	Asset Purchase Agreement, dated February 2, 2021, by and among (i) Aterian, Inc. and Truweo, LLC, as Purchaser, (ii) Healing Solutions, LLC, (iii) Jason R. Hope, and (iv) for the purposes of Section 5.11 and Article VII, Super Transcontinental Holdings LLC.	8-K	001-38937	2/3/2021	2.1
2.3+	Asset Purchase Agreement, dated May 5, 2021, by and among (i) the Company and Truweo, LLC, as Purchaser, (ii) Squatty Potty, LLC, and (iii) for the purposes of Section 5.7, Section 5.8, Section 5.11, Section 5.13 and Article VII, Edwards SP Holdings, LLC, Team Lindsey, LLC, SLEKT Investments, LLC, Sachs Capital Fund II, LLC, Sachs Capital-Squatty, LLC and Bevel Acquisition II, LLC.	8-K	001-38937	5/11/2021	2.1
2.4+	Stock Purchase Agreement, dated May 5, 2021, by and among (i) the Company and Truweo, LLC, as Purchaser, (ii) Photo Paper Direct Ltd., (iii) Josef Eitan, and (iv) Ran Nir.	8-K	001-38937	5/11/2021	2.2
3.1	Certificate of Correction of Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Aterian, Inc.	8-K	001-38937	4/30/2021	3.2
3.2	Amended and Restated Certificate of Incorporation of Aterian, Inc.	8-K	001-38937	4/30/2021	3.1
3.3	Third Amended and Restated Bylaws of Aterian, Inc.	8-K	001-38937	6/1/2022	3.1
4.1	Form of Common Stock Certificate.	S-1/A	333-231381	5/24/2020	4.1
4.2+	Form of Registration Rights Agreement, dated as of April 6, 2018, among Aterian, Inc. and the purchasers party thereto.	S-1	333-231381	5/10/2019	4.2
4.3	Warrant to Purchase Stock, issued to MidCap Financial Trust on September 4, 2018.	S-1	333-231381	5/10/2019	4.3
4.4	Form of Warrant, issued to Katalyst Securities LLC and its assigns on September 4, 2018.	S-1	333-231381	5/10/2019	4.4
4.5	Form of Warrant, issued to Horizon Technology Finance Corporation on December 31, 2018.	S-1	333-231381	5/10/2019	4.5
4.6	Amendment No. 1 to Registration Rights Agreement, dated as of March 2, 2019, among Aterian, Inc. and the investors party thereto.	S-1	333-231381	5/10/2019	4.6

Exhibit Number	Description	Incorporated by Reference			
		Form	File Number	Filing Date	Exhibit
4.7	Warrant to Purchase Shares of Common Stock, issued to Third Creek Advisors, LLC on August 18, 2020.	10-Q	001-38937	11/9/2021	4.6
4.8	Form of Warrant to Purchase Stock, dated December 22, 2022.	8-K	001-38937	12/27/2021	4.1
4.9	Description of Securities of Aterian, Inc.	10-K	001-38937	03/16/2023	4.9
10.1#	Form of Indemnification Agreement.	S-1/A	333-231381	5/24/2019	10.1
10.2#	2014 Amended and Restated Equity Incentive Plan.	S-1	333-231381	5/10/2019	10.2
10.3#	Form of Stock Option Grant Notice and Form of Stock Option Agreement (2014 Amended and Restated Equity Incentive Plan).	S-1	333-231381	5/10/2019	10.3
10.4#	Amended and Restated 2018 Equity Incentive Plan.	S-8	333-232087	5/28/2021	4.2
10.5#	Form of Notice of Stock Option Grant and Form of Stock Option Award Agreement (2018 Equity Incentive Plan).	S-1	333-231381	5/10/2019	10.17
10.6#	Form of Notice of Grant of Restricted Shares and Form of Restricted Share Award Agreement (2018 Equity Incentive Plan).	S-1	333-232087	5/10/2019	10.4
10.7#	Amended and Restated Aterian, Inc. 2019 Equity Plan.	S-1	333-256635	5/28/2021	10.7
10.8#	Form of Notice of Grant of Restricted Shares and Form of Restricted Share Award Agreement (Aterian, Inc. 2019 Equity Plan).	S-1	333-231381	5/28/2021	10.8
10.9	Aterian, Inc. 2022 Inducement Equity Incentive Plan.	8-K	001-38937	05/27/2022	10.1
10.10	Form of Stock Option Agreement under the Aterian, Inc. 2022 Inducement Equity Incentive Plan.	S-8	333-265298	05/27/2022	4.3
10.11	Form of Restricted Stock Unit Agreement under the Aterian, Inc. 2022 Inducement Equity Incentive Plan.	S-8	333-265298	05/27/2022	4.4
10.12	Form of Restricted Stock Award Agreement under the Aterian, Inc. 2022 Inducement Equity Incentive Plan.	S-8	333-265298	05/27/2022	4.5
10.13#+	Employment Agreement dated May 14, 2018, by and between Aterian Group, Inc. and Joseph Risico.	S-1	333-231381	5/10/2019	10.10
10.14#+	Employment Agreement dated November 27, 2018, by and between Aterian Group, Inc. and Roi Zahut.	S-1	333-231381	5/10/2019	10.16
10.15	Restated Voting Agreement dated March 13, 2020, by and among MV II, LLC, Maximus Yaney, Larisa Storozhenko and Aterian, Inc.	S-1	333-231381	5/10/2019	10.19
10.16	Lock-Up, Voting and Standstill Agreement, dated December 1, 2020, by and between Aterian, Inc. and 9830 Macarthur LLC.	8-K	001-38937	12/1/2020	10.3
10.17+	Non-Negotiable Promissory Note, dated December 1, 2020, from Aterian, Inc. to 9830 Macarthur LLC.	8-K	001-38937	12/1/2020	10.4

Exhibit Number	Description	Incorporated by Reference			
		Form	File Number	Filing Date	Exhibit
10.18+	Transition Services Agreement, dated February 2, 2021, by and between Healing Solutions, LLC and Truweo, LLC.	8-K	001-38937	2/3/2021	10.8
10.19	Voting and Standstill Agreement, dated May 5, 2021, by and between Aterian, Inc. and Squatty Potty, LLC.	8-K	001-38937	5/11/2021	10.1
10.20+	Transition Services Agreement, dated May 5, 2021, by and between Squatty Potty, LLC and Truweo, LLC.	8-K	001-38937	5/11/2021	10.5
10.21	Shareholder Agreement, dated May 5, 2021, by and between Aterian, Inc. and Josef Eitan.	8-K	001-38937	5/11/2021	10.6
10.22	Shareholder Agreement, dated May 5, 2021, by and between Aterian, Inc. and Ran Nir.	8-K	001-38937	5/11/2021	10.7
10.23	Amendment to Lock-Up, Voting and Standstill Agreement, dated as of May 31, 2021, by and between Aterian, Inc. and Healing Solutions LLC.	10-Q	001-38937	8/9/2021	10.15
10.24	Amendment to Lock-Up, Voting and Standstill Agreement, dated as of May 31, 2021, by and between Aterian, Inc. and 9830 Macarthur LLC.	10-Q	001-38937	8/9/2021	10.16
10.25+	Credit and Security Agreement, dated as December 22, 2021, by and Aterian, Inc. and its subsidiaries party thereto as “Credit Parties”, the lenders party thereto from time to time and Midcap Funding IV Trust, as administrative agent	8-K	001-38937	12/27/2021	10.1
10.26#	Amendment to Joseph A. Risico Employment Agreement	10-Q	001-38937	11/08/2023	10.1
10.27#	Amendment to Arturo Rodriguez Employment Agreement	10-Q	001-38937	11/08/2023	10.2
10.28	Advisor Agreement, dated July 26, 2023, by and between Aterian, Inc. and William Kurtz.	8-K	001-38937	07/27/2023	10.2
10.29	Advisor Agreement, dated August 16, 2024, by and between Aterian, Inc. and William Kurtz.	8-K	001-38937	08/16/2024	10.1
10.30*	Executive Severance Plan	10-K	001-38937	03/25/2025	10.30
10.31*	Amendment No. 3 to that certain Credit and Security Agreement, dated as March 25, 2025, by and Aterian, Inc. and its subsidiaries party thereto as “Credit Parties,” the lenders party thereto from time to time and Midcap Funding IV Trust, as administrative agent.	10-K	001-38937	03/25/2025	10.31
19.1*	Insider Trading Policy	10-K	001-38937	03/21/2024	19.1
21.1*	List of Subsidiaries of the Registrant.				
23.1*	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.				
23.2*	Consent of UHY LLP, Independent Registered Public Accounting Firm.				
24.1*	Power of Attorney (included on the signature page to this Annual Report on Form 10-K).				

Exhibit Number	Description	Incorporated by Reference			
		Form	File Number	Filing Date	Exhibit
31.1*	Certifications of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.				
31.2*	Certifications of the Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.				
32.1**	Certifications of the Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
97.1*	Policy Relating to Recovery of Erroneously Awarded Compensation.				
101.INS	Inline XBRL Instance Document				
101.SCH	Inline XBRL Taxonomy Extension Schema Document				
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document				
104	Cover Page Interactive Data File (embedded within the Inline XBRL)				

* Filed herewith.

** Furnished herewith.

Indicates management contract or compensatory plan or arrangement.

+ Non-material schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules and exhibits upon request by the Securities and Exchange Commission.

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, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

ATERIAN, INC.

By: /s/ Arturo Rodriguez
Arturo Rodriguez
Chief Executive Officer

Date: March 25, 2025

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints, jointly and severally, Arturo Rodriguez and Joshua Feldman, and each of them acting individually, as his or her attorney-in-fact, each with full power of substitution and resubstitution, for him or her in any and all capacities, to sign any and all 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, granting unto said attorneys-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Signature	Title	Date
<u>/s/ Arturo Rodriguez</u> Arturo Rodriguez	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 25, 2025
<u>/s/ Joshua Feldman</u> Joshua Feldman	Chief Financial Officer <i>(Principal Financial Officer and Principal Accounting Officer)</i>	March 25, 2025
<u>/s/ William Kurtz</u> William Kurtz	Director and Chairman of the Board	March 25, 2025
<u>/s/ Susan Lattmann</u> Susan Lattmann	Director	March 25, 2025
<u>/s/ Sarah Liebel</u> Sarah Liebel	Director	March 25, 2025
<u>/s/ Bari Harlam</u> Bari Harlam	Director	March 25, 2025

Aterian, Inc.
Executive Severance Plan

ARTICLE I
PURPOSE

This Executive Severance Plan has been established by the Company on March 21, 2025 (the “**Effective Date**”) to provide Participants with the opportunity to receive severance benefits in the event of certain terminations of employment. The purpose of the Plan is to attract and retain qualified executives. The Plan is intended to be a top hat welfare benefit plan under ERISA.

Capitalized terms used but not otherwise defined herein have the meanings set forth in ARTICLE II.

ARTICLE II
DEFINITIONS

“**280G Payments**” has the meaning set forth in Section 9.04.

“**Administrator**” means the Board or any committee thereof duly authorized by the Board to administer the Plan.

“**Annual Target Bonus**” means the annual bonus for a Participant, as approved in writing by the Board and/or the Compensation Committee.

“**Board**” means the Board of Directors of the Company.

“**Cause**” has the same meaning as set forth in any unexpired employment agreement between the Company and the Participant or, in the absence of such agreement or definition of Cause therein, means that the Company determines in its reasonable discretion that any of the following situations gave rise to a Participant’s termination from service: (i) the Participant committed, was convicted, or pled no contest or any similar plea to a misdemeanor involving acts of dishonesty or breach of fiduciary duty or any felony; (ii) the Participant willfully failed to substantially perform his or her duties and responsibilities to the Company or deliberately violated a Company policy, the Participant received written notification of such failure from the Board describing the basis for the Company’s determination, and the Participant has not cured such failure within a period of 30 days following the notice; (iii) the Participant committed any act or acts of fraud, embezzlement, dishonesty, or other willful misconduct; (iv) without authorization, the Participant used or disclosed any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (v) the Participant breached any of his or her material obligations under any written agreement with the Company. The foregoing definition does not in any way limit the Company’s ability to terminate a Participant’s employment or other service relationship at any time, and the term “Company” will be interpreted herein to include any affiliate or successor thereto, if appropriate. Furthermore, a Participant’s service shall be deemed to have terminated for Cause within the meaning hereof if, at any time (whether before, on, or after termination of the Participant’s service), facts or circumstances are discovered that would have justified a termination for Cause, regardless of whether the Participant initiated the termination of the Participant’s service.

“**Change in Control**” means the first of the following to occur after the Effective Date:

(i) Acquisition of Controlling Interest. Any Person (other than Persons who are employees or service providers at any time more than one year before a transaction) becomes the Beneficial Owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities; provided that the foregoing shall exclude any bona fide sale of securities of the Company by the Company to one or more third parties for purposes of raising capital. In applying the preceding sentence, an agreement to vote securities shall be disregarded unless its ultimate purpose is to cause what would otherwise be a Change in Control, as reasonably determined by the Board.

(ii) Change in Board Control. During any consecutive one-year period, individuals who constituted the Board at the beginning of the period (or their approved replacements, as defined in the next sentence) cease for any reason to constitute a majority of the Board. A new director shall be considered an “approved replacement” director if his or her election (or nomination for election) was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of the period or were themselves approved replacement directors, but in either case excluding any director whose initial assumption of office occurred as a result of an actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board.

(iii) Merger. The Company consummates a merger or consolidation of the Company with any other corporation unless: (a) the voting securities of the Company outstanding immediately before the merger or consolidation would continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; and (b) no Person (other than Persons who are employees or service providers at any time more than one year before the transaction) becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities.

(iv) Sale of Assets. The Company sells or disposes of all, or substantially all, of the Company’s assets.

(v) Liquidation or Dissolution. The stockholders of the Company approve a plan or proposal for liquidation or dissolution of the Company.

Notwithstanding the foregoing, a “Change in Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following, which (I) the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions, or (II) any Person who was a Beneficial Owner, directly or indirectly, of securities in the Company representing 50% or more acquires additional securities in the Company, or (III) the Company converting from an incorporated entity to an unincorporated entity.

“**Change in Control Pro Rata Bonus**” has the meaning set forth in Section 4.02(b).

“**Change in Control Severance**” has the meaning set forth in Section 4.02(a).

“**Change in Control Qualifying Termination**” means the termination of a Participant’s employment either (a) by the Company other than for Cause, the Participant’s death, or the Participant’s Disability; or (b) by the Participant for Good Reason that occurred either (i) after a Change in Control and on or before the first anniversary thereof or (ii) at the request of a third party who had taken steps reasonably calculated to effect a Change in Control or in connection with or anticipation of a Change in Control.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. Any reference to COBRA shall be deemed to include a reference to any regulations promulgated thereunder.

“**Code**” means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to include a reference to any regulations promulgated thereunder.

“**Company**” means Aterian, Inc., a Delaware corporation, and any successor thereto.

“**Disability**” means such term as defined in any then-existing employment or service agreement between the Participant and the Company, or in the absence of such agreement (or the absence of such term therein), such term as defined in the Company’s long-term disability plan or policy then in effect with respect to that Participant, as such plan or policy may be in effect from time to time, and, if there is no such plan or policy, a total and permanent disability as defined in Code Section 22(e)(3).

“**Effective Date**” has the meaning set forth in ARTICLE I.

“**Eligible Employee**” means any full-time executive of the Company who is and designated as a Participant in Appendix A. Eligible Employees shall be limited to a select group of management or highly compensated employees within the meaning of Sections 201, 301, and 404 of ERISA.

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

“**Exchange Act**” means the Securities and Exchange Act of 1934, as amended.

“**Good Reason**” has the same meaning as set forth in any unexpired employment agreement between the Company and the Participant, or, in the absence of such agreement or definition of Good Reason therein, means (i) a reduction of a Participant’s base salary and bonus that diminishes the aggregate value of the Participant’s compensation except to the extent that the base salary and bonus of all other officers of the Company is similarly reduced; (ii) any change in a Participant’s position, title or reporting relationship with the Company that diminishes in any material respect the Participant’s authority, duties or responsibilities, provided, however, that a change in a Participant’s authority, duties or responsibilities solely due to the Company becoming a division, subsidiary or other similar part of a larger organization shall not by itself constitute Good Reason; or (iii) a relocation of a Participant’s principal place of employment that would result in an increase in the Participant’s one-way commute by more than 30 miles; provided, however, in each case, that the Participant has given the Company written notice within thirty (30) days of the initial occurrence of the event that is alleged to constitute Good Reason, such breach remains uncured in the thirty (30) day period after such notice, and the Participant terminates employment no later than ten (10) days after the cure period has expired.

“**Participant**” has the meaning set forth in Section 3.01.

“**Person**” has the meaning ascribed to it in Section 13(d)(3) of the Exchange Act.

“**Plan**” means this Aterian, Inc. Executive Severance Plan, as may be amended and/or restated from time to time.

“**Pro-Rata Bonus**” has the meaning set forth in Section 4.02(b).

“**Qualifying Termination**” means the termination of a Participant’s employment either (a) by the Company other than for Cause, the Participant’s death, or the Participant’s Disability; or (b) by the Participant for Good Reason; in each case, other than a termination of employment that qualifies as a “Change in Control Qualifying Termination.”

“**Release**” has the meaning set forth in Section 6.01.

“**Section 280G**” has the meaning set forth in Section 9.04.

“**Section 4999**” has the meaning set forth in Section 9.04.

“**Severance**” has the meaning set forth in Section 4.02(a).

“**Specified Employee Payment Date**” has the meaning set forth in Section 9.13(b).

ARTICLE III PARTICIPATION

Section III.01 Participants. The Administrator shall designate and provide written notice to each Eligible Employee chosen by the Administrator to participate in the Plan (each, a “**Participant**”). Appendix A of the Plan, as it may be updated from time to time by the Administrator, shall at all times contain a current list of Participants.

ARTICLE IV SEPARATION BENEFITS

Section IV.01 Separation Benefits Upon a Qualifying Termination. If a Participant experiences a Qualifying Termination, then, subject to ARTICLE VI, the Company will provide the Participant with the following:

(a) Severance in an amount equal to the Participant's annual base salary in effect immediately prior to the date of the Qualifying Termination ("**Severance**"). Subject to Section 9.13, Severance will be paid in substantially equal installments over the twelve-month period following the Qualifying Termination, payable in accordance with the Company's normal payroll practices, which payments in the aggregate are equal to the Severance and which shall begin as soon as practicable following the Qualifying Termination;

(b) A prorated annual bonus equal to the product of (i) the Annual Target Bonus, if any, for the Participant for the entire fiscal year in which the Qualifying Termination occurs; and (ii) a fraction, the numerator of which is the number of days the Participant was employed by the Company during the fiscal year in which the Qualifying Termination occurs and the denominator of which is the number of days in such year (a "**Pro-Rata Bonus**"). Subject to Section 9.13, a Participant's Pro-Rata Bonus shall be paid on the date that annual bonuses are paid to the Company's senior executives, but in no event later than two-and-a-half (2 1/2) months following the end of the calendar year in which the Qualifying Termination occurs; and

(c) For twelve months following the date of the Qualifying Termination, the Company shall cause the Company's welfare plans to continue medical and dental benefits to the Participant and/or the Participant's family on the same terms applicable to similarly situated active employees, with the Participant's share of the premiums no greater than that applicable to such similarly situated active employees; provided that (i) the Participant or qualified beneficiary of the Participant timely elects continuation coverage under COBRA; (ii) if the Participant becomes eligible for substantially similar medical and/or dental benefits in connection with subsequent employment or coverage under Medicare, the medical and/or dental benefits, as applicable, described herein shall terminate; and (iii) the benefits provided hereunder shall be provided in such a manner that such benefits are excluded from the Participant's income for federal income tax purposes. Notwithstanding the foregoing, if the Company reasonably determines that providing continued coverage under one or more of its welfare benefit plans contemplated herein could adversely affect the tax treatment of other participants covered under such plans, or would otherwise have adverse legal ramifications or adverse economic impact, the Company may, in its discretion, provide other insurance coverage substantially similar in the aggregate to the continued coverage otherwise required hereunder.

Section IV.02 Separation Benefits Upon a Change in Control Qualifying Termination. If a Participant experiences a Change in Control Qualifying Termination, then, subject to ARTICLE VI and Section 9.04, the Company will provide the Participant with the following:

(a) Severance in an amount equal to the Participant's base salary in effect immediately prior to the date of the Change in Control Qualifying Termination plus the Participant's Annual Target Bonus for the year in which the Change in Control Qualifying Termination occurs ("**Change in Control Severance**"). Subject to Section 9.13, Change in Control Severance will be paid in a single lump-sum as soon as practicable following the Change in Control, but in no event later than 60 days following the Change in Control.

(b) A prorated annual bonus equal to the product of (i) the Annual Target Bonus, if any, for the Participant for the entire fiscal year in which the Change in Control Qualifying Termination occurs; and (ii) a fraction, the numerator of which is the number of days the Participant was employed by the Company during the fiscal year in which the Change in Control Qualifying Termination occurs and the denominator of which is the number of days in such year (a "**Change in Control Pro-Rata Bonus**"). Subject to Section 9.13, the Change in Control Pro-Rata Bonus will be paid in a single lump-sum as soon as practicable following the Change in Control, but in no event later than 60 days following the Change in Control.

(c) For twelve months following the date of the Change in Control Qualifying Termination, the Company shall cause the Company's welfare plans to continue medical and dental benefits to the Participant and/or the Participant's family on the same terms applicable to similarly situated active employees, with the Participant's share of the premiums no greater than that applicable to such similarly situated active employees; provided that (i) the Participant or qualified beneficiary of the Participant timely elects continuation coverage under COBRA; (ii) if the Participant becomes eligible for substantially similar medical and/or dental benefits in connection with subsequent employment or coverage under Medicare, the medical and/or dental benefits, as applicable, described herein shall terminate; and (iii) the benefits provided hereunder shall be provided in such a manner that such benefits are excluded from the Participant's income for federal income tax purposes. Notwithstanding the foregoing, if the Company reasonably determines that providing continued coverage under one or more of its welfare benefit plans contemplated herein could adversely affect the tax treatment of other participants covered under such plans, or would otherwise have adverse legal ramifications or adverse economic impact, the Company may, in its discretion, provide other insurance coverage substantially similar in the aggregate to the continued coverage otherwise required hereunder.

ARTICLE V EQUITY AWARDS

Section V.01 Equity Awards in a Qualifying Termination. Notwithstanding the terms of the Company equity plan or plans under which a Participant's equity awards are granted or any applicable award agreements, or any equity-related terms in any employment agreement, if a Participant has a Qualifying Termination, then any outstanding equity awards shall be treated as follows:

(a) With respect to an individual who is the Chief Executive Officer of the Company as of the Effective Date, subject to ARTICLE VI, any outstanding equity awards shall not be terminated and shall immediately become fully vested.

(b) With respect to any Participant in the Plan other than a Participant described in (a), subject to ARTICLE VI, any outstanding equity awards shall not be terminated and shall continue to vest during the twelve month period following the Qualifying Termination.

Section V.02 Equity Awards in a Change in Control Qualifying Termination. Notwithstanding the terms of the Company equity plan or plans under which a Participant's equity awards are granted or any applicable award agreements, or any equity-related terms in any employment agreement, if a Participant has a Change in Control Qualifying Termination, subject to ARTICLE VI, the Participant's outstanding unvested time-based equity awards shall become fully vested.

ARTICLE VI CONDITIONS

Section VI.01 Conditions A Participant's entitlement to any severance or equity benefits under ARTICLE IV and ARTICLE V will be subject to (i) the Participant experiencing a Qualifying Termination or Change in Control Qualifying Termination, as applicable; and (ii) the Participant executing (A) a release of claims in favor of the Company, its affiliates and their respective officers and directors; and (B) an agreement including non-competition, non-solicitation, non-disparagement, confidentiality and further cooperation provisions substantially similar to those set forth in Appendix B hereto.

ARTICLE VII CLAIMS PROCEDURES

Section VII.01 Initial Claims. A Participant who believes that the Participant is eligible for a payment under the Plan that has not been received may submit a written claim for benefits to the Plan within 60 days after the Participant's Qualifying Termination or Change in Control Qualifying Termination. Claims should be addressed and sent to:

Aterian, Inc.
Attention: General Counsel
legal@aterian.io
350 Springfield Avenue, Suite 200
Summit, NJ 07901

If the Participant's claim is denied, in whole or in part, the Participant will be furnished with written notice of the denial within 90 days after the Administrator's receipt of the Participant's written claim, unless special circumstances require an extension of time for processing the claim, in which case a period not to exceed 180 days will apply. If such an extension of time is required, written notice of the extension will be furnished to the Participant before the termination of the initial 90-day period and will describe the special circumstances requiring the extension, and the date on which a decision is expected to be rendered. Written notice of the denial of the Participant's claim will contain the following information:

- (a) the specific reason or reasons for the denial of the Participant's claim;
- (b) references to the specific Plan provisions on which the denial of the Participant's claim was based;
- (c) a description of any additional information or material required by the Administrator to reconsider the Participant's claim (to the extent applicable) and an explanation of why such material or information is necessary; and
- (d) a description of the Plan's review procedures and time limits applicable to such procedures, including a statement of the Participant's right to bring a civil action under Section 502(a) of ERISA following a benefit claim denial on review.

Section VII.02 Appeal of Denied Claims. If the Participant's claim is denied and they wish to submit a request for a review of the denied claim, the Participant or their authorized representative must follow the procedures described below:

- (a) Upon receipt of the denied claim, the Participant (or their authorized representative) may file a request for review of the claim in writing with the Administrator. This request for review must be filed no later than 60 days after the Participant has received written notification of the denial.
- (b) The Participant has the right to submit in writing to the Administrator any comments, documents, records or other information relating to their claim for benefits.
- (c) The Participant has the right to be provided with, upon request and free of charge, reasonable access to and copies of all pertinent documents, records and other information that is relevant to their claim for benefits.
- (d) The review of the denied claim will take into account all comments, documents, records and other information that the Participant submitted relating to their claim, without regard to whether such information was submitted or considered in the initial denial of their claim.

Section VII.03 Administrator's Response to Appeal. The Administrator will provide the Participant with written notice of its decision within 60 days after the Administrator's receipt of the Participant's written claim for review. There may be special circumstances which require an extension of this 60-day period. In any such case, the Administrator will notify the Participant in writing within the 60-day period and the final decision will be made no later than 120 days after the Administrator's receipt of the Participant's written claim for review. The Administrator's decision on the Participant's claim for review will be communicated to the Participant in writing and will clearly state:

- (a) the specific reason or reasons for the denial of the Participant's claim;
- (b) reference to the specific Plan provisions on which the denial of the Participant's claim is based;
- (c) a statement that the Participant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, the Plan and all documents, records, and other information relevant to their claim for benefits; and
- (d) a statement describing the Participant's right to bring an action under Section 502(a) of ERISA.

Section VII.04 Exhaustion of Administrative Remedies. The exhaustion of these claims procedures is mandatory for resolving every claim and dispute arising under the Plan. As to such claims and disputes:

- (a) no claimant shall be permitted to commence any legal action to recover benefits or to enforce or clarify rights under the Plan under Section 502 or Section 510 of ERISA or under any other provision of law, whether or not statutory, until these claims procedures have been exhausted in their entirety; and
- (b) in any such legal action, all explicit and implicit determinations by the Administrator (including, but not limited to, determinations as to whether the claim, or a request for a review of a denied claim, was timely filed) shall be afforded the maximum deference permitted by law.

ARTICLE VIII ADMINISTRATION, AMENDMENT AND TERMINATION

Section VIII.01 Administration. The Administrator has the exclusive right, power and authority, in its sole and absolute discretion, to administer and interpret the Plan. The Administrator has all powers reasonably necessary to carry out its responsibilities under the Plan including (but not

limited to) the sole and absolute discretionary authority to:

- (a) administer the Plan according to its terms and to interpret Plan provisions;
- (b) resolve and clarify inconsistencies, ambiguities, and omissions in the Plan and among and between the Plan and other related documents;
- (c) take all actions and make all decisions regarding questions of eligibility for benefits, and benefit amounts;
- (d) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of the Plan;
- (e) process and approve or deny all claims for benefits; and
- (f) decide or resolve any and all questions, including benefit eligibility determinations and interpretations of the Plan, as may arise in connection with the Plan.

The decision of the Administrator on any disputes arising under the Plan, including (but not limited to) questions of construction, interpretation and administration shall be final, conclusive and binding on all persons having an interest in or under the Plan. Any determination made by the Administrator shall be given deference in the event the determination is subject to judicial review and shall be overturned by a court of law only if it is arbitrary and capricious.

Section VIII.02 Amendment and Termination. The Company reserves the right to amend or terminate the Plan at any time, provided that no such amendment or termination that has the effect of reducing or diminishing the material rights or potential financial benefits of any Participant will be effective without the written consent of such Participant.

ARTICLE IX GENERAL PROVISIONS

Section IX.01 At-Will Employment. The Plan does not alter the status of each Participant as an at-will employee of the Company. Nothing contained herein shall be deemed to give any Participant the right to remain employed by the Company or to interfere with the rights of the Company to terminate the employment of any Participant at any time, with or without Cause.

Section IX.02 Effect on Other Plans, Agreements, and Benefits.

(a) Any benefits payable to a Participant under the Plan will be: (i) in lieu of and not in addition to any severance benefits to which the Participant would otherwise be entitled under any general severance policy or severance plan maintained by the Company or any agreement between the Participant and the Company that provides for severance benefits (unless the policy, plan, or agreement expressly provides for severance benefits to be in addition to those provided under the Plan); and (ii) a reduced by any severance benefits to which the Participant is entitled by operation of a statute or government regulations.

(b) Any severance benefits payable to a Participant under the Plan will not be counted as compensation for purposes of determining benefits under any other benefit policies or plans of the Company, except to the extent expressly provided therein.

Section IX.03 Severability. The invalidity or unenforceability of any provision of the Plan shall not affect the validity or enforceability of any other provision of the Plan. If any provision of the Plan is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, such provision shall be deemed modified, amended and narrowed to the extent necessary to render such provision legal, valid, and enforceable, and the other remaining provisions of the Plan shall not be affected but shall remain in full force and effect.

Section IX.04 Code Section 280G. In the event that the severance and other benefits provided for in this Plan or otherwise (“**280G Payments**”) payable to a Participant (i) constitute “parachute payments” within the meaning of Section 280G of the Code (“**Section 280G**”), and (ii) but for this Section 9.04, would be subject to the excise tax imposed by Section 4999 of the Code (“**Section 4999**”), then the 280G Payments will be either: (i) delivered in full, or (ii) delivered as to such lesser extent which would result in no portion of such benefits being subject to excise tax under Section 4999, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by the Participant on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999. If a reduction in severance and/or other benefits constituting “parachute payments” is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: (i) cancellation of awards granted “contingent on a change in ownership or control” (within the meaning of Section 280G), which will occur in the reverse order of the date of grant for such awards (i.e., the most recently granted awards will be reduced first); (ii) reduction of cash payments, which will occur in reverse chronological order such that the cash payment owed on the latest date following the occurrence of the event triggering such excise tax will be the first cash payment to be reduced; (iii) reduction of acceleration of vesting of equity awards, which will occur in the reverse order of the date of grant for such awards (i.e., the vesting of the most recently granted equity awards will be reduced first); and (iv) reduction of other benefits paid or provided to the Participant, which will occur in reverse chronological order such that the benefit owed on the latest date following the occurrence of the event triggering such excise tax will be the first benefit to be reduced. If more than one equity award was made to the Participant on the same date of grant, all such awards will have their acceleration of vesting reduced pro rata.

Notwithstanding the foregoing, to the extent the Company submits any payment or benefit payable to the Participant under this Plan or otherwise to the Company’s stockholders for approval in accordance with Treasury Regulation Section 1.280G-1 Q&A 7, the foregoing provisions shall not apply following such submission and such payments and benefits will be treated in accordance with the results of such vote, except that any reduction in, or waiver of, such payments or benefits required by such vote will be applied without any application of discretion by the Participant and in the order prescribed by this Section 9.04. In no event will a Participant have any discretion with respect to the ordering of payment reductions.

Unless the Participant and the Company otherwise agree in writing, any determination required under this Section 9.04 will be made in writing by a nationally recognized firm of independent public accountants or valuation firm selected by the Company or such other person or entity to which the parties mutually agree (the “**Firm**”), whose determination will be conclusive and binding upon the Participant and the Company. For purposes of making the calculations required by this Section 9.04 the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999. The Participant and the Company will furnish to the Firm

such information and documents as the Firm may reasonably request in order to make a determination under this Section 9.04. The Company will bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section 9.04.

Section IX.05 Headings and Subheadings. Headings and subheadings contained in the Plan are intended solely for convenience and no provision of the Plan is to be construed by reference to the heading or subheading of any section or paragraph.

Section IX.06 Unfunded Obligations. The amounts to be paid to Participants under the Plan are unfunded obligations of the Company. The Company is not required to segregate any monies or other assets from its general funds with respect to these obligations. Participants shall not have any preference or security interest in any assets of the Company other than as a general unsecured creditor.

Section IX.07 Successors. The Plan will be binding upon any successor to the Company, its assets, its businesses or its interest, in the same manner and to the same extent that the Company would be obligated under the Plan if no succession had taken place. In the case of any transaction in which a successor would not by the foregoing provision or by operation of law be bound by the Plan, the Company shall require any successor to the Company to expressly and unconditionally assume the Plan in writing and honor the obligations of the Company hereunder, in the same manner and to the same extent that the Company would be required to perform if no succession had taken place. All payments and benefits that become due to a Participant under the Plan will inure to the benefit of his or her heirs, assigns, designees, or legal representatives.

Section IX.08 Transfer and Assignment. Neither a Participant nor any other person shall have any right to sell, assign, transfer, pledge, anticipate or otherwise encumber, transfer, hypothecate or convey any amounts payable under the Plan prior to the date that such amounts are paid, except that, in the case of a Participant's death, such amounts shall be paid to the Participant's beneficiaries.

Section IX.09 Waiver. Any party's failure to enforce any provision or provisions of the Plan will not in any way be construed as a waiver of any such provision or provisions, nor prevent any party from thereafter enforcing each and every other provision of the Plan.

Section IX.10 Governing Law. To the extent not pre-empted by federal law, the Plan shall be construed in accordance with and governed by the laws of Delaware without regard to conflicts of law principles. Any action or proceeding to enforce the provisions of the Plan will be brought only in a state or federal court located in the state of New York, county of New York, and each party consents to the venue and jurisdiction of such court. The parties hereby irrevocably submit to the non-exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.]

Section IX.11 Clawback. Any amounts payable under the Plan are subject to any policy (whether in existence as of the Effective Date or later adopted) established by the Company providing for clawback or recovery of amounts that were paid to the Participant. The Company will make any determination for clawback or recovery in its sole discretion and in accordance with any applicable law or regulation.

Section IX.12 Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

Section IX.13 Section 409A.

(a) The Plan is intended to comply with Section 409A of the Code or an exemption thereunder and shall be construed and administered accordingly. Notwithstanding any other provision of the Plan, payments provided under the Plan may only be made upon an event and in a manner that complies with Section 409A of the Code or an applicable exemption. Any payments under the Plan that may be excluded from Section 409A of the Code either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A of the Code to the maximum extent possible. For purposes of Section 409A of the Code, each installment payment provided under the Plan shall be treated as a separate payment. Any payments to be made under the Plan upon a termination of employment shall only be made upon a "separation from service" under Section 409A of the Code. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under the Plan comply with Section 409A of the Code and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by a Participant on account of non-compliance with Section 409A of the Code.

(b) Notwithstanding any other provision of the Plan, if any payment or benefit provided to a Participant in connection with his or her Qualifying Termination or Change in Control Qualifying Termination is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code and the Participant is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i) of the Code, then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the Qualifying Termination or Change in Control Qualifying Termination or, if earlier, on the Participant's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which the Participant's separation from service occurs shall be paid to the Participant in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule. Notwithstanding any other provision of the Plan, if any payment or benefit is conditioned on the Participant's execution of a Release or other agreement, the first payment shall include all amounts that would otherwise have been paid to the Participant during the period beginning on the date of the Qualifying Termination or Change in Control Qualifying Termination and ending on the payment date if no delay had been imposed.

(c) To the extent required by Section 409A of the Code, each reimbursement or in-kind benefit provided under the Plan shall be provided in accordance with the following: (i) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year; and (ii) any right to reimbursements or in-kind benefits under the Plan shall not be subject to liquidation or exchange for another benefit.

APPENDIX A

PARTICIPANTS

As of the Plan Effective Date, the following employees are Participants in the Plan:

- **Arturo Rodriguez**

- **Joshua Feldman**
 - **Roi Zahut**
 - **Christopher Porcelli**
 - **Phillip Lepper**
-

APPENDIX B

[DATE]

Re: Terms of Separation

Dear :

This letter confirms the agreement (“**Agreement**”) between you and Aterian Group, Inc. (the “**Company**”) concerning the terms of your separation and offers you the separation compensation we discussed in exchange for a general release of claims and covenant not to sue.

1. **Separation Date:** is your last day of employment with the Company (the “*Separation Date*”). You will be paid through [DATE] .

2. **Benefits:** [_____]

3. **Separation Compensation:** Provided that you sign and return this Agreement to the Company within twenty-one (21) calendar days after your receipt thereof, (the “*Execution Date*”), do not revoke this agreement pursuant to Section 18 below, and comply with its terms: You shall be entitled to a separation payment [_____].

4. **Salary through Separation Date:** Regardless of whether you sign this Agreement, you will receive any earned and unpaid salary through the Separation Date in accordance with Company policy. Other than the aforementioned salary, you agree that the Company and the other Released Parties do not owe you any other amounts, including without limitation any wages, salary, bonuses, reimbursable expenses, or other payments or benefits of any kind. Further, any amounts payable under this Agreement shall not constitute compensation or otherwise be creditable with respect to any Company benefit plans or programs.

5. **Tax Reporting and Withholding:** The Company will report all payments due under this Agreement to tax authorities, and withhold taxes and other amounts from them, as it determines is consistent with applicable law. You agree not to make any claim against the Company or any other person based on how the Company reports amounts or withholds taxes from them, or if an adverse determination is made as to the tax treatment of any amounts payable under this Agreement. You agree that the Company has no duty to try to prevent such an adverse determination.

6. **General Release and Waiver by Employee:** Except as otherwise provided in Section 9, you, and anyone claiming through you or on your behalf, hereby waive and release the Company and its current and former, direct and indirect parents, subsidiaries, brother-sister companies, owners and all other affiliates and related partnerships, joint ventures, or other entities, and, with respect to each of them, their predecessors and successors; and, with respect to each such entity, all of its past, present, and future employees, officers, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by, through, under or in concert with any of the persons or entities listed in this Section, and their successors (together, the “**Company Released Parties**”) from any and all claims, proceedings, charges, causes of actions, grievances, suits, and complaints, whether known or unknown, that you now have or have ever had against the Company or any of the other Company Released Parties arising from any act, omission, or event occurring or existing at any time prior to or on the Execution Date, including but in no way limited to any matter relating to your employment by the Company and or the termination of that employment, whether arising in tort, contract, statute, common law, or equity, before any federal, state, local, or private court, agency, arbitrator, mediator, or other entity (“*Released Claims*”). Without limitation, this release specifically includes, but is not limited to, any and all claims that the Company Released Parties:
 - a. violated any personnel policies, stock option plans, equity incentive plans, handbooks, contracts of employment, or covenants of good faith and fair dealing;
 - b. violated the National Labor Relations Act; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Age Discrimination in Employment Act; the Older Workers’ Benefits Protection Act; the Americans With Disabilities Act, as amended; the Family and Medical Leave Act; the Equal Pay Act of 1963; the Occupational Safety and Health Act; the Fair Labor Standards Act; Sections 1981 through 1988 of Title 42 of the United States Code; the Immigration Reform and Control Act; the Rehabilitation Act of 1973, as amended; the Employee Retirement Income Security Act of 1974, as amended; the Fair Credit Reporting Act.; the Worker Adjustment and Retraining Notification Act; the Uniform Services Employment and Reemployment Rights Act; the Genetic Information Nondiscrimination Act; the New York State Human Rights Law; the New York Labor Law (including but not limited to the Retaliatory Action by Employers Law, the New York State Work Adjustment and Retraining Notification Act, all provisions prohibiting discrimination and retaliation, and all provisions regulating wage and hour law); the New York Civil Rights Law; Section 125 of the New York Workers’ Compensation Law; Article 23-A of the New York Correction Law; the New York City Human Rights Law, and the New York City Earned Sick Leave Law and/or any other federal, state or local statute, law, regulation or ordinance, including but not limited to any claim that Company discriminated against you on the basis of age, race, color, sex (including sexual harassment), pregnancy, sexual orientation, transgender status, national origin, ancestry, disability, religion, membership in the military or National Guard, union activities, genetic background, arrest or conviction record; and/or
 - c. violated public policy or common law, including, but not limited to, claims for retaliatory discharge, negligent hiring, retention or supervision, assault, battery, defamation, intentional or negligent infliction of emotional distress and/or mental anguish, intentional interference with a contract or prospective economic advantage, negligence, invasion of privacy, detrimental reliance, loss of consortium and/or promissory estoppel.

As part of this release, you expressly waive any right to recovery of compensation of any kind, including costs, fees, or other expenses, including attorneys’ fees, incurred in these matters. The foregoing identification of specific statutes is for purposes of example only, and the omission of any specific statute or law should not limit the scope of this general release in any manner.

In the event of any complaint, charge, proceeding or other claim (collectively, "Claims") filed with any court, other tribunal or governmental or regulatory entity that involves or is based upon any of the Released Claims pursuant to Section 9 below, you hereby waive and agree not to accept any money or other personal relief on account of any such Claims for any actual or alleged personal injury or damages to you, including any costs, fees, or other expenses, including attorneys' fees, incurred by or on behalf of you (however, this Agreement does not limit your eligibility to receive an award under applicable law, if any, for providing truthful information to a governmental agency or regulatory entity). Notwithstanding the foregoing, the releases and waivers in this Section 6 shall not apply to any claim for unemployment or workers' compensation, or other claim that by law is non-waivable.

7. **Affirmations/No Pending Actions:** You affirm that you have not filed or caused to be filed, and are not presently a party to, any claim, complaint, charge, or action against the Company Released Parties in any forum or form (provided, however, that you need not disclose to the Company, and the foregoing affirmation does not apply to, conduct or matters described in Section 9 below); you are the sole owner of the Released Claims; none of the Released Claims has been transferred or assigned or caused to be transferred or assigned to any other person, firm or other legal entity; and you have the full right and power to grant, execute, and deliver the releases, undertakings, and agreements contained in this Agreement. You further affirm that you are not entitled to and will not receive any compensation, payments, benefits, or recovery of any kind from the Company or the other Company Released Parties and have been paid all compensation, wages, bonuses, vacation, commissions and/or benefits to which you may be entitled, except in each case as expressly provided in this Agreement. In addition, you affirm that you have not suffered any on-the-job injury for which you have not already filed a claim. You also affirm that you have not been denied any leave of absence for which you were qualified nor have you been discriminated against or retaliated against for taking any leave of absence or any other reason, including but not limited to leaves pursuant to any applicable law.

8. **Covenant Not to Sue:** Except as otherwise provided in Section 9, you agree not to undertake any litigation or make any claim whatsoever against the Company Released Parties that arises out of or in any way relates to the Released Claims.

9. **Protected Disclosures:** Nothing in this Agreement affects your right to bring any claims for breach of the terms and conditions of this Agreement, claims arising from any future conduct directed at you, and any claim(s) that cannot be released by law. Nothing in this Agreement shall prohibit you from confidentially or otherwise (without informing the Company) communicating or filing a charge or complaint with a federal, state, local or other governmental agency or regulatory (including self-regulatory) entity, including concerning alleged or suspected criminal conduct or unlawful employment practices; participating in a governmental agency or regulatory entity investigation (or proceeding); or giving truthful testimony, statements, or disclosures to a governmental agency or regulatory entity, or if properly subpoenaed or otherwise required to do so under applicable law, including any regulation or legal process; or requesting or receiving confidential legal advice (at your own expense); or exercising any protected right to communicate about lawfully acquired compensation information or other working conditions, including but not limited to exercising Section 7 rights under the National Labor Relations Act. Furthermore, the U.S. Defend Trade Secrets Act of 2016 provides that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (1) in confidence to a federal, state, or local government official (either directly or indirectly) or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement limits or otherwise affects any such rights or creates liability for any such protected conduct. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual: (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

10. **Return of Company Property:** You hereby warrant and represent to the Company that you have returned to the Company, or will return prior to the payment referenced in Section 3, all property or data of the Company of any type whatsoever that has been in your possession or control, including identification cards or badges, access codes or devices, keys, laptops, computers, telephones, mobile phones, hand-held electronic devices, credit cards, electronically stored documents or files, physical files, and any other Company property in your possession or control. You further acknowledge and agree that you no longer have access to and do not claim ownership of any of Company cloud storage accounts.

11. **Confidential and Proprietary Information:** You hereby acknowledge that you remain bound by the Proprietary Information and Inventions Assignment Agreement between you and the Company and that as a result of your employment with the Company you have had access to the Company's Proprietary Information (as defined in the agreement), that you will hold all Proprietary Information in strictest confidence and that you will not make use of such Proprietary Information on behalf of anyone. You further confirm that you have delivered to the Company all documents and data of any nature containing or pertaining to such Proprietary Information and that you have not taken with you any such documents or data or any reproduction thereof.

12. **Non-Disparagement/Non-Competition:** Except as provided in Section 9, you shall refrain from all conduct, verbal or otherwise, that directly or indirectly disparages or damages the reputation, goodwill, or standing in the community of the Company, any of the Company's products or brands, or any Company Released Party; provided, however, that nothing herein shall preclude you from discussing or disclosing information about any unlawful acts by the Company, such as harassment or discrimination or any other conduct you have reason to believe is unlawful, or from testifying as required by lawful subpoena or other legal process or making good faith reports to governing regulatory bodies or authorities, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation.

You shall refrain for a period of one year from the date hereof from directly or indirectly, competing against, or assisting third parties in any way that could reasonably be deemed to compete with, the Company's essential oils, Squatty Potty and Photo Paper Direct (PPD) businesses.

13. **Neutral Reference:** The Company agrees to respond to any inquiries from third parties, including prospective employers, by disclosing only your dates of employment and title.

14. **Confidentiality:** Except as provided in Section 9, you agree not to disclose the existence or terms of this Agreement, or any facts, circumstances or allegations involving or related to any alleged claims that you have or may have against the Company Released Parties that are released in this Agreement, to any third parties with the exception of your accountants, attorneys, and spouse, provided that each such person shall be bound by this confidentiality provision and you shall ensure such confidentiality. You and the Company each acknowledge, agree and affirmatively state that the confidentiality obligations set forth in this Section 14 are the documented and explicit preference of, and are mutually beneficial to, each of you, including without limitation because you wish to maintain the privacy of all such matters and both parties recognize the benefits of a confidential resolution of all such matters.

15. **Arbitration/Waiver of Jury Trial:** The Company and you agree to resolve on an individual basis any disputes you may have with each other through final and binding arbitration. For example, you are agreeing to arbitrate any dispute about the formation, validity, or meaning of this Agreement and any contract, tort, or statutory claims (including but not limited to claims for defamation, discrimination and retaliation). You also agree to resolve through final

and binding arbitration any disputes you have with any other Company Released Party who elects to arbitrate those disputes under this subsection. Arbitrations will be conducted by JAMS in accordance with its employment dispute resolution rules (and no other JAMS rules), except that if any provision of this Section conflicts with the JAMS rules, then the provision of this Section will prevail. This agreement to arbitrate does not preclude resort to or recovery through any government agency process or proceeding, including but not limited to those of the National Labor Relations Board and the Equal Employment Opportunity Community (or its state and local counterparts). Except as otherwise may be required by law, the parties to the arbitration will bear their own costs and attorney's fees and share equally the JAMS fee and the arbitrator's fee; provided, however, that the arbitrator at the conclusion of the arbitration will award costs and attorney's fees to the prevailing party, except where the fee-shifting law applicable to the claim(s) asserted provides otherwise. You acknowledge that you understand the Arbitration requirements contained in this Section and that Arbitration would be in lieu of a court or jury trial. **YOU AND THE COMPANY BOTH WAIVE THE RIGHT TO A JURY TRIAL.** The Federal Arbitration Act will govern this Section, but if for any reason the FAA is held to be inapplicable, then the law of arbitrability of the state in which you last worked for the Company will apply.

16. No Admission of Liability: This Agreement is not and shall not be construed or contended by you to be an admission or evidence of any wrongdoing or liability on the part of the Company or any other of the Company Released Parties. The Company Released Parties expressly deny any such illegal or wrongful conduct by them. This Agreement shall be afforded the maximum protection allowable under the Federal Rules of Evidence 408 and/or any other state or federal provisions of similar effect.

17. Section 409A: This Agreement is intended to comply with or be exempt from Section 409A of the Internal Revenue Code and the regulations thereunder (Section 409A), and the Company shall have complete discretion to interpret and construe this Agreement in any manner that establishes an exemption from (or otherwise conforms to) the requirements of Section 409A. For purposes of Section 409A, each payment hereunder shall at all times be considered a separate and distinct payment. To the extent required under Section 409A, any payments to be made under this Agreement on a termination of employment only will be made upon a "separation from service" within the meaning of Section 409A and any payments that otherwise would be made to you during the first six months following your separation from service will instead be made to you on the first day of the seventh month following your separation from service. If the period you have to consider and revoke this Agreement spans two calendar years, notwithstanding anything to the contrary in this Agreement, no payment will be made to you prior to the second calendar year. The Company makes no guarantee as to any tax treatment relating to this Agreement and neither the Company, its employees, officers, directors, or attorneys shall have any liability to you on account of any adverse tax or related consequences including but not limited to adverse consequences under Section 409A.

18. Acknowledgement and Waiver: You acknowledge, understand, and agree that: (a) you have read this Agreement in its entirety and understand all of its terms; (b) by this Agreement, you have been advised to consult with an attorney (chosen by you and at your expense) before executing this Agreement; (c) you knowingly, freely and voluntarily assent to all of the terms and conditions of this Agreement including, without limitation, the waiver, release, and covenants contained in this Agreement; (d) you are signing this Agreement, including the waiver and release, in exchange for good and valuable consideration in addition to anything of value to which you are otherwise entitled; (e) you are not waiving or releasing rights or claims that may arise after you sign this Agreement; (f) you understand that the waiver and release in this Agreement is being requested in connection with your separation from employment from the Company; (g) you have been given at least twenty-one (21) calendar days in which to consider whether to execute this Agreement, to ask questions, and to consult with an attorney of your choice; and (h) you shall have an additional seven (7) calendar days after the date on which you sign this Agreement to revoke the Agreement upon written notice to chris@aterian.io and the Agreement will not become effective or enforceable until this seven (7)-calendar day revocation period has expired without any revocation by you. If you revoke this Agreement, it shall be null and void. Any modification of this Agreement or any exhibits or attachments hereto, whether material or immaterial, will not restart the twenty-one (21) calendar day consideration period set forth above.

19. Complete Agreement: This Agreement, together with the Proprietary Information and Inventions Assignment Agreement referenced in Section 11 and any other restrictive covenants that you have executed in connection with your compensation from or employment by the Company (including all stock award agreements), constitute the entire agreement between you and the Company with respect to the subject matter hereof and supersede all prior negotiations and agreements, whether written or oral, relating to such subject matter. You acknowledge that neither the Company nor their agents or attorneys have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this Agreement for the purpose of inducing you to execute the Agreement, and you acknowledge that you have executed this Agreement in reliance only upon such promises, representations and warranties as are contained herein, and that you are executing this Agreement voluntarily, free of any duress or coercion.

20. Severability: The provisions of this Agreement are severable, and if any part of it is found to be invalid or unenforceable, the other parts shall remain fully valid and enforceable. Specifically, should a court, arbitrator, or government agency conclude that a particular claim may not be released as a matter of law, it is the intention of the parties that the general release, the waiver of unknown claims and the covenant not to sue above shall otherwise remain effective to release any and all other claims.

21. Modification; Counterparts; Facsimile/PDF Signatures: It is expressly agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement that specifically refers to this Agreement, executed by authorized representatives of each of the parties to this Agreement. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Execution of a facsimile, PDF or by other electronic means acceptable to the Company shall have the same force and effect as execution of an original and a copy of a signature (or other electronic version) will be admissible in any legal proceeding as if an original.

22. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

This offer of separation compensation in exchange for a release of claims will expire at 5:00 p.m. (Eastern Time) on [DATE].

If you agree to abide by the terms outlined in this letter, please sign this letter below and also sign the attached copy and return it to me. I wish you the best in your future endeavors.

Sincerely,

ATERIAN GROUP, INC

By: _____

Christopher Porcelli

General Counsel & Head of People

BEFORE SIGNING THIS AGREEMENT, READ IT CAREFULLY, AND THE COMPANY ADVISES YOU TO DISCUSS IT WITH YOUR ATTORNEY. YOU HAVE 21 DAYS FOLLOWING THE DATE ON WHICH YOU RECEIVED THIS AGREEMENT TO CONSIDER IT AND DELIVER A DIGITAL SIGNED COPY OF IT TO CHRIS@ATERIAN.IO. BY SIGNING IT, YOU WILL BE WAIVING YOUR KNOWN AND UNKNOWN CLAIMS.

YOU MAY RESCIND THIS AGREEMENT. TO DO SO, YOU MUST DELIVER A WRITTEN NOTICE THAT YOU ARE RESCINDING THIS AGREEMENT TO CHRIS@ATERIAN.IO BEFORE SEVEN DAYS EXPIRE FROM THE TIME YOU SIGNED IT. IF YOU RESCIND THIS AGREEMENT, IT WILL NOT GO INTO EFFECT AND YOU WILL NOT RECEIVE THE PAYMENTS OR BENEFITS DESCRIBED IN IT THAT ARE CONTINGENT ON YOUR ENTERING INTO AND NOT RESCINDING THIS AGREEMENT.

READ, UNDERSTOOD AND AGREED

Date: _____

AMENDMENT NO. 3 TO CREDIT AND SECURITY AGREEMENT

This AMENDMENT NO. 3 TO CREDIT AND SECURITY AGREEMENT (this “**Agreement**”) is made as of March 25, 2025, by and among **ATERIAN, INC.**, a Delaware corporation (“**Aterian Holdco**”), **ATERIAN GROUP, INC.**, a Delaware corporation (“**Aterian**”), each of Aterian Holdco’s direct and indirect subsidiaries set forth on the signature pages hereto as Borrowers (each, a “**Borrower**”, and collectively “**Borrowers**”), **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, individually as a Lender and as Agent (in such capacity and together with its permitted successors and assigns, the “**Agent**”), and the other financial institutions or other entities from time to time parties to the Credit Agreement referenced below, each as a Lender.

RECITALS

- A. Agent, Lenders and Borrowers are parties to that certain Credit and Security Agreement, dated as of December 22, 2021 (as amended prior to the date hereof, the “**Original Credit Agreement**” and as amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the “**Credit Agreement**”), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers and certain of their Affiliates in the amounts and manner set forth in the Credit Agreement.
- B. Borrowers have requested, and Agent and Lenders have agreed, on and subject to the terms and conditions set forth in this Agreement, to, among other things, amend certain provisions of the Original Credit Agreement in accordance with the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, the Lenders and Borrowers hereby agree as follows:

1. **Recitals.** This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. The Recitals set forth above shall be construed as part of this Agreement as if set forth fully in the body of this Agreement and capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).
 2. **Amendments to Original Credit Agreement.** Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 3 below, the Original Credit Agreement (including any applicable exhibits and schedules thereto) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold and double-underlined text (indicated textually in the same manner as the following example: **bold and double-underlined text**) as set forth on the pages of the Credit Agreement attached as Annex A hereto.
 3. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which the following condition has been satisfied, as determined by Agent in its sole discretion:
 - a. each Borrower shall have delivered to Agent this Agreement, executed by an authorized officer of such Borrower;
 - b. all representations and warranties of the Borrowers contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date (and such parties’ delivery of their respective signatures hereto shall be deemed to be its certification thereof); and
 - c. immediately prior to and after giving effect to this Agreement, no Default or Event of Default exists under any of the Financing Documents.
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4. **Representations and Warranties; Reaffirmation of Security Interest.** Each Borrower hereby (a) confirms that all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Borrower as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date, and (b) covenants to perform its respective obligations under the Credit Agreement. Each Borrower confirms and agrees that all security interests and Liens granted to Agent continue in full force and effect, and all Collateral remains free and clear of any Liens, other than Permitted Liens. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral. Each Borrower acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Borrower, and are enforceable against such Borrower in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.
 5. **Costs and Fees.** Borrowers shall be responsible for the payment of all reasonable and documented out-of-pocket costs and fees of Agent's counsel incurred in connection with the preparation of this Agreement and any related documents. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.
 6. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Original Credit Agreement, the other Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.
 7. **Release.** In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly), based in whole or in part on facts, whether or not now known, existing on or before the date hereof, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Financing Documents or transactions contemplated thereby or any actions or omissions in connection therewith or (ii) any aspect of the dealings or relationships between or among any or all of the Borrowers, on the one hand, and any or all of the Released Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. Each Borrower acknowledges that the foregoing release is a material inducement to Agent's and Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Lenders in connection therewith.
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8. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.
9. **Confidentiality.** No Borrower will disclose the contents of this Agreement, the Credit Agreement or any of the other Financing Documents to any third party (other than to such Borrower's current and prospective direct and indirect financing sources, acquirors and holders of Debt of Credit Parties and the Credit Parties' direct and indirect equityholders, and its and their respective attorneys, advisors, directors, managers and officers on a need-to-know basis, as otherwise may be required by law or in connection with the resolution of a dispute brought hereunder involving a Credit Party and any of Agent, any Lender, any Participant or in connection with any public or regulatory filing requirement relating to the Financing Documents) without Agent's prior written consent. Each Borrower agrees to inform all such persons who receive information concerning this Agreement, the Credit Agreement and the other Financing Documents that such information is confidential and may not be disclosed to any other person except as may be required by Law, including to any court or regulatory agency having jurisdiction over such Borrower, any Lender or the Agent.
10. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Borrower hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Borrower. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.
11. **Miscellaneous.**
- a. **Reference to the Effect on the Credit Agreement.** Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Borrower.
 - b. **GOVERNING LAW.** THIS AGREEMENT AND EACH OTHER FINANCING DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).
 - c. **Incorporation of Credit Agreement Provisions.** The provisions contained in Section 11.6 (Indemnification), Section 12.8 (Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.
 - d. **Headings.** Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
 - e. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto.
 - f. **Entire Agreement.** The Credit Agreement, as amended hereby, and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.
 - g. **Severability.** In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.
 - h. **Successors/Assigns.** This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Agreement under seal as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/Maurice Amsellem

Name: Maurice Amsellem

Title: Authorized Signatory

LENDER:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/Maurice Amsellem

Name: Maurice Amsellem

Title: Authorized Signatory

[Signatures Continue on Following Page]

BORROWERS:

ATERIAN, INC.
ATERIAN GROUP, INC.
AUSSIE HEALTH CO, LLC
TRUWEO, LLC
XTAVA LLC
SUNLABZ LLC
RIF6 LLC
VREMI LLC
HOMELABS LLC
VIDAZEN LLC
URBAN SOURCE LLC
ZEPHYR BEAUTY LLC
DISCOCART LLC
VUETI LLC
PUNCHED LLC
SWEETHOMEDEALZ LLC
KITCHENVOX LLC
HOLONIX LLC
KINETIC WAVE LLC
3GIRLSFROMNY LLC
CHICALLEY LLC
BOXWHALE, LLC
SPIRALIZER, LLC
COMMERCE PLANET, LLC
MUELLER AUSTRIA, LLC
KNDIRECT, LLC
POHL & SCHMITT, LLC
PURSTEAM, LLC
MAISON CONTEMPO, LLC
PRODUCTS FOR CHANGE, LLC
KITCHEN PRODUCTS, LLC
RENCARE, LLC
CHROMATIC JAMMER, LLC
TRUCOM, LLC
POSTURE PRODUCTS, LLC
FINEST SCREEN (REMEDY) LLC
FIRST HOUR COMMERCE (REMEDY) LLC
HEALING SOLUTIONS (REMEDY) LLC
MODEL TRADING COMPANY (REMEDY) LLC
CHOICE PRODUCT SELECTION (REMEDY), LLC
SARI FOODS, LLC
SQUATTY POTTY USA, LLC
PHOTO PAPER DIRECT LLC
STEP AND GO LLC

By: /s/ Arturo Rodriguez

Name: Arturo Rodriguez

Title: Chief Executive Officer

BORROWER:

DEALMOJO, LLC

By: /s/ Arturo Rodriguez

Name: Arturo Rodriguez

Title: Chief Executive Officer

Annex A
Conformed Credit Agreement
[See attached]

CREDIT AND SECURITY AGREEMENT

dated as of December 22, 2021

by and among

ATERIAN, INC. and

ITS SUBSIDIARIES FROM TIME TO TIME PARTY HERETO,

each as a Borrower, and collectively as Borrowers,

and

MIDCAP FUNDING IV TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO



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CREDIT AND SECURITY AGREEMENT

This **CREDIT AND SECURITY AGREEMENT** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of December 22, 2021 by and among **ATERIAN, INC.**, a Delaware corporation ("**Aterian Holdco**"), **ATERIAN GROUP, INC.**, a Delaware corporation ("**Aterian**"), certain subsidiaries of Aterian Holdco set forth on Annex B hereto and any additional borrower that may hereafter be added to this Agreement (each individually as a "**Borrower**", and collectively with Aterian Holdco, Aterian and any entities that become party hereto as Borrower and each of their successors and permitted assigns, the "**Borrowers**"), **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

WHEREAS, Borrowers have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - &NBSP;&NBSP;&NBSP;&NBSP;DEFINITIONS

Section 1.1 Certain Defined Terms

. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Acquired EBITDA**" means, with respect to any Acquired Entity or Business for any period, the amount for such period of EBITDA of such Acquired Entity or Business, as determined on a consolidated basis for such Acquired Entity or Business.

"**Acquired Entity or Business**" has the meaning specified in the definition of the term "EBITDA".

"**Acquisition**" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, business line, product line, division or other unit operation of any Person (b) the acquisition of in excess of fifty percent (50%) of the equity interests of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, (c) a merger or consolidation or any other combination with another Person or (d) the acquisition (including through licensing) of any Product or Intellectual Property of or from any other Person.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Additional Tranche**" means an additional amount of Revolving Loan Commitment equal to \$13,000,000.00 (it being acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of \$1,000,000 each for a total of up to \$13,000,000.00).

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other

Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Amazon Agreement**" means, collectively, each Amazon Business Services Solutions Agreement (and any and all successor agreements or agreements serving an identical or similar purpose) pursuant to which the Borrowers sell Inventory through Amazon Services International, Inc. and its affiliates (collectively, "**Amazon**").

"**Amazon Locations**" means each warehouse or similar location owned or controlled by Amazon and where Borrowers' Inventory is being stored.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means five and one half of one percent (5.50%).

"**Applicable Minimum EBITDA Amount**" means, (a) for each Defined Period ending on a month end date specified in the table attached hereto as Schedule 1.1, the amount corresponding to such month end date and (b) for each applicable Defined Period ending after December 31, 2024, an Applicable Minimum EBITDA Amount determined by Agent in its reasonable discretion, in consultation with Borrower Representative, based on financial statements and projections delivered to Agent in accordance with Section 4.1 and satisfactory to Agent in its reasonable discretion, which Applicable Minimum EBITDA Amounts shall be notified to Borrower Representative by Agent in writing on or prior to February 15th of the year in which such Defined Period ends.

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition (including by merger, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation) by any Credit Party or any Subsidiary thereof of any asset of such Credit Party or Subsidiary.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Aterian**" has the meaning set forth in the preamble hereto.

"**Aterian Holdco**" has the meaning set forth in the preamble hereto.

"**Availability Reserve**" means a reserve established by Agent, solely during any Availability Reserve Period, equal to \$1,000,000.

"**Availability Reserve Period**" means the period (a) beginning on the earlier of: (i) any date of delivery of any Compliance Certificate evidencing EBITDA of less than the Applicable Minimum EBITDA Amount for the Defined Period to which such Compliance Certificate relates or (ii) the date of any Event of Default and (b) ending on: (i) the date of delivery of any Compliance Certificate evidencing EBITDA of greater than or equal to the Applicable Minimum EBITDA Amount for the Defined Period to which such Compliance Certificate relates or (ii) the date such Event of Default has been waived by the Agent in its sole discretion, as applicable.

"**Available Tenor**" means, as of any date of determination with respect to the then-current Benchmark, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" or similar term pursuant to Section 2.2(n).

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base Rate**" means a per annum rate of interest equal to the greater of (a) one half of one percent (0.50%) and (b) the per annum rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however*, that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Benchmark**" means, initially, Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.2(n).

"**Benchmark Replacement**" means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Agent giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Financing Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by Agent giving due consideration to any selection or recommendation by the Relevant Governmental Body, or any evolving or then-prevailing market convention at such time, for determining a spread adjustment, or method for calculating or determining such spread adjustment, for such type of replacement for U.S. dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the then-current Benchmark: (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or (b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date. For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark: (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official or resolution authority with jurisdiction over the administrator for such Benchmark (or such component), or a court or an entity with similar insolvency or resolution authority, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative. For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means the period (if any) (a) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.2(n) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.2(n).

“Blocked Person” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

“Borrower” and **“Borrowers”** has the meaning set forth in the introductory paragraph hereto.

“Borrower Representative” means Aterian, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

“Borrowing Base” means the sum of:

(a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *plus*

(b) the lesser of (i) ninety percent (90%) *multiplied by* the Orderly Liquidation Value of the Eligible Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory and Eligible Slow-Moving Inventory), or (ii) sixty five percent (65%) *multiplied by* the value of the Eligible Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory and Eligible Slow-Moving Inventory), valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *plus*

(c) the lesser of (i) eighty percent (80%) *multiplied by* the Orderly Liquidation Value of the Eligible Slow-Moving Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory), or (ii) sixty-five percent (65%) *multiplied by* the value of the Eligible Slow-Moving Inventory (excluding, for the avoidance of doubt, Eligible In-Transit Inventory), valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *provided that* the portion of the Borrowing Base attributable to Eligible Slow-Moving Inventory shall not exceed fifteen percent (15%) of the aggregate portion of the Borrowing Base attributable to Eligible Inventory, Eligible In-Transit Inventory and Eligible Slow-Moving Inventory at any time; *plus*

(d) the lesser of (i) eighty percent (80%) *multiplied by* the Orderly Liquidation Value of the Eligible In-Transit Inventory (excluding, for the avoidance of doubt, Eligible Slow-Moving Inventory), or (ii) sixty five percent (65%) *multiplied by* the value of the Eligible In-Transit Inventory

(excluding, for the avoidance of doubt, Eligible Slow-Moving Inventory), valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *provided* that the portion of the Borrowing Base attributable to Eligible In-Transit Inventory shall not exceed thirty percent (30%) of the aggregate portion of the Borrowing Base attributable to Eligible Inventory, Eligible In-Transit Inventory and Eligible Slow-Moving Inventory at any time; *minus*

(e) the amount of the Dilution Reserve, Rent Reserve, the Availability Reserve and any other reserves and/or adjustments provided for in this Agreement.

"Borrowing Base Certificate" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"Business Day" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close; *provided, however*, that when used in the context of a SOFR Loan, the term "Business Day" shall also exclude any day that is not also a SOFR Business Day.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as the same may be amended from time to time.

"Change in Control" means any of the following: (a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), shall have acquired beneficial ownership of 25% or more on a fully diluted basis of the voting and/or economic interest in the Equity Interests of Aterian Holdco after the Closing Date; (b) a majority of the members of the board of directors or other equivalent governing body of Aterian Holdco cease to be composed of individuals (i) who were members of that board or equivalent governing body on the Closing Date, (ii) whose election, appointment or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election, appointment or nomination at least a majority of that board or equivalent governing body or (iii) whose election, appointment or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election, appointment or nomination at least a majority of that board or equivalent governing body of Aterian Holdco; (c) Aterian Holdco shall cease to, directly or indirectly, own and control one hundred percent (100%) of each class of the outstanding Equity Interests of each Subsidiary of Aterian Holdco (except to the extent any such Subsidiary becomes party to any merger or consolidation otherwise permitted pursuant to Section 5.6); and (d) the occurrence of any "Change of Control", "Change in Control" or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

"Closing Date" means the date of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral" means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"Commitment Annex" means Annex A to this Agreement.

"Commitment Expiry Date" means December 22, 2026.

"Competitor" means, at any time of determination, any Person (a) engaged in the same or substantially the same line of business as the Borrower and the other Credit Parties and such business accounts for all or substantially all the revenue or net income of such Person at the time of such determination and (b) who is designated as a "Competitor" by Borrower pursuant to that certain "competitors list" sent by Borrower to Agent in writing prior to the Closing Date.

"Compliance Certificate" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit A hereto.

"Conforming Changes" means, with respect to Term SOFR or any Benchmark Replacement, any technical, administrative or operational changes (including (a) changes to the definition of "Business Day", "Reference Time" or other definitions, (b) the addition of concepts such as "interest period", (c) changes to timing and/or frequency of determining rates, making interest payments, giving borrowing requests, prepayment, conversion or continuation notices, or length of lookback periods, (d) the applicability of Section 2.8 (*Taxes; Capital Adequacy; Increased Costs; Inability to Determine Rates; Illegality*) and (e) other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of Term SOFR or such Benchmark Replacement and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or determines that no such market practice exists, in such other manner as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Financing Documents).

"Consolidated Subsidiary" means, at any date, any Subsidiary, the accounts of which would be consolidated with those of Aterian Holdco (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"Contingent Obligation" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a **"Third Party Obligation"**) if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent

Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"Controlled Group" means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"Credit Exposure" means, at any time, any portion of the Revolving Loan Commitment that remains outstanding, or any Reimbursement Obligation or other Obligation that remains unpaid or any Letter of Credit or Support Agreement not supported with cash collateral required by this Agreement that remains outstanding; *provided, however*; that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"Credit Party" means each Borrower and each Guarantor, and **"Credit Parties"** means all such Persons, collectively; *provided, however*; that, for the avoidance of doubt, in no event shall any Restricted Foreign Subsidiary be a **"Credit Party"** for purposes of this Agreement or the other Financing Documents.

"Credit Party Liquidity" means, at any time, the sum of (a) Credit Party Unrestricted Cash plus (b) the Revolving Loan Availability; *provided* that solely for purposes of calculating the Minimum Liquidity Covenant as of any date of determination, Revolving Loan Availability shall be calculated without giving effect to any Availability Reserve in effect at such time.

"Credit Party Unrestricted Cash" the aggregate unrestricted cash and cash equivalents owned by Borrowers and that are (a) held in the name of a Borrower in a bank or financial institution located in the United States and subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, in favor of Agent, (b) not subject to any Lien other than a Lien in favor of Agent or any other Permitted Lien and (c) not pledged to or held by Agent to secure a specified Obligation.

"Customs Broker" means a Person serving as a customs broker for Borrower in connection with Borrower's importation of goods.

"Debt" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person, (k) obligations arising under non-compete agreements, and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business or otherwise approved by the Borrower's Board of Directors, in its good faith business discretion. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans and Letter of Credit Liabilities.

"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.

"Defaulted Lender" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"Defined Period" means, for purposes of calculating EBITDA (and any component thereof) for any given calendar month, the twelve (12) month period immediately preceding any such calendar month.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware LLC Division" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Deposit Account" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"Deposit Account Control Agreement" means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account all funds received or deposited into such Lockbox or Lockbox Account.

"Dilution" means, as of any date of determination, a percentage, based upon the experience during any prior period selected from time to time by Agent in its sole discretion, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers' Accounts during such period, by (b) Borrowers' billings with respect to Accounts during such period.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five (5%) percent.

“**Disposed EBITDA**” means, with respect to any Disposed Entity or Business for any period, the amount of EBITDA of such Disposed Entity or Business for such period, all as determined on a consolidated basis for such Disposed Entity or Business.

“**Disposed Entity or Business**” has the meaning specified in the definition of the term “EBITDA”.

“**Dollars**” or “**\$**” means the lawful currency of the United States of America.

“**Domestic Subsidiary**” means any Subsidiary of a Borrower that is not a Foreign Subsidiary.

“**EBITDA**” means for the applicable Defined Period:

- (a) Net income (or loss) for the Defined Period of Borrowers and their Consolidated Subsidiaries, but excluding: (a) the income (or loss) of any Person (other than Subsidiaries of Borrowers) in which Borrowers or any of their Subsidiaries has an ownership interest unless received by Borrower or their Subsidiary in a cash distribution; and (b) the income (or loss) of any Person accrued prior to the date it became a Subsidiary of Borrowers or is merged into or consolidated with Borrowers; *plus*
- (b) any provision for (or minus any benefit from) income and franchise taxes deducted in the determination of net income for the Defined Period; *plus*
- (c) interest expense, net of interest income, deducted in the determination of net income for the Defined Period; *plus*
- (d) amortization and depreciation deducted in the determination of net income for the Defined Period; *plus*
- (e) stock-based compensation expense for the Defined Period; *plus*
- (f) changes in fair-market value of earn-outs to be paid in cash during the Defined Period; *plus*
- (g) changes in fair-market value of earn-outs to be paid in shares of common stock of Aterian Holdco, par value \$0.0001 per share (“Common Stock”) during the Defined Period; *plus*
- (h) profit and loss impacts from the issuance of common stock and/or warrants during the Defined Period; *plus*
- (i) changes in fair-market value of warrant liability during the Defined Period; *plus*
- (j) litigation settlements or reserves during the Defined Period; *plus*
- (k) impairment on goodwill and intangibles during the Defined Period; *plus*
- (l) gain from extinguishment of seller note during the Defined Period; *plus*
- (m) amortization of inventory step-up from acquisitions (included in cost of goods sold) during the Defined Period; *plus*
- (n) professional fees relating to acquisitions paid in cash during the Defined Period; *plus*
- (o) professional fees relating to acquisitions paid in Common Stock during the Defined Period; *plus*
- (p) restructuring expenses during the Defined Period; *plus*
- (q) reserve on barter credits during the Defined Period; *plus*
- (r) other expenses, net, during the Defined Period; *plus*
- (s) investment write-offs if investment made in Common Stock during the Defined Period;

; *provided* that (x) the calculation of the addbacks in clauses (e) through (s) above shall be made by Borrowers in good faith and in a manner consistent in all material respects with Aterian Holdco’s calculation of “adjusted EBITDA” for purposes of its most recently filed Form 10-Q or 10-K with the SEC and (y) the aggregate amounts added back pursuant to clauses (f), (j), (n), (p) and (r) shall not exceed \$1,500,000 in any Defined Period.

There shall be included in determining EBITDA for any period, without duplication, the Acquired EBITDA of any Person, all or substantially all of the assets of a Person, or any business unit, line of business or division of any Person acquired by the Credit Parties and their Consolidated Subsidiaries during such period (but not the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired), to the extent not subsequently sold, transferred or otherwise disposed of by such Credit Party or such Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an “**Acquired Entity or Business**”), based on the actual Acquired EBITDA of such Acquired Entity or Business for such period (including the portion thereof occurring prior to such Acquisition).

There shall be excluded in determining EBITDA for any period, without duplication, the Disposed EBITDA of any Person, all or substantially all of the assets of a Person, or any business unit, line of business or division of any Person sold, transferred or otherwise disposed of by the Credit Parties and their Consolidated Subsidiaries during such period (each such Person, property, business or asset so sold or disposed, a “**Disposed Entity or Business**”), based on the actual Disposed EBITDA of such Disposed Entity or Business for such period (including the portion thereof occurring prior to such sale, transfer or disposition).

“**Eligible Account**” means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and which Agent, in its good faith credit judgment and discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent’s option, be calculated on shortest terms), credits, allowances or excise taxes

of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

- (a) the Account remains unpaid more than sixty (60) days past the claim or invoice date (but in no event more than seventy-five (75) days after the applicable goods or services have been rendered or delivered);
- (b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;
- (c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);
- (d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;
- (e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Law or the Account represents a progress billing for which services have not been fully and completely rendered;
- (f) the Account is subject to a Lien other than a Permitted Lien, or Agent does not have a first priority, perfected Lien on such Account;
- (g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;
- (h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;
- (i) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);
- (j) without limiting the provisions of clause (i) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason;
- (k) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible); *provided*, that the limitation set forth in this clause (k) shall not apply to Accounts owed by Amazon.com, Inc. or any other Account Debtor approved by the Agent in writing so long as such Account Debtor's credit rating is at least "BBB-" or higher from S&P or "Baa3" or higher from Moody's;
- (l) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any respect;
- (m) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;
- (n) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement and, if such Account is owing by the federal government, Borrowers shall have complied to the reasonable satisfaction of Agent with all applicable requirements of the Assignment of Claims Act, 31 USC §3727, with respect thereto;
- (o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;
- (p) the Account Debtor has its principal place of business or executive office outside the United States;
- (q) the Account is payable in a currency other than Dollars;
- (r) the Account Debtor is an individual;
- (s) the Borrower owning such Account has not signed and delivered to Agent notices, in the form requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;
- (t) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible);
- (u) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien; or
- (v) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment and discretion.

"Eligible Assignee" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, (x) "Eligible Assignee" shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"Eligible Customs Broker" means any Customs Broker which has its principal assets, place of organization and place of business in the United States, which is acceptable to Agent in its reasonable discretion and with which Agent has entered into an In-Transit Bailee Agreement, and which has not asserted any adverse claim or Agent against any In-Transit Inventory.

"Eligible In-Transit Inventory" means Inventory that, as of any date of determination, is owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion, deems to be Eligible In-Transit Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible In-Transit Inventory unless:

- (a) under the terms of sale of such Inventory, title and risk of loss have passed with respect to such Inventory from the vendor to Borrower on or before such date, and all amounts due and owing by Borrower to vendor or any other Person (specifically including, but not limited to, vendor's financial institution, if applicable) have been fully paid (including but not limited to shipping costs with respect thereto), or, if such amounts have not been fully paid, the sale of such Inventory by vendor to Borrower has been made on mutually agreeable credit terms, and such credit terms' payment arrangement has not, in any way, prevented (or otherwise limited) title and risk of loss with respect to any such Inventory from passing to Borrower;
- (b) such Inventory is fully insured by Borrower in such amounts, with such insurance companies and subject to such deductibles as are satisfactory to Agent in its reasonable discretion and in respect of which Agent has been named as sole lender loss payee pursuant to a lender's loss payee endorsement acceptable to Agent in its reasonable discretion;
- (c) Borrower is not in default of any of its obligations to the vendor of such Inventory; and
- (d) neither the vendor nor such vendor's financial institution (if applicable) has any right on such date, under applicable law or pursuant to any document relating to the sale of such Inventory, to reclaim, divert the shipment of, reroute, repossess, stop delivery of or otherwise assert any Lien rights or title retention with respect to such Inventory;
- (e) such Inventory is either (1) in the possession of a common carrier, which is not an Affiliate of the vendor or the Borrower, and which has either (x) issued a tangible negotiable bill of lading to the order of Borrower (or, if otherwise required by Agent in its reasonable discretion, to the order of Agent), which covers only such Inventory, bears a conspicuous notation on its face of Agent's security interest therein (unless such bill of lading is issued to the order of Agent), and which is otherwise in form and substance satisfactory to Agent in its reasonable discretion or (y) issued a tangible non-negotiable bill of lading that otherwise satisfies all of the criteria set forth in the immediately preceding clause (x), except that the bill of lading must be issued to the order of Agent or (2) in the possession of an Eligible NVOCC;
- (f) all original counterparts of a tangible bill of lading (if any) covering such Inventory are in the possession, in the United States, of Agent, an agent of Agent (including an Eligible Customs Broker or an Eligible NVOCC) or in the possession of Borrower as a result of Agent's (or Agent's agent's) delivery to Borrower to facilitate offloading of such Inventory at the port of entry;
- (g) the Inventory is to be received by an Eligible NVOCC or an Eligible Customs Broker, and the terms of the applicable In-Transit Bailee Agreement with respect to such In-Transit Inventory are adhered to in all material respects by the parties thereto; and
- (h) such Inventory otherwise would be deemed eligible under the definition of "Eligible Inventory" except solely due to the requirements set forth in clauses (c), (d), (k) and (l) of the definition thereof.

"Eligible Inventory" means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion, deems to be Eligible Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

- (a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory);
- (b) such Inventory is placed on consignment;
- (c) such Inventory is in transit;
- (d) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favor of Agent;
- (e) such Inventory is excess, obsolete, unsalable, shopworn, seconds, damaged, unfit for sale, unfit for further processing, is of substandard quality or is not of good and merchantable quality, free from any defects;
- (f) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;
- (g) such Inventory is not subject to a first priority perfected Lien in favor of Agent;
- (h) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available or of any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance, or similar term, by any environmental law or any Governmental Authority applicable to Borrowers or their business, operations or assets;
- (i) such Inventory is not covered by casualty insurance acceptable to Agent;
- (j) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect;
- (k) such Inventory is located (i) outside of the continental United States or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than \$10,000;

(l) such Inventory is located on premises with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent unless Agent has established a Rent Reserve in respect of such premises; *provided, however*; that Inventory held at Amazon Locations shall not be deemed ineligible solely as a result of this clause (l);

(m) such Inventory consists of (A) discontinued items, (B) slow moving or excess items held in inventory for twelve (12) months or more, or (C) used items held for resale;

(n) such Inventory does not consist of finished goods;

(o) such Inventory does not meet all standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);

(p) such Inventory consists of products for which Borrowers have a greater than fourteen (14) month supply on hand;

(q) such Inventory is held for rental or lease by or on behalf of Borrowers;

(r) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of Agent or any Lender to sell or otherwise dispose of such Inventory; or

(s) such Inventory fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment. Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

"Eligible NVOCC" means, with respect to any In-Transit Inventory, an NVOCC for such Inventory that (i) is not an Affiliate of Borrower or the applicable vendor and is otherwise reasonably acceptable to Agent; (ii) is engaged by Agent as freight forwarder with respect to such Inventory; (iii) if such NVOCC has received from the carrier a bill of lading with respect to such Inventory, such bill of lading names such NVOCC as consignee and, if so requested by Agent, has granted Agent a security interest in such bill of lading as security for the Obligations; (iv) has issued to the order of Borrower or, if so requested by Agent, to the order of Agent, a bill of lading (including any express bill of lading or seaway bill) in respect of such Inventory (and, if so requested by Agent, any bill of lading so issued to the order of Borrower shall name Agent as a notify party and conspicuously state on its face that it is subject to Lender's security interest); (v) is a party with Agent to an In-Transit Bailee Agreement; and (vi) has not asserted any adverse claim or Lien against any such Inventory.

"Eligible Slow-Moving Inventory" means Inventory that, as of any date of determination, is owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that (a) consists of slow-moving or excess items held in inventory for twelve (12) months or more and (b) Agent, in its good faith credit judgment and discretion, deems to be Eligible Slow-Moving Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Slow-Moving Inventory unless such Inventory otherwise would be deemed eligible under the definition of "Eligible Inventory" except solely due to the requirements set forth in clause (m)(B) of the definition thereof.

"Eligible Swap Counterparty" means Agent, any Affiliate of Agent, any Lender and/or any Affiliate of any Lender, that (a) at any time it occupies such role or capacity (whether or not it remains in such capacity) enters into a Swap Contract permitted hereunder with any Borrower, and (b) in the case of a Lender or an Affiliate of a Lender other than Agent, maintains a reporting system acceptable to Agent with respect to Swap Contract exposure and agrees with Agent to provide regular reporting to Agent, in form and substance reasonably satisfactory to Agent, with respect to such exposure. In addition thereto, any Affiliate of a Lender shall, upon Agent's request, execute and deliver to Agent a letter agreement pursuant to which such Affiliate designates Agent as its agent and agrees to share, pro rata, all expenses relating to liquidation of the Collateral for the benefit of such Affiliate.

"Environmental Laws" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"Equity Interests" means any and all shares, interests, participations or other equivalents (however designated) of equity interests of a corporation, membership interests in a limited liability company, partnership interests in a partnership, and any and all similar ownership interests in any Person, and any and all warrants, rights or options to purchase any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"ERISA Plan" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Borrower maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Event of Default" has the meaning set forth in Section 10.1.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to Agent, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, such

Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party under the terms hereof or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit Revolving Loan Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.8(c); and (d) any U.S. federal withholding taxes imposed in respect of a Lender under FATCA.

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury regulations or official interpretations thereof and any agreement entered into pursuant to the implementation of Section 1471(b)(1) of the Code, and any intergovernmental agreement between the United States Internal Revenue Service, the U.S. Government and any governmental or taxation authority under any other jurisdiction which agreement's principal purposes deals with the implement such sections of the Code.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, any subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements (other than any Swap Contract) related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**First Amendment**" means that certain Amendment No. 1 to Credit and Security Agreement, dated as of October 21, 2022, by and among Borrowers, Agent and the Lenders party thereto.

"**Floor**" means the rate per annum of interest equal to one half of one percent (0.50%).

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**Foreign Subsidiary**" shall mean a direct or indirect Subsidiary of Borrower not chartered under the laws of the United States or any state thereof

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Subsidiary of Aterian Holdco and any other Person, in each case approved in writing by Agent, that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling under Environmental Laws; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"Hazardous Materials Contamination" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrowers or any other Credit Party under any Financing Documents and (b) to the extent not otherwise described in (a), Other Taxes.

"Instrument" means "instrument", as defined in Article 9 of the UCC.

"In-Transit Bailee Agreement" means, with respect to any In-Transit Inventory, an In-Transit Bailee Agreement or customs broker agreement, in form and substance satisfactory to Agent in its reasonable discretion, among Borrower, the applicable Customs Broker or Eligible NVOCC, and Agent.

"In-Transit Inventory" means Inventory that is being shipped or otherwise transported to Borrower.

"Intellectual Property" means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"Interest Period" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"Inventory" means "inventory" as defined in Article 9 of the UCC.

"Investment" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make any Acquisition, or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"Joinder Requirements" has the meaning set forth in Section 4.11(d).

"Laws" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. **"Laws"** includes, without limitation, Environmental Laws.

"LC Issuer" means one or more banks, trust companies or other Persons in each case expressly identified by Agent from time to time, in its sole discretion, as an LC Issuer for purposes of issuing one or more Letters of Credit hereunder. Without limitation of Agent's discretion to identify any Person as an LC Issuer, no Person shall be designated as an LC Issuer unless such Person maintains reporting systems acceptable to Agent with respect to letter of credit exposure and agrees to provide regular reporting to Agent satisfactory to it with respect to such exposure.

"Lender" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and **"Lenders"** means all of the foregoing. In addition to the foregoing, solely for the purpose of identifying the Persons entitled to share in payments and collections from the Collateral as more fully set forth in this Agreement and the Security Documents, the term **"Lender"** shall include Eligible Swap Counterparties. In connection with any such distribution of payments and collections, Agent shall be entitled to assume that no amounts are due to any Eligible Swap Counterparty unless such Eligible Swap Counterparty has notified Agent of the amount of any such liability owed to it prior to such distribution.

"Lender Letter of Credit" means a Letter of Credit issued by an LC Issuer that is also, at the time of issuance of such Letter of Credit, a Lender.

"Letter of Credit" means a standby letter of credit issued for the account of any Borrower by an LC Issuer which expires by its terms within one year after the date of issuance and in any event at least thirty (30) days prior to the Commitment Expiry Date. Notwithstanding the foregoing, a Letter of Credit may provide for automatic extensions of its expiry date for one or more successive one (1) year periods, *provided, however*, that the LC Issuer that issued such Letter of Credit has the right to terminate such Letter of Credit on each such annual expiration date and no renewal term may extend the term of the Letter of Credit to a date that is later than the thirtieth (30th) day prior to the Commitment Expiry Date. Each Letter of Credit shall be either a Lender Letter of Credit or a Supported Letter of Credit.

"Letter of Credit Cash Collateral Account" means, collectively, that certain Deposit Account #038030349 of Aterian maintained at HSBC Bank, in each case, for the sole purpose of securing Borrower's obligations in respect of an existing letter of credit; *provided*, that the aggregate amount of cash or cash equivalents deposited in such Deposit Accounts does not, at any time, exceed \$2,000,000 in the aggregate.

"Letter of Credit Liabilities" means, at any time of calculation, the sum of (a) without duplication, the amount then available for drawing under all outstanding Lender Letters of Credit and all Supported Letters of Credit, in each case without regard to whether any conditions to drawing thereunder can then be met, *plus* (b) without duplication, the aggregate unpaid amount of all reimbursement obligations in respect of previous drawings made under all such Lender Letters of Credit and Supported

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Liquidity Certificate" means a certificate, in form and substance satisfactory to Agent in its reasonable discretion, duly executed by a Responsible Officer of Borrower Representative calculating Credit Party Liquidity as of the date of such Liquidity Certificate.

"Litigation" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"Loan Account" has the meaning set forth in Section 2.6(b).

"Loan(s)" means the Revolving Loans.

"Lockbox" has the meaning set forth in Section 2.11.

"Lockbox Account" means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by Agent, opened in the name of Agent (or a nominee of Agent).

"Lockbox Bank" has the meaning set forth in Section 2.11.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

"Material Adverse Effect" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, (a) a material adverse change in, or a material adverse effect upon, any of (i) the condition (financial or otherwise), operations, business or properties of any of the Credit Parties, (ii) the rights and remedies of Agent or Lenders under any Financing Document or the ability of Agent or Lenders to enforce the Obligations or realize upon the Collateral, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any Financing Document, (iv) the existence, perfection or priority of any security interest granted in any Financing Document, (v) the value of any material Collateral or (b) an impairment to the likelihood that Eligible Accounts in general will be collected and paid in the Ordinary Course of Business of any Borrower and upon the same schedule and with the same frequency as such Borrowers' recent collections history.

"Material Contract" means (a) the Amazon Agreement and (b) any other agreements or instruments to which any Credit Party is a party, and the breach, nonperformance or cancellation of which, or the failure of which to renew, could reasonably be expected to have a Material Adverse Effect.

"Maximum Lawful Rate" has the meaning set forth in Section 2.7.

"MCF" means MidCap Funding IV Trust, a Delaware statutory trust, and its successors and assigns.

"Minimum Availability Covenant" has the meaning set forth in Section 6.2.

"Minimum Availability Covenant Election Notice" means a notice, in form and substance satisfactory to Agent in its reasonable discretion, duly executed by a Responsible Officer of Borrower Representative certifying that the Borrowers have elected to become subject to the Minimum Availability Covenant in lieu of the Minimum Liquidity Covenant.

"Minimum Balance" means, at any time before the Second Amendment Effective Date, \$5,000,000, and at any time after the Second Amendment Effective Date, \$2,500,000.

"Minimum Balance Fee" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced in Section 2.2(a)) from (ii) the Minimum Balance multiplied by (b) the highest interest rate applicable to the Revolving Loans during such month (or, during the continuance of an Event of Default, the default rate of interest set forth in Section 10.5(a)).

"Minimum Liquidity Covenant" has the meaning set forth in Section 6.1.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Multiemployer Plan" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"Notes" has the meaning set forth in Section 2.3.

"Notice of Borrowing" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

"Notice of LC Credit Event" means a notice from a Responsible Officer of Borrower Representative to Agent with respect to any issuance, increase or extension of a Letter of Credit specifying: (a) the date of issuance or increase of a Letter of Credit; (b) the identity of the LC Issuer with respect to such Letter of Credit, (c) the expiry date of such Letter of Credit; (d) the proposed terms of such Letter of Credit, including the face amount; and (e) the transactions that are to be supported or financed with such Letter of Credit or increase thereof.

"NVOCC" means, with respect to any In-Transit Inventory, a non-vessel operating common carrier engaged as a freight forwarder or otherwise to assist in the importation of In-Transit Inventory.

"Obligations" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. In addition to, but without duplication of, the foregoing, the

Obligations shall include, without limitation, all obligations, liabilities and indebtedness arising from or in connection with (a) all Support Agreements, (b) all Lender Letters of Credit, and (c) all Swap Contracts entered into with any Eligible Swap Counterparty. "**Obligations**" does not include obligations under any warrants issued to Agent or a Lender.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operative Documents**" means the Financing Documents and Subordinated Debt Documents.

"**Orderly Liquidation Value**" means the net amount (after all costs of sale), expressed in terms of money, which Agent, in its good faith discretion, estimates can be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices or as conducted by such Credit Party in accordance with ordinary prevailing industry standards of the industry in which such Credit Party has its primary business.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loans or any Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Participant**" has the meaning set forth in Section 11.17(b).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Permits**" means all governmental licenses, authorizations, provider numbers, supplier numbers, registrations, permits, drug or device authorizations and approvals, certificates, franchises, qualifications, accreditations, consents and approvals of a Credit Party required under all applicable Laws and required for such Credit Party in order to carry on its business as now conducted.

"**Permitted Acquisition**" means any Acquisition by a Borrower, in each case, to the extent that each of the following conditions shall have been satisfied:

- (a) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days (or such shorter period as may be agreed by Agent) prior to the closing of the proposed Acquisition: (i) a description of the proposed Acquisition; (ii) to the extent available, a due diligence package (including, to the extent available, a quality of earnings report); and (iii) drafts of the respective agreements, documents or instruments pursuant to which such Acquisition is to be consummated (or substantially final drafts thereof), any schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith, and, to the extent available and required to be completed prior to the closing of such Acquisition under the related acquisition agreement, all required regulatory and third party approvals and copies of any environmental assessments;
- (b) the Credit Parties (including any new Subsidiary to the extent required by Section 4.11) shall comply with the Joinder Requirements and otherwise execute and deliver the agreements, instruments and other documents to the extent required by the terms of this Agreement, including, without limitation, Section 4.11 hereof, including such agreements, instruments and other documents necessary to ensure that Agent receives a first priority perfected Lien in all entities and assets acquired in connection with the proposed Acquisition to the extent required by this Agreement;
- (c) at the time of such Acquisition and after giving effect thereto, no Default or Event of Default has occurred and is continuing;
- (d) all transactions in connection with such Acquisition shall be consummated in accordance with applicable Law;
- (e) the entity or assets acquired in such Acquisition are for use in the same lines of business as the Credit Parties are currently engaged or a line of business reasonably related thereto;
- (f) such Acquisition shall not be hostile and, if applicable, shall have been approved by the board of directors (or other similar body) and/or the stockholders or other equity holders of any Person being acquired in such Acquisition;

- (g) no Debt or Liens are assumed or created (other than Permitted Liens and Permitted Debt) in connection with such Acquisition;
- (h) Agent shall have received a certificate of a Responsible Officer of the Borrower Representative demonstrating, on a pro forma basis after giving effect to the consummation of such Acquisition, that Credit Parties are in compliance with the financial covenants set forth in Article 6 hereof;
- (i) the consideration payable by the Credit Parties and their Subsidiaries in connection with such Acquisition shall consist solely of cash and cash equivalents, Subordinated Debt and/or common equity interests of Aterian Holdco;
- (j) the sum of all cash amounts (including any cash equivalents but excluding the cash proceeds received from any substantially contemporaneous issuance of common equity interests of Aterian Holdco) paid or payable in connection with all Permitted Acquisitions (including all Debt, liabilities and Contingent Obligations (in each case to the extent otherwise permitted hereunder) incurred or assumed and the maximum amount of any earn-out or comparable payment obligation in connection therewith, regardless of when due or payable and whether or not reflected on a consolidated balance sheet of Borrowers), but excluding any such amounts owing in respect of Acquisitions consummated prior to the Closing Date, shall not exceed 5,000,000 in the aggregate for the twelve month period ending with the month in which such Acquisition is consummated;
- (k) unless Agent shall otherwise consent in writing (in its sole discretion), (x) if the Acquisition is an equity purchase or merger, the target and its Subsidiaries must have as their jurisdiction of formation a state within the United States, and (y) if the Acquisition is an asset purchase, all or substantially all of the assets so acquired shall be located within the United States;
- (l) Agent has received, prior to the consummation of such proposed Acquisition, updated financial projections, in form and substance reasonably satisfactory to Agent, for the immediately succeeding twelve (12) months following the proposed consummation of the Acquisition beginning with the month during which the Acquisition is to be consummated (the "**Transaction Projections**"); and
- (m) the Person to be acquired and/or whose assets are to be acquired shall have a non-negative EBITDA (calculated on a pro forma basis in a manner reasonably acceptable to Agent), for the trailing twelve month period most recently ended for which financial statements have been delivered to Agent pursuant to Section 4.1(a) or (b) (whichever was most recently delivered to Agent).

Notwithstanding the foregoing, no Accounts or Inventory acquired by a Credit Party in a Permitted Acquisition shall be included as Eligible Accounts, Eligible In-Transit Inventory, Eligible Slow-Moving Inventory or Eligible Inventory until a field examination (and, if required by Agent, an Inventory appraisal) with respect thereto has been completed to the reasonable satisfaction of Agent, including the establishment of reserves required in Agent's reasonable discretion; *provided* that field examinations and appraisals in connection with Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement may be sought.

"Permitted Asset Dispositions" means the following Asset Dispositions, *provided, however*, that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition:

- (a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;
- (b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries;
- (c) the use of cash or cash equivalents and conversions of cash equivalents into cash or other cash equivalents, in each case, in a manner not prohibited by the Financing Documents;
- (d) dispositions of assets among Borrowers to the extent not otherwise prohibited pursuant to the terms of this Agreement;
- (e) to the extent constituting an Asset Disposition, the making of Permitted Investments or the granting of Permitted Liens;
- (f) sales of equipment to Winmark pursuant to the terms of a Permitted Winmark Sale Leaseback Transaction;
- (g) any non-exclusive sub-license of Intellectual Property rights (other than with respect to any source code) of a Borrower to any other Borrower, any Restricted Foreign Subsidiary, in each case, so long as all such licenses do not result in a legal transfer of title to the licensed property, and have been granted pursuant to documentation in form and substance reasonably satisfactory to Agent;
- (h) any division by any Subsidiary pursuant to a Delaware LLC Division; provided that if any Delaware Divided LLC in such a transaction is a Credit Party, then such Delaware Divided LLC shall be a Credit Party; and
- (i) dispositions approved by Agent.

"Permitted Contest" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers' and its Subsidiaries' title to, and its right to use, the Collateral is not adversely affected thereby and Agent's Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower's or its Subsidiary's intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Borrowers or any of its Subsidiaries and/or confirmation of the continuing satisfaction of this definition; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

"Permitted Contingent Obligations" means:

- (a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the Closing Date and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed \$100,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Contingent Obligations arising from indemnities or warranties provided to customers in the Ordinary Course of Business;

(i) Contingent Obligations related to indemnification and defense of directors and officers and employees from claims arising pursuant to the Organizational Documents of the Credit Party, applicable law or an indemnification agreement entered into in the Ordinary Course of Business, which claims, in each case, relate to their service to the Credit Party;

(j) Contingent Obligations arising with respect to customary indemnification obligations, adjustment of purchase price, non-compete, earn-outs or similar obligations of any Credit Party, to the extent such Contingent Obligations are described on Schedule 5.1 or otherwise arise in connection with a Permitted Acquisition; and

(k) other Contingent Obligations not permitted by clauses (a) through (j) above, not to exceed \$100,000 in the aggregate at any time outstanding.

"Permitted Debt" means:

(a) Borrowers' and its Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt not to exceed \$500,000 at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment;

(d) Debt existing on the Closing Date and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt in the form of insurance premiums financed through the applicable insurance company;

(g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business;

(h) Debt in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), in each case, incurred in the Ordinary Course of Business and to the extent such Debt does not exceed \$300,000 in the aggregate at any time outstanding;

(i) without duplication, Permitted Contingent Obligations;

(j) Subordinated Debt; and

(k) Debt incurred by Borrower pursuant to the Truweo Seller Note; *provided* that (a) the aggregate principal amount of such Debt shall not exceed \$2,454,631, (b) Borrower shall not amend, restate, supplement or otherwise modify the Truweo Seller Note without the prior written consent of Agent, (c) Borrower shall not pay any amount owing under the Truweo Seller Note in cash or cash equivalents and (d) such Truweo Seller Note shall at all times remain unsecured.

"Permitted Distributions" means the following Distributions:

(a) dividends and distributions by any Subsidiary of any Borrower to a Borrower;

(b) dividends payable solely in common stock;

(c) issuance of restricted stock, options, warrants or other rights (i) to acquire common stock of the issuer and issued to directors, officers, employees or contractors in connection with services pursuant to plans or agreements approved by the issuer's governing body or (ii) to acquire

Equity Interests issued to landlords or equipment lessors or lenders with respect to Permitted Debt and Equity Interests issued upon exercise of any right described in the preceding clauses (i) or (ii);

(d) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however*, that such repurchase does not exceed \$250,000 in the aggregate per fiscal year;

(e) cash repurchases of stock of Aterian Holdco, so long no Event of Default has occurred and is continuing prior to, or would result immediately after giving pro forma effect to, such repurchase, in an amount not to exceed (i) from the Third Amendment Effective date through and including December 22, 2025 (the “**2025 Repurchase Period**”), \$750,000 and (ii) from December 23, 2025 through and including the Commitment Expiry Date (the “**2026 Repurchase Period**”), \$750,000; and

(f) additional cash repurchases of stock of Aterian Holdco, so long as at the time of such repurchase, (i) no Event of Default has occurred and is continuing and no Event of Default would occur as a result of such repurchase, after giving pro forma effect thereto, (ii) Agent shall have timely received from Credit Parties a Liquidity Certificate in form and substance reasonably satisfactory to Agent in accordance with Section 4.1(i), and (iii) Credit Party Liquidity (as evidenced by the most recent Liquidity Certificate timely delivered to Agent) calculated after giving pro forma effect to such stock repurchase, would exceed \$10,000,000; *provided* that (x) the aggregate cash amount of such stock repurchases made during the 2025 Repurchase Period pursuant to this clause (f), when combined with repurchases made pursuant to clause (e)(i) above during the 2025 Repurchase Period, shall not exceed \$1,500,000 and (y) the aggregate cash amount of such stock repurchases made during the 2026 Repurchase Period pursuant to this clause (f), when combined with repurchases made pursuant to clause (e)(ii) above during the 2026 Repurchase Period, shall not exceed \$1,500,000 (subject to the following proviso); *provided* that, the lesser of (x) \$500,000 and (y) any unused portion of the \$1,500,000 basket described in clause (x) of the foregoing proviso, that was available but unused during the 2025 Repurchase Period shall accrue and may be utilized during the 2026 Repurchase Period in addition to the \$1,500,000 basket with respect to the 2026 Repurchase Period.

"Permitted Investments" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) the holding of cash and cash equivalents to the extent constituting an Investment;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans and advances outstanding pursuant to this clause (d) may not exceed \$250,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary;

(g) Investments of Borrowers consisting of Deposit Accounts in which Agent has received a Deposit Account Control Agreement;

(h) (i) Investments by any Credit Party in any other Credit Party (or any Subsidiary that will become a Credit Party upon consummation of such Investment) other than Holdings, in each case, made in compliance with Section 4.11(c) and (ii) Investments by any Subsidiary in any Credit Party;

(i) Investments in any Restricted Foreign Subsidiary in any other Restricted Foreign Subsidiary;

(j) Investments constituting, or otherwise made to consummate, a Permitted Acquisition; and

(k) other Investments of cash and cash equivalents in an amount not exceeding \$250,000 in the aggregate.

"Permitted Liens" means:

(a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens on Collateral, other than Accounts, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens on Collateral other than Accounts, for sums not exceeding \$250,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) Liens and encumbrances in favor of Agent under the Financing Documents;

(g) Liens on Collateral, other than Collateral which is part of the Borrowing Base, existing on the Closing Date and set forth on Schedule 5.2;

(h) Liens of a depository banks solely in respect of the Letter of Credit Cash Collateral Account;

(i) Liens solely on any cash earnest money deposits made by a Borrower or Subsidiary thereof in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition or other Investment expressly permitted under this Agreement; and

(j) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided, however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof.

"Permitted Modifications" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days (or such later date as may be agreed to by the Agent in its sole discretion) after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"Permitted Winmark Sale Leaseback Transactions" means any sale and leaseback transaction between Borrowers and Winmark Capital Corporation (or any affiliate thereof, "**Winmark**") providing for the leasing by Borrower of tangible electronic equipment from Winmark; *provided that*, in each case, (a) the equipment sold by Borrower in connection with such sale leaseback transaction is sold for value and cash consideration only (b) the sale occurs while no Event of Default has occurred and is continuing, and (c) aggregate gross amount of all such sales during the term of this Agreement is not in excess of \$1,000,000.

"Person" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"Pro Rata Share" means with respect to a Lender's obligation to make Revolving Loans, such Lender's right to receive the unused line fee described in Section 2.2(b), such Lender's obligation to purchase interests and participations in Letters of Credit and related Support Agreement liabilities and obligations, and such Lender's obligation to share in Letter of Credit Liabilities and to receive the related Letter of Credit fee described in Section 2.5(b), the Revolving Loan Commitment Percentage of such Lender, (b) with respect to a Lender's right to receive payments of principal and interest with respect to Revolving Loans, such Lender's Revolving Loan Exposure with respect thereto; and (c) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by dividing (i) the sum of the Revolving Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment shall have been terminated, such Lender's then existing Revolving Loan Outstanding), by (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been terminated, the then existing Revolving Loan Outstanding) of all Lenders.

"Reference Time" means approximately a time substantially consistent with market practice two (2) SOFR Business Days prior to the first day of each calendar month. If by 5:00 pm (New York City time) on any interest lookback day, Term SOFR in respect of such interest lookback day has not been published on the SOFR Administrator's Website, then Term SOFR for such interest lookback day will be Term SOFR as published in respect of the first preceding SOFR Business Day for which Term SOFR was published on the SOFR Administrator's Website; provided that such first preceding SOFR Business Day is not more than three (3) SOFR Business Days prior to such interest lookback day.

"Reimbursement Obligations" means, at any date, the obligations of each Borrower then outstanding to reimburse (a) Agent for payments made by Agent under a Support Agreement, and/or (b) any LC Issuer, for payments made by such LC Issuer under a Lender Letter of Credit.

"Relevant Governmental Body" means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

"Rent Reserve" means a reserve established by Agent in respect of each location at which Inventory of a Borrower is located that is not subject to a satisfactory landlord waiver or bailee letter (in an initial amount, as of the Closing Date, equal to the sum (as determined by Agent in its reasonable good faith credit judgment and discretion) of three (3) month's rent or fees, as applicable, as adjusted from time to time by Agent in its reasonable good faith credit judgment and discretion).

"Required Lenders" means at any time Lenders holding (a) sixty-six and two thirds percent (66 2/3%) or more of the sum of the Revolving Loan Commitment (taken as a whole), or (b) if the Revolving Loan Commitment has been terminated, sixty-six and two thirds percent (66 2/3%) or more of the sum of (x) the then aggregate outstanding principal balance of the Loans plus (y) the then aggregate amount of Letter of Credit Liabilities.

"Responsible Officer" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower acceptable to Agent.

"Restricted Distribution" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any Equity Interest in such Person (except those payable solely in its Equity Interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any Equity Interests in such Person or any claim respecting the purchase or sale of any Equity Interest in such Person, or (ii) any option, warrant or other right to acquire any Equity Interests in such Person (excluding any warrants issued to Agent or a Lender), (c) any management fees, salaries or other fees or compensation to any Person holding an Equity Interest in a Borrower or a Subsidiary of a Borrower (other than (i) payments of salaries or bonuses to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an Equity Interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness; *provided, however*, that, so long as such issuance does not result in a Change in Control or otherwise violate this Agreement, issuance of Equity Interests upon conversion,

exchange, acceleration or redemption of Permitted Debt into Equity Interests of the issuer, and any amendment, waiver or exchange costs and fees incurred in connection with such conversion or exchange (whether paid in cash or in Equity Interests), shall not be a **"Restricted Distribution."**

"Restricted Foreign Subsidiary" means (a) Mohawk Innovations Limited, an Irish private limited company, (b) Shenzhen Mohawk Technology Ltd. Co., a limited company organized under the laws of the People's Republic of China; (c) Mohawk Innovations Canada Inc., a Canadian company organized under the laws of the Province of Quebec, Canada; (d) Mohawk Israel, a company incorporated under the Laws of the State of Israel, (e) Mohawk Group Inc. Philippines Branch, a company organized under the laws of the Philippines, (f) Mohawk Group Sp. z.o.o., a company organized under the laws of Poland, (g) Photo Paper Direct LTD, a limited company organized under the laws of England and Wales and (h) each other direct and indirect Foreign Subsidiary that Agent and Required Lenders may agree (in their sole discretion) in writing from time to time after the Closing Date to designate as an **"Restricted Foreign Subsidiary"** for purposes of this Agreement; *provided however* that from and after the time that any such Subsidiary has been made a Credit Party hereunder in accordance with the provisions set forth in Section 4.11, it shall no longer be a **"Restricted Foreign Subsidiary"** hereunder.

"Revolving Lender" means each Lender having a Revolving Loan Commitment Amount in excess of \$0 (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstanding in excess of \$0).

"Revolving Loan Availability" means, at any time, the Revolving Loan Limit *minus* the Revolving Loan Outstanding.

"Revolving Loan Borrowing" means a borrowing of a Revolving Loan.

"Revolving Loan Commitment" means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

"Revolving Loan Commitment Amount" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be \$0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders on the Second Amendment Effective Date is \$17,000,000.00 and if the Additional Tranche is fully activated after the on the Second Amendment Effective Date by Borrowers pursuant to the terms of the Agreement such amount shall increase to \$30,000,000.

"Revolving Loan Commitment Percentage" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

"Revolving Loan Exposure" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstanding on such date *divided by* the aggregate Revolving Loan Outstanding of all Lenders on such date.

"Revolving Loan Limit" means, at any time, the lesser of (i) the Revolving Loan Commitment and (ii) the Borrowing Base.

"Revolving Loan Outstanding" means, at any time of calculation, (a) the sum of the then existing aggregate outstanding principal amount of Revolving Loans *plus* the then existing Letter of Credit Liabilities, and (b) when used with reference to any single Lender, the sum of the then existing outstanding principal amount of Revolving Loans advanced by such Lender *plus* the then existing Letter of Credit Liabilities for the account of such Lender.

"Revolving Loans" has the meaning set forth in Section 2.1(b).

"S&P" means S&P Global Ratings or any successor thereto.

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

"Second Amendment Effective Date" means February 23, 2024.

"Securities Account" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"Securities Account Control Agreement" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"Security Document" means this Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"Smash Seller Note" means that certain Non-Negotiable Promissory Note dated as of December 1, 2020, made by Parent and payable to 9830 MacArthur, LLC; *provided* that (x) the aggregate principal amount of the Smash Seller Note shall not exceed \$16,000,000 and (y) such Smash Seller Note shall at all times remain unsecured and subject to the Smash Subordination Agreement.

"Smash Subordination Agreement" means that certain Subordination Agreement, dated as of the Closing Date, among 9830 MacArthur, LLC and the other parties signatory thereto, as subordinated creditors, Agent and Borrowers, as such document may be amended, restated, supplemented or otherwise modified from time to time after the date hereof.

“**SOFR**” means, with respect to any SOFR Business Day, a rate per annum equal to the secured overnight financing rate for such SOFR Business Day.

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

“**SOFR Administrator’s Website**” means the website of the SOFR Administrator, currently at <https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html>, or any successor source for Term SOFR identified by the SOFR Administrator from time to time.

“**SOFR Business Day**” means any day other than a Saturday or Sunday or a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**SOFR Implementation Date**” means the first day after the end of the Interest Period during which the First Amendment shall become effective in accordance with its terms.

“**SOFR Interest Rate**” means, with respect to each day during which interest accrues on a Loan, the rate per annum (expressed as a percentage) equal to (a) Term SOFR for the applicable Interest Period for such day; or (b) if the then-current Benchmark has been replaced with a Benchmark Replacement pursuant to Section 2.2(n), such Benchmark Replacement for such day. Notwithstanding the foregoing, the SOFR Interest Rate shall not at any time be less than the Floor.

“**SOFR Loan**” means a Loan that bears interest at a rate based on Term SOFR.

“**Solvent**” means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

“**Stated Rate**” has the meaning set forth in Section 2.7.

“**Subordinated Debt**” means any Debt of Borrowers and the Subsidiaries incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent.

“**Subordinated Debt Documents**” means (a) the Smash Seller Note, and (b) each other document or agreement evidencing and/or securing Debt governed by a Subordination Agreement or otherwise by its terms subordinated to the Obligations, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

“**Subordination Agreement**” means (a) the Smash Subordination Agreement, and (b) any other agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

“**Subsidiary**” means, with respect to any Person, (a) any corporation (or any foreign equivalent thereof) of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company (or any foreign equivalents thereof) in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

“**Support Agreement**” has the meaning set forth in Section 2.5(a).

“**Supported Letter of Credit**” means a Letter of Credit issued by an LC Issuer in reliance on one or more Support Agreements.

“**Swap Contract**” means any “swap agreement”, as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such “swap agreement”.

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

“**Term SOFR**” means the greater of (a) the forward-looking term rate for a period comparable to such Interest Period based on SOFR that is published by the SOFR Administrator and is displayed on the SOFR Administrator’s Website at approximately the Reference Time for such Interest Period plus 0.11448% and (b) the Floor. Unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 2.2(n), in the event that a Benchmark Replacement with respect to Term SOFR is implemented, then all references herein to Term SOFR shall be deemed references to such Benchmark Replacement.

“**Termination Date**” means the earlier to occur of (a) the Commitment Expiry Date, (b) any date on which the maturity of the Loans becomes accelerated pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

“**Third Amendment Effective Date**” means March 25, 2025.

“**Transaction Projections**” has the meaning provided for in clause (l) of the definition of Permitted Acquisitions.

“**Truweo Seller Note**” means that certain Non-Negotiable Promissory Note dated as of August 25, 2020, made by Truweo, LLC and payable to Truweo.

“**UCC**” means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.”

“**United States**” means the United States of America.

“**U.S. Tax Compliance Certificate**” has the meaning set forth in Section 2.8(c)(i).

“**Withholding Agent**” means each Credit Party or Agent.

“**Work-In-Process**” means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower’s normal business practices for release and delivery to customers.

Section 1.2 Accounting Terms and Determinations

Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, 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 applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided, however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. 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 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value”, as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions

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”. 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 Dollars and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable. All references herein to a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or analogous term, will be construed to mean also a division of or by a limited liability company, as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable. Any series of limited liability company shall be considered a separate Person.

Section 1.4 Time is of the Essence

Time is of the essence in Borrower’s and each other Credit Party’s performance under this Agreement and all other Financing Documents.

ARTICLE 2 - &NBSP;&NBSP;&NBSP;&NBSP;LOANS AND LETTERS OF CREDIT

Section 2.1 Loans

(a) [Reserved].

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a “**Revolving Loan**”, and collectively, “**Revolving Loans**”) equal to such Lender’s Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided, however*, that after giving effect thereto, the Revolving Loan Outstanding shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed Revolving Loan Borrowing, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, (A) as provided in Section 2.5(c), with respect to obligations

arising under Support Agreements and/or Lender Letters of Credit, and (B) to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's reasonable good faith credit judgment and discretion, such reserves are necessary.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided, however*, that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstanding exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay or cause to be repaid the Revolving Loans or cash collateralize Letter of Credit Liabilities in the manner specified in Section 2.5(e) or cause the cancellation of outstanding Letters of Credit, or any combination of the foregoing, in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided, however*, that any such partial prepayment shall be in an amount equal to \$100,000 or a higher integral multiple of \$25,000. For the avoidance of doubt, nothing in this clause shall permit Borrowers to terminate or reduce the Revolving Loan Commitment other than in connection with a prepayment of all Obligations in full and termination of the Revolving Loan Commitment and the Financing Documents in accordance with Section 2.12(b).

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their sole discretion, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche. Upon activating an Additional Tranche, each Lender's Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such activation. In the event Agent and all Lenders do not consent to the activation of a requested Additional Tranche within thirty (30) days after receiving a written request from Borrower Representative, then the Revolving Loan Commitment shall not be increased, and, within the next one hundred twenty (120) days, Borrowers may terminate this Agreement upon written notice to Agent and, if the Borrowing Base on the date of such request would have supported such increased Revolving Loan Commitment, upon repayment in full of all Obligations, no fee shall be due pursuant to Section 2.2(f) in connection with such termination.

Section 2.2 Interest, Interest Calculations and Certain Fees

(a) Interest.

(i) From and following the SOFR Implementation Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the SOFR Interest Rate plus the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a three (3) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders.

(ii) In the event one or more of the following events occurs with respect to Term SOFR: (a) a public statement or publication of information by or on behalf of the SOFR Administrator announcing that the SOFR Administrator has ceased or will cease to provide Term SOFR for a 1-month period, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide Term SOFR for a 1-month period; (b) a public statement or publication of information by the regulatory supervisor for the SOFR Administrator, the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official or resolution authority with jurisdiction over the SOFR Administrator, or a court or an entity with similar insolvency or resolution authority, which states that the SOFR Administrator has ceased or will cease to provide Term SOFR for a 1-month period permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide Term SOFR for a 1-month period; or (c) a public statement or publication of information by the regulatory supervisor for the SOFR Administrator announcing that Term SOFR for a 1-month period is no longer, or as of a specified future date will no longer be, representative and Agent has provided Borrower Representative with notice of the same, any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loan at the end of the applicable Interest Period.

(iii) In connection with Term SOFR, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Document. Agent will promptly notify Borrower Representative and the Lenders of the effectiveness of any Conforming Changes.

(b) Unused Line Fee. From and following the Closing Date, on the first day of each month, commencing on the first day of the first full calendar month following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Revolving Loan Commitment *minus* (B) the average daily balance of the sum

of the Revolving Loan Outstanding during the preceding month, *multiplied by* (ii) one half of one percent (0.50%) per annum. The unused line fee payable pursuant to this paragraph is to be paid monthly in arrears on the first day of each month.

(c) Minimum Balance Fee. On the first day of each month, commencing on January 1, 2022, the Borrowers agree to pay to Agent, for the ratable benefit of all Lenders committed to make Revolving Loans, the sum of the Minimum Balance Fees due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(d) Collateral Fee. From and following the Closing Date, on the first day of each month, commencing on the first day of the first full calendar month following the Closing Date, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a fee in an amount equal to the product obtained by *multiplying* (i) the greater of (A) the average end-of-day principal balance of Revolving Loan Outstandings during the immediately preceding month and (B) the Minimum Balance *by* (ii) one half of one percent (0.50%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account hereunder) or otherwise received by Agent for the account of Borrowers shall be subject to a three (3) Business Day clearance period. The collateral fee payable pursuant to this paragraph shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) Origination Fee. (i) Contemporaneously with Borrowers' execution of this Agreement, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Shares, a fee in an amount equal to \$400,000 and (ii) upon activation of the Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Term Loans on the date the Additional Tranche is activated, in accordance with their respective Pro Rata Share, a fee in an amount equal to (1) the funded amount of the Additional Tranche, multiplied by (2) one percent (1.00%). All fees payable pursuant to this Section 2.2(e)(ii) shall be fully-earned and non-refundable as of the Closing Date.

(f) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate for any reason (whether by voluntary termination by Borrowers, by termination by Lenders or Agent following the occurrence of an Event of Default or otherwise) prior to the Commitment Expiry Date, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, in an amount equal to (i) if such fee is payable on or prior to December 22, 2024, \$400,000, or (ii) if such fee is payable after December 22, 2024, an amount determined by *multiplying* the Revolving Loan Commitment *by* the following applicable percentage amount: one and one half of one percent (1.50%) during the period from December 23, 2024 through and including December 22, 2025 or (y) one percent (1.00%) thereafter. All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(g) [Reserved].

(h) [Reserved].

(i) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable after the audit or inspection has occurred on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers; *provided*, that, in the absence of a Default or an Event of Default, Borrowers shall not be obligated to reimburse Agent for more than (i) two (2) Inventory appraisals per calendar year and (ii) two (2) collateral audits per calendar year conducted, in each case, by Agent or its designee in accordance with Section 4.6

(j) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(k) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(l) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(m) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

(n) Benchmark Replacement Setting; Conforming Changes.

(i) Upon the occurrence of a Benchmark Transition Event, Agent and Borrowers may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after Agent has posted such proposed amendment to all Lenders and Borrower so long as Agent has not received, by such time, written notice of objection thereto from Lenders comprising the Required Lenders. No such replacement will occur prior to the applicable Benchmark Transition Start Date. In connection with the implementation of a Benchmark Replacement, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Document. Agent will promptly notify Borrower Representative and the Lenders of the implementation of any Benchmark Replacement and the effectiveness of any Conforming Changes.

(ii) Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent

from any other party to this Agreement or any other Financing Document, except, in each case, as expressly required pursuant to this Section. Notwithstanding anything to the contrary herein or in any other Financing Document, at any time, (a) if the then-current Benchmark is a term rate (including Term SOFR) and either (i) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (ii) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor, and (b) if a tenor that was removed pursuant to clause (a) above either (i) is subsequently displayed on a screen or information service for a Benchmark or (ii) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor. Agent will promptly notify Borrower Representative of the removal or reinstatement of any tenor of a Benchmark pursuant to this Section.

(iii) Upon Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, any outstanding affected Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period.

Section 2.3 Notes

The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "Note") in an original principal amount equal to such Lender's Revolving Loan Commitment Amount. Upon activation of an Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall deliver to each Lender to whom Borrowers previously delivered a Note, a restated Note evidencing such Lender's Revolving Loan Commitment Amount.

Section 2.4 [Reserved]

Section 2.5 Letters of Credit and Letter of Credit Fees

(a) Letter of Credit. On the terms and subject to the conditions set forth herein, the Revolving Loan Commitments may be used by Borrowers, in addition to the making of Revolving Loans hereunder, for the issuance, prior to that date which is one year prior to the Termination Date, by (i) Agent, of letters of credit, Guarantees or other agreements or arrangements (each, a "Support Agreement") to induce an LC Issuer to issue or increase the amount of, or extend the expiry date of, one or more Letters of Credit and (ii) a Lender, identified by Agent, as an LC Issuer, of one or more Lender Letters of Credit, so long as, in each case:

(i) Agent shall have received a Notice of LC Credit Event at least five (5) Business Days before the relevant date of issuance, increase or extension; and

(ii) after giving effect to such issuance, increase or extension, (A) the aggregate Letter of Credit Liabilities do not exceed \$0, and (B) the Revolving Loan Outstanding do not exceed the Revolving Loan Limit.

Nothing in this Agreement shall be construed to obligate any Lender to issue, increase the amount of or extend the expiry date of any Letter of Credit, which act or acts, if any, shall be subject to agreements to be entered into from time to time between Borrowers and such Lender. Each Lender that is an LC Issuer hereby agrees to give Agent prompt written notice of each issuance of a Lender Letter of Credit by such Lender and each payment made by such Lender in respect of Lender Letters of Credit issued by such Lender.

Notwithstanding anything to the contrary set forth herein, Borrowers agree and acknowledge that no part of the Revolving Loan Commitment will be available for the issuance of a Letter of Credit until such times as Agent notifies Borrower Representative that a Lender party to this Agreement is an LC Issuer.

(b) Letter of Credit Fee. Borrowers shall pay to Agent, for the benefit of the Revolving Lenders in accordance with their respective Pro Rata Shares, a letter of credit fee with respect to the Letter of Credit Liabilities for each Letter of Credit, computed for each day from the date of issuance of such Letter of Credit to the date that is the last day a drawing is available under such Letter of Credit, at a rate per annum equal to the Applicable Margin then applicable to SOFR Loans. Such fee shall be payable in arrears on the last day of each calendar month prior to the Termination Date and on such date. In addition, Borrowers agree to pay promptly to the LC Issuer any fronting or other fees that it may charge in connection with any Letter of Credit.

(c) Reimbursement Obligations of Borrowers. If either (i) Agent shall make a payment to an LC Issuer pursuant to a Support Agreement, or (ii) any Lender shall notify Agent that it has made payment in respect of, a Lender Letter of Credit, (A) the applicable Borrower shall reimburse Agent or such Lender, as applicable, for the amount of such payment by the end of the day on which Agent or such Lender shall make such payment and (B) Borrowers shall be deemed to have immediately requested that Revolving Lenders make a Revolving Loan, in a principal amount equal to the amount of such payment (but solely to the extent such Borrower shall have failed to directly reimburse Agent or, with respect to Lender Letters of Credit, the applicable LC Issuer, for the amount of such payment). Agent shall promptly notify Revolving Lenders of any such deemed request and each Revolving Lender hereby agrees to make available to Agent not later than noon (Eastern time) on the Business Day following such notification from Agent such Revolving Lender's Pro Rata Share of such Revolving Loan. Each Revolving Lender hereby absolutely and unconditionally agrees to fund such Revolving Lender's Pro Rata Share of the Loan described in the immediately preceding sentence, unaffected by any circumstance whatsoever, including, without limitation, (x) the occurrence and continuance of a Default or Event of Default, (y) the fact that, whether before or after giving effect to the making of any such Revolving Loan, the Revolving Loan Outstanding exceed or will exceed the Revolving Loan Limit, and/or (z) the non-satisfaction of any conditions set forth in Section 7.2. Agent hereby agrees to apply the gross proceeds of each Revolving Loan deemed made pursuant to this Section 2.5(c) in satisfaction of Borrowers' reimbursement obligations arising pursuant to this Section 2.5(c). Borrowers shall pay interest, on demand, on all amounts so paid by Agent pursuant to any Support Agreement or to any applicable Lender in honoring a draw request under any Lender Letter of Credit for each day from the date of such payment until Borrowers reimburse Agent or the applicable Lender therefor (whether pursuant to clause (A) or (B) of the first sentence of this subsection (c)) at a rate per annum equal to the sum of two percent (2%) plus the interest rate applicable to Revolving Loans for such day.

(d) Reimbursement and Other Payments by Borrowers. The obligations of each Borrower to reimburse Agent and/or the applicable LC Issuer pursuant to Section 2.5(c) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this

Agreement, under all circumstances whatsoever, including the following:

- (i) any lack of validity or enforceability of, or any amendment or waiver of or any consent to departure from, any Letter of Credit or any related document;
- (ii) the existence of any claim, set-off, defense or other right which any Borrower may have at any time against the beneficiary of any Letter of Credit, the LC Issuer (including any claim for improper payment), Agent, any Lender or any other Person, whether in connection with any Financing Document or any unrelated transaction, *provided, however*, that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;
- (iii) any statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;
- (iv) any affiliation between the LC Issuer and Agent; or
- (v) to the extent permitted under applicable law, any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(e) Deposit Obligations of Borrowers. In the event any Letters of Credit are outstanding at the time that Borrowers prepay in full or are required to repay the Obligations or the Revolving Loan Commitment is terminated, Borrowers shall (i) deposit with Agent for the benefit of all Revolving Lenders cash in an amount equal to one hundred ten percent (110%) of the aggregate outstanding Letter of Credit Liabilities to be available to Agent, for its benefit and the benefit of issuers of Letters of Credit, to reimburse payments of drafts drawn under such Letters of Credit and pay any fees and expenses related thereto, and (ii) prepay the fee payable under Section 2.5(b) with respect to such Letters of Credit for the full remaining terms of such Letters of Credit assuming that the full amount of such Letters of Credit as of the date of such repayment or termination remain outstanding until the end of such remaining terms. Upon termination of any such Letter of Credit and so long as no Event of Default has occurred and is continuing, the unearned portion of such prepaid fee attributable to such Letter of Credit shall be refunded to Borrowers, together with the deposit described in the preceding clause (i) attributable to such Letter of Credit, but only to the extent not previously applied by Agent in the manner described herein.

(f) Participations in Support Agreements and Lender Letters of Credit.

(i) Concurrently with the issuance of each Supported Letter of Credit, Agent shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from Agent, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, Agent's Support Agreement liabilities and obligations in respect of such Supported Letter of Credit and Borrowers' Reimbursement Obligations with respect thereto. Concurrently with the issuance of each Lender Letter of Credit, the LC Issuer in respect thereof shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from such LC Issuer, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, such Lender Letter of Credit and Borrowers' Reimbursement Obligations with respect thereto. Any purchase obligation arising pursuant to the immediately two preceding sentences shall be absolute and unconditional and shall not be affected by any circumstances whatsoever.

(ii) If either (A) Agent makes any payment or disbursement under any Support Agreement and/or (B) an LC Issuer makes any payment or disbursement under any Lender Letter of Credit, and (I) Borrowers have not reimbursed Agent or the applicable LC Issuer, as applicable, in full for such payment or disbursement in accordance with Section 2.5(c), or (II) any reimbursement under any Support Agreement or Lender Letter of Credit received by Agent or any LC Issuer, as applicable, from any Credit Party is or must be returned or rescinded upon or during any bankruptcy or reorganization of any Credit Party or otherwise, each Revolving Lender shall be irrevocably and unconditionally obligated to pay to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of such payment or disbursement (but no such payment shall diminish the Obligations of Borrowers under Section 2.5(c)). To the extent any such Revolving Lender shall not have made such amount available to Agent or the applicable LC Issuer, as applicable, before 12:00 Noon (Eastern time) on the Business Day on which such Lender receives notice from Agent or the applicable LC Issuer, as applicable, of such payment or disbursement, or return or rescission, as applicable, such Lender agrees to pay interest on such amount to Agent or the applicable LC Issuer, as applicable, forthwith on demand accruing daily at the Federal Funds Rate, for the first three (3) days following such Lender's receipt of such notice, and thereafter at the Base Rate *plus* the Applicable Margin in respect of Revolving Loans. Any such Revolving Lender's failure to make available to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of any such payment or disbursement, or return or rescission, as applicable, shall not relieve any other Lender of its obligation hereunder to make available such other Revolving Lender's Pro Rata Share of such payment, but no Revolving Lender shall be responsible for the failure of any other Lender to make available such other Lender's Pro Rata Share of any such payment or disbursement, or return or rescission.

Section 2.6 General Provisions Regarding Payment; Loan Account

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "Loan Account") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided, however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan

Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest

In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "Stated Rate") would exceed the highest rate of interest permitted under any applicable law to be charged (the "Maximum Lawful Rate"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy; Increased Costs; Inability to Determine Rates; Illegality

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future Taxes, except as required by applicable Law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and if any such withholding or deduction is in respect of any Indemnified Taxes, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to Agent the original or a certified copy of an official receipt, a copy of the return reporting such payment, or other documentation satisfactory to Agent evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify Agent and Lenders, within ten (10) days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent or any Lender or required to be withheld or deducted from a payment to Agent or any Lender and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent, at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Representative or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent as will enable Borrowers or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Each Lender that is not U.S. a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "Foreign Lender") shall, to the extent permitted by Law, execute and deliver to Borrower Representative and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent) whichever of the following is applicable: (A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, two (2) properly completed and executed originals of United States Internal Revenue Service ("IRS") Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) two (2) executed originals of IRS Form W-8ECI (or successor form); (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect

partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative and Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or Agent. Each such Lender shall promptly notify Borrowers at any time it determines that any certificate previously delivered to Borrower Representative (or any other form of certification adopted by the U.S. governmental authorities for such purposes) is no longer valid.

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

(d) If any Lender determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Borrower pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to Borrowers, net of all reasonable out-of-pocket expenses of such Lender or of Agent with respect thereto, including any Taxes; *provided, however*, that Borrowers, upon the written request of such Lender or Agent, agree to repay any amount paid over to Borrowers to such Lender or to Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender or Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

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

(f) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent in connection with any Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this paragraph (f).

(g) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided*-that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law shall (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the

account of, or credit extended or participated in by, any Lender, (ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement, or any SOFR Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Taxes covered by Section 2.8); or (iii) impose on any Lender any other condition, cost or expense affecting this Agreement or SOFR Loans made by such Lender, and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to Term SOFR (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(i) If any Lender requests compensation under the clauses in this Section 2.8, or requires Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its sole good faith discretion). Without limitation of the provisions of Section 12.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(j) Subject to Section 2.2(n), if Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined pursuant to the definition thereof on or prior to the first day of any Interest Period, Agent will promptly so notify the Borrowers and each Lender. Upon notice thereof by Agent to Borrowers, any obligation of the Lenders to make SOFR Loans shall be suspended until Agent revokes such notice. Upon receipt of such notice, any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period and shall bear interest at the sum of the Base Rate plus the Applicable Margin. Upon any such conversion, Borrower shall also pay any additional amounts required pursuant to this Agreement.

(k) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund SOFR Loans, or to determine or charge interest rates based upon Term SOFR, then, upon notice thereof by such Lender to Borrowers (through Agent), any obligation of such Lender to make SOFR Loans shall be suspended, in each case until such Lender notifies Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, all SOFR Loans shall become Base Rate Loans and shall bear interest at the sum of the Base Rate plus the Applicable Margin. Upon any such conversion, Borrower shall also pay any additional amounts required pursuant to this Agreement.

(l) Each party's obligations under this Section 2.8 shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

Section 2.9 Appointment of Borrower Representative

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, Notices of LC Credit Events and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, requesting Letters of Credit, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, and LC Issuer may provide such Letters of Credit for the account of a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, or the issuance of any Letter of Credit requested on behalf of a Borrower hereunder, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders and LC Issuer with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" shall mean such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower,

individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "Fraudulent Conveyance" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) The Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; provided, however, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and provided, further, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been paid and satisfied in full. As used in this Section 2.10(e), the term "Recovery Amount" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "Deficiency Amount" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to \$0 through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account

(a) Borrowers shall maintain a lockbox (the "Lockbox") with a United States depository institution designated from time to time by Agent (the "Lockbox Bank"), subject to the provisions of this Agreement, and (subject to Section 7.4) shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. Borrowers shall ensure that all collections of Accounts and proceeds of Collateral that forms a part of the Borrowing Base are paid directly from Account Debtors (i) into the Lockbox for deposit into a Lockbox Account and/or (ii) directly into a Lockbox Account; *provided, however*, unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. Borrowers shall ensure that all collections of Accounts are transferred into the Payment Account pursuant to a

standing wire order at the close of each Business Day. All funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day.

(b) [Reserved]

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising solely from Agent's gross negligence or willful misconduct.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Event of Default exists.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers. If any funds received by any Borrower are commingled with other funds of the Borrowers, or are required to be deposited to a Lockbox or Lockbox Account and are not so deposited within two (2) Business Days, then Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, a compliance fee equal to \$500 for each day that any such conditions exist.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than five percent (5%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to the Lockbox Account.

Section 2.12 Termination; Restriction on Termination

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least thirty (30) days' prior written notice and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however*, that no such termination shall be effective until Borrowers have (i) paid or collateralized to Agent's satisfaction all of the Obligations in immediately available funds, all Letters of Credit and Support Agreements have expired, terminated or have been cash collateralized to Agent's satisfaction, (ii) complied with Section 2.12(c). Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans or issue or procure any Letters of Credit or Support Agreements on or after the termination date stated in such notice.

(c) Effectiveness of Termination. All of the Obligations (other than inchoate indemnity obligations for which no claim has been asserted and which survive the termination) shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations (other than inchoate indemnity obligations for which no claim has been asserted and which survive the termination) have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 and the terms of any fee letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

(d) Release of Lien; Recordation. Upon (i) termination of the Revolving Loan Commitment; (ii) cash collateralization of certain Obligations that may survive termination of this Agreement as referred to in Section 2.12(b); (iii) payment in full of all Obligations (other than inchoate

indemnity obligations for which no claim has been asserted and which survive the termination) and those cash collateralized as contemplated by Section 2.12(b) and (iv) satisfaction of the conditions in the last sentence of Section 2.12(c), if any are applicable, the Agent on behalf of the Lenders shall, pursuant to the terms of a payoff documentation in form and substance satisfactory to Agent and Lender, release the security interest granted in the Collateral pursuant to this Financing Documents, and Agent shall execute and deliver or authenticate at Borrower's reasonable request such UCC-3 termination statements and other instruments as Borrower shall reasonably request to evidence the termination of the security interests granted pursuant to the terms of the Financing Documents.

ARTICLE 3 - &NBSP;&NBSP;&NBSP;&NBSP;REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power

. Each Credit Party is an entity as specified on Schedule 3.1, is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, and has all powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect. Each Credit Party is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (a) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (b) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention

. The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect

. Each of the Financing Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization

. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information

. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2020 there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party.

Section 3.6 Litigation

. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened against or affecting, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Financing Documents.

Section 3.7 Ownership of Property

. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default

. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters

. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities

. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations

(a) The Credit Parties and their Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, the Credit Parties and their Subsidiaries do not own or hold any Margin Stock.

(b) None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes

. All federal, state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan or the issuance of any Letter of Credit, (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that

increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Brokers

. Except (a) as set forth on Schedule 3.15 as of the Closing Date and (b) for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Financing Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Reserved

Section 3.17 Material Contracts

. Except for the Amazon Agreement and the other agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials

. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property

. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All Intellectual Property existing as of the Closing Date which is issued or registered or for which application or registration is pending with any United States or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States or foreign Governmental Authority) and all material licenses (other than commercially available or off-the-shelf software) under which any Borrower is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefor) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or application therefor), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each such registered Intellectual Property (or application therefor) purported to be owned by such Credit Party, free and clear of any Liens and/or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in such Borrower's interest in such license or agreement or other property which prohibition or restriction is enforceable within Section 9408 of the UCC. To such Borrower's knowledge, each Credit Party conducts its business without infringement of any Intellectual Property rights of others and there is no infringement or filed complaint alleging of infringement by others of any Intellectual Property rights of any Credit Party, which infringement or claim of infringement could reasonably be expected to have a Material Adverse Effect.

Section 3.20 Solvency

. After giving effect to the Loan advance and the liabilities and obligations of each Borrower under the Financing Documents, each Borrower is Solvent and each additional Credit Party is Solvent, in each case, after giving effect to all rights of such Person arising by virtue of Section 2.10(b) and (e) and any other rights of contribution or similar rights of such Person.

Section 3.21 Full Disclosure

. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Financing Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Borrowers (or their agents) have been prepared on the basis of the

assumptions stated therein. Such projections represent each Borrower's best estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; *provided, however*, that Borrowers can give no assurance that such projections will be attained.

Section 3.22 Senior Indebtedness Status

. The Obligations of each Credit Party under this Agreement and each of the other Financing Documents ranks and shall continue to rank at least senior in priority of payment to all Debt that is contractually subordinated to the Obligations of each such Person under this Agreement and is designated as "Senior Indebtedness" (or an equivalent term) under all instruments and documents, now or in the future, relating to all Debt that is contractually subordinated to the Obligations under this Agreement of each such Person.

Section 3.23 Subsidiaries

. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities except (a) as set forth on Schedule 3.23 as of the Closing Date and (b) Permitted Investments.

ARTICLE 4 - &NBSP;&NBSP;&NBSP;&NBSP;AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports

. Each Borrower will deliver to Agent: (a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheets, cash flows and income statements (including year-to-date results) covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, setting forth in comparative form the corresponding figures as at the end of the corresponding month of the previous fiscal year and the projected figures for such period based upon the projections required hereunder, all in reasonable detail, certified by a Responsible Officer and in a form acceptable to Agent; (b) together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all payroll, withholding and similar taxes due and owing by all Borrowers with respect to the payroll period(s) occurring during such month; (c) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion; (d) within five (5) days of delivery or filing thereof, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC; (e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of One Hundred Thousand Dollars (\$100,000) or more *provided* that Borrower shall be required to disclose threatened litigation that is received in the form of a "demand letter" only in its quarterly Compliance Certificates (it being understood that the foregoing exception shall not apply with respect to litigation for which any court filings have been made); (f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property; (g) budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request, (h) promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act and (i) within two Business Days of the first calendar day of each calendar month, a Liquidity Certificate in form and substance reasonably satisfactory to Agent. Each Borrower will, within thirty (30) days after the last day of each month, deliver to Agent with the monthly financial statements described in clause (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth monthly cash and cash equivalents held by Borrowers, Borrowers and their Consolidated Subsidiaries, a calculation of EBITDA (beginning with the Defined Period ending July 31, 2024) and calculations showing compliance with the financial covenants set forth in this Agreement. Promptly upon their becoming available, Borrowers shall deliver to Agent copies of all Swap Contracts and Material Contracts. Each Borrower will, within ten (10) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date). Borrowers shall, every ninety (90) days on a schedule to be designated by Agent, and at such other times as Agent shall request, deliver to Agent a schedule of Eligible Accounts denoting, for the thirty (30) largest Account Debtors during such quarter. Notwithstanding anything to the contrary herein, documents required to be delivered pursuant to Section 4.1(d) (to the extent any such documents are included in materials filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrowers posts such documents, or provides a link thereto, on Borrowers' website on the Internet at Borrowers' website address.

Section 4.2 Payment and Performance of Obligations

. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence

. Each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business, or upon which any Borrowing Base is calculated, becomes damaged or destroyed, if repair is commercially reasonable each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse sums (other than insurance proceeds with respect to such loss required to be disbursed to Borrower under this Agreement) to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any, following which Agent shall return the security, if any, deposited with Agent pursuant to the definition of Permitted Contest.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), (iii) if as of the date on which any Compliance Certificate is delivered (or required to be delivered) to Agent in accordance with Section 6.3, more than 5% of Borrowers' consolidated net revenue (as determined in accordance with GAAP) for the trailing twelve month period ending on the last day of the month for which such Compliance Certificate was delivered is derived from management services or software related services provided by Borrowers to third parties, Cyber/Professional Services insurance in amounts reasonably satisfactory to Agent, and (iv) such other insurance coverage in such amounts and with respect to such risks as Agent may request from time to time; *provided, however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the Closing Date, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least sixty (60) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts

. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral that is part of the Borrowing Base.

Section 4.6 Inspection of Property, Books and Records

. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds

. Borrowers shall use the proceeds of the Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the payment in full on the Closing Date of certain Debt existing on the Closing Date, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 Estoppel Certificates

. After written request by Agent (which request shall be no more frequent than once a quarter so long as no Event of Default has occurred and is continuing), Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting

forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default.

Section 4.9 Notices of Litigation and Defaults

. Borrowers will give prompt written notice to Agent (a) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document; *provided* that Borrower shall be required to disclose threatened litigation that is received in the form of a "demand letter" only in its quarterly Compliance Certificates (it being understood that the foregoing exception shall not apply with respect to pending litigation for which any court filings have been made), (b) upon any Borrower becoming aware of the existence of any Default or Event of Default, (c) upon any Borrower receiving notice (or otherwise becoming aware) that any Credit Party is in breach or default under or with respect to any Material Contract, or if any Credit Party is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect, (d) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (e) if Borrower is notified (or otherwise becomes aware) that there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that, if determined in a manner adverse to such Credit Party, could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property Rights of others, and (f) of all returns, recoveries, disputes and claims that involve more than \$100,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will to the extent Borrower or any other Credit Party is liable for remediation costs, cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof for which any Credit Party is liable for remediation costs, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Domestic Subsidiaries of Borrowers and upon the request of Agent, cause all Foreign Subsidiaries to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations. Without limiting the generality of the foregoing, (x) Borrowers shall, at the time of the delivery of any Compliance Certificate disclosing the acquisition by an Credit Party of any registered Intellectual Property or application for the registration of Intellectual Property, deliver to Agent a duly completed and executed supplement to the applicable Credit Party's Intellectual Property Security Agreement, and (y) at the request of Agent, following the disclosure by Borrowers on any Compliance Certificate of the acquisition by any Credit Party of any rights under a license as a licensee with respect to any registered Intellectual Property or application for the registration of any Intellectual Property owned by another Person to the extent the loss of such license is material to the business of Borrowers, Borrowers shall execute any documents requested by Agent to establish, create, preserve, protect and perfect a first priority lien in favor of Agent, to the extent legally possible and, in such Borrower's rights under such license and shall use their commercially reasonable efforts to obtain the written consent of the licensor of such license to the granting in favor of Agent of a Lien on such Borrower's rights as licensee under such license.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the formation or acquisition of a new Subsidiary, Borrowers shall (within thirty (30) days of such formation or acquisition or such longer period as may be agreed by Agent in its sole discretion), (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of Equity Interests or other Equity Interests of such new Subsidiary owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause such new Domestic Subsidiary and upon the request of Agent, cause such new Foreign Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Domestic Subsidiary or upon the request of Agent, cause such new Foreign Subsidiary to either (at the election of Agent) become a

Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause any new Subsidiary that is joined as a party to the Financing Documents pursuant to clause (iii) above to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorize the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent (the requirements set forth in clauses (i)-(iv), collectively, the "Joinder Requirements").

(d) Upon the request of Agent, Borrowers shall obtain (i) a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral included in or proposed to be included in the Borrowing Base, is stored or located, other than with respect to any Amazon Location and (ii) a landlord's agreement or an electronic access agreement, as applicable, from the landlord or electronic access provider for the books and records relating to any Collateral included in or proposed to be included in the Borrowing Base and/or software and equipment relating to such books and records or Collateral, in each case, which agreement or letter shall be reasonably satisfactory in form and substance to Agent; *provided* that in the case of this clause (d)(ii), if such books and records are located at multiple locations, Borrower shall be required to deliver an access agreement only with respect to one location. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(e) Borrower further agrees:

(i) to ensure that the total amount of cash and cash equivalents held by Restricted Foreign Subsidiaries (other than Photo Paper Direct LTD) does not exceed \$100,000, in the aggregate at any time; *provided, however*; that nothing in this Section 4.11(e) shall require a Restricted Foreign Subsidiary to make any distribution that would be prohibited by applicable Law; and

(ii) to ensure that the total amount of cash and cash equivalents held by Photo Paper Direct LTD does not exceed \$4,000,000, in the aggregate at any time; *provided* that, if at any time Credit Party Liquidity is less than \$7,800,000, Borrower shall promptly (but in any case, within 60 calendar days) transfer all cash and cash equivalents owned by Photo Paper Direct LTD in excess of \$2,000,000 to a Deposit Account held in the name of a Borrower with a bank or financial institution located in the United States and subject to a Deposit Account Control Agreement.

(f) Following (i) the occurrence and continuation of an Event of Default and (ii) the exercise by Agent of any right, option or remedy provided for hereunder, under any Financing Document or at law or in equity, Credit Parties shall cause each Restricted Foreign Subsidiary to declare and pay to the applicable Credit Party the maximum amount of dividends and other distributions in respect of its capital stock or other equity interest legally permitted to be paid by each such Restricted Foreign Subsidiary; *provided* that such Restricted Foreign Subsidiary shall be able to retain for working capital purposes such other amounts used by such Restricted Foreign Subsidiaries in the Ordinary Course of Business and as are reasonable necessary for its operations based on its current projections, as provided to the Agent pursuant to Section 4.1.

Section 4.12 Reserved

Section 4.13 Power of Attorney

Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration

(a) All data and other information relating to Accounts or other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor, or becomes an Account Debtor at any time following the Closing Date that directs each Account Debtor to make payments into the Lockbox or a Lockbox Account (except to the extent such Account Debtor is currently making payments into the Lockbox or Lockbox Account, as applicable), and hereby authorizes Agent, upon Borrowers' failure to send such notices (or ten (10) days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) Borrowers will conduct a physical count of the Inventory at least once per year (or twice, if Agent shall so request) and Borrowers shall provide to Agent a written accounting of such physical count in form and substance satisfactory to Agent; *provided* that if an Event of Default has occurred and is continuing, Borrower shall perform such additional inventory counts in any given year as Agent shall request in its sole discretion. Each Borrower will use commercially reasonable efforts to at all times keep its Inventory in good and marketable condition. In addition to the foregoing, from

time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Subsidiaries.

(d) Borrower shall ensure that all Inventory held at Amazon Locations is owned by Borrowers other than Aterian Holdco or Aterian, and that such Subsidiary Borrowers have the right to recall such Inventory from the Amazon locations at any time (subject to the terms of the Amazon Agreement). Upon Agent's request from time to time, Borrower shall provide Agent with online viewing access to its Amazon.com account.

Section 4.15 Maintenance of Management

. Borrower will cause its business to be continuously managed by its present chief executive officer and chief financial officer or such other individuals serving in such capacities as shall be reasonably satisfactory to Agent. Borrowers will notify Agent promptly in writing of any change in its board of directors or executive officers.

ARTICLE 5 - &NBSP;&NBSP;&NBSP;&NBSP;NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations

. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens

. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Restricted Distributions

. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements

. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Restricted Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Other Debt

. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof; *provided* that nothing in clause (d) above shall prohibit amendment of any Debt to permit its conversion into Equity Interests of Borrower or issuance of Equity Interests upon such conversion thereof to the extent otherwise permitted pursuant to the terms of the applicable Subordination Agreement.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control

. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person other than (i) consolidations or mergers among Borrowers, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors, and (iv) consolidations or mergers among Subsidiaries that are not Credit Parties, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. No Borrower will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments

. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business or to the extent constituting a Permitted Acquisition; (b) engage or enter into any agreement to engage in any joint venture or partnership with any other Person; or (c) acquire or own or enter into any agreement to acquire or own any Investment in any Person other than Permitted Investments.

Section 5.8 Transactions with Affiliates

. Except as otherwise disclosed on Schedule 5.8, except for transactions permitted under Section 4.16 and except for transactions that are disclosed to Agent in advance of being entered into and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower.

Section 5.9 Modification of Organizational Documents

. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements

. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) could reasonably be expected to be adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same; or (c) reduces in any material respect any rights or benefits of any Borrower or any Subsidiaries (it being understood and agreed that any such determination shall be in the discretion of Agent). Each Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business

. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Lease Payments

. No Borrower will, or will permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions

. Except for any Permitted Winmark Sale Leaseback Transaction, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts

(a) . Except to the extent provided otherwise in the last sentence of this Section 5.14, each Borrower will, and will cause each Credit Party to, cause each Deposit Account and Securities Account to be subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable. No Borrower will, or will permit any Credit Party without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to (a) the Letter of Credit Cash Collateral Account and (b) Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such; *provided, however*, that at all times that any Obligations remain outstanding, Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws

. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Agreements Regarding Receivables

. No Borrower may backdate, postdate or redate any of its invoices. No Borrower may make any sales on extended dating or credit terms beyond that customary in such Borrower's industry or consented to in advance by Agent. In addition to the Borrowing Base Certificate to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Borrower's learning thereof, in the event any Eligible Account becomes ineligible for any reason, other than the aging of such Account, and of the reasons for such ineligibility. Borrower Representative shall

also notify Agent promptly of all material disputes and claims with respect to the Accounts of any Borrower, and such Borrower will settle or adjust such material disputes and claims at no expense to Agent; *provided, however*, no Borrower may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Accounts (i) which is outside the ordinary course of business or (ii) which discount, credit or allowance exceeds an amount equal to \$100,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account. Nothing permitted by this Section 5.16, however, may be construed to alter in any the criteria for Eligible Accounts, Eligible Inventory, Eligible In-Transit Inventory or Eligible Slow-Moving Inventory provided in Section 1.1.

Section 5.17 [Reserved]

Section 5.18 Aterian Holdco

Aterian Holdco will not incur or permit to exist any Debt nor grant or permit to exist any Liens upon any of its properties or assets nor engage in any operations, business or activity other than (i) owning 100% of the equity interests of Aterian and all operations incidental thereto, (ii) granting a security interest in all its assets to Agent, for the benefit of the Lenders and other Permitted Liens (other than any consensual Liens on the equity interests of Aterian), (iii) executing and performing its obligations under the Operative Documents to which it is a party, (iv) the payment of administrative fees necessary for the maintenance of its existence and the payment of Taxes, (v) fulfilling its obligations under the Operative Documents to which it is a party, (vi) performing administrative, governance and supervisory functions in connection with the operation of the business of its Subsidiaries, (vii) issuing equity interests, including without limitation pursuant to stock option plans, (viii) the incurrence of the Debt and obligations under the Operative Documents, (ix) the maintenance of its corporate existence and corporate governance and other activities reasonably incidental thereto and (x) guaranteeing of obligations of Subsidiaries to the extent permitted by this Agreement.

ARTICLE 6 - &NBSP;&NBSP;&NBSP;&NBSP;FINANCIAL COVENANTS

Section 6.1 Minimum Credit Party Liquidity

Commencing on the Closing Date and at all times thereafter prior to Agent's receipt of a Minimum Availability Covenant Election Notice, Borrowers shall not permit the Credit Party Liquidity at any time to be less than \$6,800,000 (the covenant set forth in this Section 6.1, the "Minimum Liquidity Covenant").

Section 6.2 Minimum Availability

Commencing on the date of Agent's receipt of a Minimum Availability Covenant Election Notice and at all times thereafter, Borrowers shall not permit Revolving Loan Availability at any time to be less than \$5,000,000 (the covenant set forth in this Section 6.2, the "Minimum Availability Covenant").

Section 6.3 Evidence of Compliance

Borrowers shall furnish to Agent, together with the financial reporting required of Borrowers in Section 4.1 hereof, a Compliance Certificate as evidence of (x) the monthly cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, (y) as applicable, of Borrowers' compliance with the applicable covenants in this Article, and (z) that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - &NBSP;&NBSP;&NBSP;&NBSP;CONDITIONS

Section 7.1 Conditions to Closing

The obligation of Agent and each Lender to enter into this Agreement on the Closing Date and to continue to make the Loans hereunder, to issue any Support Agreements and of any LC Issuer to continue to issue any Lender Letter of Credit shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist attached hereto as Exhibit E hereto, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

- (a) the receipt by Agent of executed counterparts of this Agreement and the other Financing Documents;
- (b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;
- (c) since December 31, 2020, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party, or any event or condition which could reasonably be expected to result in such a material adverse change;
- (d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date
- (e) on the Closing Date, no Default or Event of Default shall have occurred and be continuing;
- (f) the receipt of a Borrowing Base Certificate, prepared as of the Closing Date; and
- (g) the Credit Party Liquidity calculated as of the Closing Date shall not be less than \$30,000,000.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to, approved and ratified, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be

approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date or the Closing Date, as applicable.

Section 7.2 Conditions to Each Loan, Support Agreement and Lender Letter of Credit

The obligation of the Lenders to make a Loan (other than Revolving Loans made pursuant to Section 2.5(c)) or an advance in respect of any Loan, of Agent to issue any Support Agreement or of any LC Issuer to issue any Lender Letter of Credit (including on the Closing Date) is subject to the satisfaction of the following additional conditions:

- (a) receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) and updated Borrowing Base Certificate, in the case of any Support Agreement or Lender Letter of Credit, receipt by Agent of a Notice of LC Credit Event in accordance with Section 2.5(a);
- (b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstanding will not exceed the Revolving Loan Limit;
- (c) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;
- (d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; and
- (e) the fact that no adverse change in the condition (financial or otherwise), properties, business, prospects, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement.

Each giving of a Notice of LC Credit Event hereunder, each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches

Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds, all issuances of Lender Letters of Credit and all undertakings in respect of Support Agreements: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

ARTICLE 8 - &NBSP;&NBSP;&NBSP;&NBSP;[RESERVED]

ARTICLE 9 - &NBSP;&NBSP;&NBSP;&NBSP;SECURITY AGREEMENT

Section 9.1 Generally

As security for the payment and performance of the Obligations, and without limiting any other grant of a Lien and security interest in any Security Document, each Borrower hereby assigns, grants and pledges to Agent, for the benefit of itself and Lenders, a continuing first priority Lien (subject to Permitted Liens) on and security interest in, upon, and to the property and assets set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instruments or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any of the Collateral are kept, which such Schedule 9.2(b) indicates in each case which Borrower(s) have Collateral and/or books and records located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location

(e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the granting of the security interest or the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments (other than checks and drafts delivered in the Ordinary Course of Business), documents or investment property (other than Equity Interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4) and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments (other than checks and drafts delivered in the Ordinary Course of Business), documents, investment property; *provided* that Borrower shall not be required to deliver negotiable bills of lading relating to In-Transit Inventory unless such Inventory is Eligible In-Transit Inventory included in the Borrowing Base and Borrower is required to make such a delivery in accordance with the definition of "Eligible In-Transit Inventory". No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least thirty (30) days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its records concerning the Collateral or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Subject to Section 5.16, Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstanding) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments (other than checks and drafts delivered in the Ordinary Course of Business) and documents owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Except for Collateral with an aggregate value of \$25,000 or less or Collateral stored at the Amazon Locations, no Inventory or other tangible Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment

agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control; *provided* that Borrowers shall not maintain Inventory or other tangible Collateral with a value in excess of \$1,000,000 at Edison Road, Hams Hill Distribution Park, Coleshill, Birmingham, B46 1DA, United Kingdom. Borrowers shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall to the extent doing so is commercially reasonable, promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - &NBSP;&NBSP;&NBSP;&NBSP;EVENTS OF DEFAULT

Section 10.1 Events of Default

. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "Event of Default":

(a) (i) any Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.9, Section 4.11, Section 4.16, Article 5, or Section 7.4 or (iii) there shall occur any default in the performance of or compliance with Section 4.1 and/or Article 6 of this Agreement and Borrower Representative has received written notice from Agent or the Required Lenders of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans) or in respect of any Swap Contract, or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans) or in respect of any Swap Contract, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or the counterparty under any such Swap Contract, to cause, Debt or other liabilities having an individual principal amount in excess of \$100,000 (or any amount, solely with respect to Swap Contracts) or having an aggregate principal amount in excess of \$100,000 (or any amount, solely with respect to Swap Contracts) to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of forty-five (45) days; or an order for relief shall be entered against any

Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$100,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$100,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of \$100,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange; and

(n) the occurrence of any fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect, if such default shall have continued unremedied for a period of ten (10) days after written notice from Agent.

Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of this Agreement two (2) times in any twelve (12) month period and Agent has given to Borrower Representative in connection with each such failure any notice to which Borrowers would be entitled under this Section before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Borrowers any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment

Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided, however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby

irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(vi) the right to cause Borrower to immediately recall all of its Inventory held at Amazon Locations to be delivered to a location of Borrower where Agent has received as satisfactory landlord or bailee access agreement or such other location (whether or not owned by Borrower) as Agent may direct in its sole discretion.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) (to the extent permitted by Applicable Law) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Cash Collateral

. If (a) any Event of Default specified in Section 10.1(e) or 10.1(f) shall occur, (b) the Obligations shall have otherwise been accelerated pursuant to Section 10.2, or (c) the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall have been terminated pursuant to Section 10.2, then without any request or the taking of any other action by Agent or the Lenders, Borrowers shall immediately comply with the provisions of Section 2.5(e) with respect to the deposit of cash collateral to secure the existing Letter of Credit Liability and future payment of related fees.

Section 10.5 Default Rate of Interest

. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, (a) the Loans and other Obligations shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under this Agreement, and (b) the fee described in Section 2.5(b) shall increase by a rate that is five percent (5.0%) in excess of the rate otherwise payable under such Section; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights

. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to

cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding and to provide cash collateral to secure any and all Letter of Credit Liability and future payment of related fees, as provided for in Section 2.5(e); *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents; and *sixth*, to the Obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts. Any balance remaining shall be delivered to Borrowers or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral,

and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unencumbered Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief

. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside

. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - &NBSP;&NBSP;&NBSP;&NBSP;AGENT

Section 11.1 Appointment and Authorization

. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates

. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent

. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts

. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent

. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith;

(e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification

. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished. Each Lender further agrees to severally indemnify Agent for, within 10 days after demand therefor, any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17(a)(iii) relating to the maintenance of a Participant Register that are payable or paid by Agent in connection with any Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to the Lender from any other source against any amount due to Agent under this Section 11.6.

Section 11.7 Right to Request and Act on Instructions

. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision

. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters

. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of each of the Revolving Loan Commitment and payment in full of all Obligations, and, to the extent required by Agent in its sole discretion, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Swap Contracts secured, in whole or in part, by any Collateral; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection

. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default

. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however*, that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however*, that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) [Reserved].

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) [Reserved].

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect

. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents

. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided, however*, that Agent shall be entitled, in its sole and absolute discretion, to provide its written consent to a proposed Swap Contract, in each case without the consent of any other Lender.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent or LC Issuer are affected thereby, by Agent and LC Issuer, as the case may be;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or Reimbursement Obligation or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan or Reimbursement Obligation; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan or of any Reimbursement Obligation, or of interest on any Loan or Reimbursement Obligation (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage, or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

(c) Without limitation of the provisions of the preceding clause (a) and (b), no waiver, amendment or other modification to this Agreement shall, unless signed by each Eligible Swap Counterparty then in existence, modify the provisions of Section 10.7 in any manner adverse to the interests of each such Eligible Swap Counterparty.

Section 11.17 Assignments and Participations

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder, *provided, however*, that unless an Event of Default has occurred and is continuing, no Lender shall be permitted assign all or any portion of such Lender's Loan to any Competitor of a Borrower without the prior written consent of Borrower Representative. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to \$1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however*, that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of \$3,500 to be paid by the assigning Lender; *provided, however*, that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest error, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Credit Parties maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "**Participant Register**"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Credit Parties and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; *provided*, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Credit Parties) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such

Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "Participant"), *provided, however*, that unless an Event of Default has occurred and is continuing, no Lender sell any participating interest in its Loans, commitments or other interests hereunder to any Competitor of any Borrower without the prior written consent of Borrower Representative. In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "Affected Lender") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("Replacement Lender") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however*, that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) through (h), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the \$3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "Lender" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender, except to the extent resulting from a merger that is expressly permitted by Section 5.6.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist

So long as Agent has not waived the conditions to the funding of Revolving Loans set forth in Article 7, any Lender may deliver a notice to Agent stating that such Lender shall cease making Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Article 7, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loans Outstanding in excess of \$0; *provided, however*, that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be \$0.

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date plus (ii) the aggregate Revolving Loan Outstanding of all Non-Funding Lenders as of such date.

(d) [Reserved].

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party, other than reimbursement obligations that have arisen pursuant to Section 2.5(c) in respect of Letters of Credit issued at the time such Non-Funding Lender was not then a Non-Funding Lender.

(f) Agent shall have no right to (i) make or disburse Revolving Loans as provided in Section 2.1(b)(i) for the account of any Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), or (ii) assume that any Revolving Lender that was a Non-Funding Lender at the time of issuance of such Letter of Credit will fund any portion of the Revolving Loans to be funded pursuant to Section 2.5(c) in respect of such Letter of Credit. In addition, no Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), shall have an obligation to fund any portion of the Revolving Loans to be funded pursuant to Section 2.5(c) in respect of such Letter of Credit, or to make any payment to Agent or the L/C Issuer, as applicable, under Section 2.5(f)(ii) in respect of such Letter of Credit, or be deemed to have purchased any interest or participation in such Letter of Credit from Agent or the L/C Issuer, as applicable, under Section 2.5(f)(i).

(g) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.19 Buy-Out Upon Refinancing

. MCF shall have the right to purchase from the other Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

ARTICLE 12 - &NBSP;&NBSP;&NBSP;&NBSP;MISCELLANEOUS

Section 12.1 Survival

. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers

. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; provided, however, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, provided, however, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided, however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided, however, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability

. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings

. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to each Credit Party's current and prospective direct and indirect financing sources, acquirors and holders of Debt of Credit Parties and the Credit Parties' direct and indirect equityholders, and its and their respective attorneys, advisors, directors, managers and officers on a need-to-know basis, as otherwise may be required by law or in connection with the resolution of a dispute brought hereunder involving a Credit Party and any of Agent, any Lender, any Participant or in connection with any public or regulatory filing requirement relating to the Financing Documents) without Agent's prior written consent, and (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, and to prospective contractual counterparties (or the professional advisors thereto) in Swap Contracts permitted hereby, *provided, however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, (v) as Agent considers necessary in its good faith discretion in exercising remedies in accordance with the Financing Documents, and (vi) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "Securitization" shall mean (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided, however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages

To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), 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 Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit 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 Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(b) EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 12.9 WAIVER OF JURY TRIAL

EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration

. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. In furtherance of the foregoing, the words "execution", "signed", "signature", "delivery" and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. As used herein, "**Electronic Signature**" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or other record. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction

. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals

. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement or the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity

(a) Except with respect to Indemnified Taxes, Other Taxes and Excluded Taxes, which shall be governed exclusively by Section 2.8, Borrowers hereby agree to promptly pay (i) all reasonable costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Financing Documents (including (i)(A) as a direct or

indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans and Letters of Credit, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Reserved

Section 12.16 Reinstatement

This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification

Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWERS:

ATERIAN, INC.
ATERIAN GROUP, INC.
AUSSIE HEALTH CO, LLC
TRUWEO, LLC
XTAVA LLC
SUNLABZ LLC
RIF6 LLC
VREMI LLC
HOMELABS LLC
VIDAZEN LLC
URBAN SOURCE LLC
ZEPHYR BEAUTY LLC
DISCOCART LLC
VUETI LLC
PUNCHED LLC
SWEETHOMEDEALZ LLC
KITCHENVOX LLC
HOLONIX LLC
KINETIC WAVE LLC
3GIRLSFROMNY LLC
CHICALLEY LLC
BOXWHALE, LLC
SPIRALIZER, LLC
COMMERCE PLANET, LLC
MUELER AUSTRIA, LLC
KNDIRECT, LLC

POHL & SCHMITT, LLC
PURSTEAM, LLC
MAISON CONTEMPO, LLC
PRODUCTS FOR CHANGE, LLC

By: _____
Name: Yaniv Sarig
Title: Chief Executive Officer
Address:

BORROWERS:

Attn: _____
Facsimile: _____
E-Mail: _____
KITCHEN PRODUCTS, LLC
RENCARE, LLC
CHORMATIC JAMMER, LLC
TRUCOM, LLC
POSTURE PRODUCTS, LLC
FINEST SCREEN (REMEDY) LLC
FIRST HOUR COMMERCE (REMEDY) LLC
HEALING SOLUTIONS (REMEDY) LLC
MODEL TRADING COMPANY (REMEDY) LLC
CHOICE PRODUCT SELECTION (REMEDY), LLC
SARI FOODS, LLC
SQUATTY POTTY USA, LLC
PHOTO PAPER DIRECT LLC

By: _____
Name: Yaniv Sarig
Title: Chief Executive Officer

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager
By: Apollo Capital Management GP, LLC,
its general partner
By: _____

Name: Maurice Amsellem
Title: Authorized Signatory
Address:
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814

Attn: Account Manager for Aterian transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com
with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450

E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

Wells Fargo Bank, N.A. (McLean, VA)

ABA #: 121-000-248

Account Name: MidCap Funding IV Trust – Collections

Account #: 2000036282803

Attention: Aterian Facility

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____

Name: Maurice Amsellem

Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300

Bethesda, Maryland 20814

Attn: Account Manager for Aterian transaction

Facsimile: 301-941-1450

E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300

Bethesda, Maryland 20814

Attn: General Counsel

Facsimile: 301-941-1450

E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A Commitment Annex
Annex B Subsidiary Borrowers

EXHIBITS

Exhibit A Form of Compliance Certificate
Exhibit B Borrowing Base Certificate
Exhibit C Form of Notice of Borrowing
Exhibit D-1 Form of U.S. Tax Compliance Certificate
Exhibit D-2 Form of U.S. Tax Compliance Certificate
Exhibit D-3 Form of U.S. Tax Compliance Certificate
Exhibit D-4 Form of U.S. Tax Compliance Certificate
Exhibit E Closing Checklist

SCHEDULES

Schedule 3.1 Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4 Capitalization
Schedule 3.6 Litigation
Schedule 3.17 Material Contracts
Schedule 3.18 Environmental Compliance
Schedule 3.19 Intellectual Property
Schedule 4.4 Insurance
Schedule 4.9 Litigation, Governmental Proceedings and Other Notice Events
Schedule 5.1 Debt; Contingent Obligations
Schedule 5.2 Liens
Schedule 5.7 Permitted Investments
Schedule 5.8 Affiliate Transactions
Schedule 5.11 Business Description
Schedule 5.14 Deposit Accounts and Securities Accounts
Schedule 9.1 Collateral
Schedule 9.2(b) Location of Collateral
Schedule 9.2(d) Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

	Revolving Loan Commitment	Revolving Loan Commitment
Lender	Amount	Percentage
MidCap Funding IV Trust	\$17,000,000	100%
TOTALS	\$17,000,000.00	100%

ANNEX B TO CREDIT AGREEMENT (SUBSIDIARY BORROWER ANNEX)

- XTAVA LLC, a Delaware limited liability company
- SUNLABZ LLC, a Delaware limited liability company
- RIF6 LLC, a Delaware limited liability company
- VREMI LLC, a Delaware limited liability company
- hOmeLabs LLC, a Delaware limited liability company
- VIDAZEN LLC, a Delaware limited liability company
- URBAN SOURCE LLC, a Delaware limited liability company
- ZephyrBeauty LLC, a Delaware limited liability company
- DiscoCart LLC, a Delaware limited liability company
- Vueti LLC, a Delaware limited liability company
- Punched LLC, a Delaware limited liability company
- SweetHomeDealz LLC, a Delaware limited liability company
- KitchenVox LLC, a Delaware limited liability company

Holonix LLC, a Delaware limited liability company

Kinetic Wave LLC, a Delaware limited liability company

3GirlsFromNY LLC, a Delaware limited liability company

ChicAlley LLC, a Delaware limited liability company

boxwhale, llc, a Delaware limited liability company

Aussie Health Co, LLC, a Delaware limited liability company

Truweo, LLC, a Delaware limited liability company

Sprializer, LLC, a Delaware limited liability company

Commerce Planet, LLC, a Delaware limited liability company

Mueller Austria, LLC, a Delaware limited liability company

KNDirect, LLC, a Delaware limited liability company

Pohl & Schmitt, LLC, a Delaware limited liability company

PurSteam, LLC, a Delaware limited liability company

Maison Contempo, LLC, a Delaware limited liability company

Products for Change, LLC, a Delaware limited liability company

Kitchen Products, LLC, a Delaware limited liability company

Rencare, LLC, a Delaware limited liability company

Chromatic Jammer, LLC, a Delaware limited liability company

TruCom, LLC, a Delaware limited liability company

Posture Products, LLC, a Delaware limited liability company

FINEST SCREEN (REMEDY) LLC, a Delaware limited liability company

FIRST HOUR COMMERCE (REMEDY) LLC, a Delaware limited liability company

HEALING SOLUTIONS (REMDEDY) LLC, a Delaware limited liability company

MODEL TRADING COMPANY (REMEDY) LLC, a Delaware limited liability company

CHOICE PRODUCT SELECTION (REMEDY), LLC, a Delaware limited liability company

Sari Foods, LLC, a Delaware limited liability company

Squatty Potty USA, LLC, a Delaware limited liability company

Photo Paper Direct LLC, a Delaware limited liability company

Step and Go LLC, a Delaware limited liability company

DealMojo, LLC, a Delaware limited liability company

EXHIBIT A TO CREDIT AGREEMENT (COMPLIANCE CERTIFICATE)

COMPLIANCE CERTIFICATE

Date: _____, 20__

This Compliance Certificate is given by _____, a Responsible Officer of Aterian Group, Inc., a Delaware corporation (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of December 22, 2021 among Aterian Holdco, the Borrower Representative, certain subsidiaries of the Borrower Representative set forth on Annex B thereto and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

- (a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects

the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

- (a) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;
- (b) except as noted on Schedule 2 attached hereto, the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantor conduct business;
- (c) except as noted on Schedule 3 attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral or (ii) any failure of any Borrower or Guarantors to make required payments of withholding or other tax obligations of any Borrower or Guarantors during the accounting period to which the attached statements pertain or any subsequent period.
- (d) Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts and investment accounts maintained by Borrowers and Guarantors;
- (e) except as noted on Schedule 4 attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against any Borrower or Guarantor; (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of any Borrower or Guarantor; or (iii) any default by any Borrower or Guarantor under any Material Contract to which it is a party.
- (f) except as noted on Schedule 5 attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any Schedule 5 to any previous Compliance Certificate delivered by the Borrower to Agent.
- (g) except as noted on Schedule 6 attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any Schedule 6 to any previous Compliance Certificate delivered by Borrower Representative to Agent.
- (h) except as noted on Schedule 7 attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.
- (i) The overall percentage of Borrowers' aggregate consolidated net revenue (as determined in accordance with GAAP) for the trailing twelve month period ending on the last day of the month for which this Compliance Certificate is delivered that is derived from management services or software related services provided by Borrowers to third parties is [_____] %.
- (j) Borrowers and Guarantors (if any) are in compliance with the covenants contained in Article 6 of the Credit Agreement (and, in the case of the Minimum Liquidity Covenant or Minimum Availability Covenant, as applicable, were in compliance with such covenant at all times during the period to which this Compliance Certificate pertains), and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation attached hereto. Such calculations and the certifications contained therein are true, correct and complete.
- (k) [EBITDA of the Borrower as of the date hereof is \$[____], as demonstrated by the calculations thereof in the attached worksheets. Such calculations and the certifications contained therein are true, correct and complete.]
- (l) Credit Parties were in compliance with the provisions of Section 5.3 and the definition of "Permitted Distributions" as of the date of each repurchase of Aterian Holdco stock made during the period to which this Compliance Certificate pertains.

The foregoing certifications and computations are made as of _____, 20__ (end of month) and as of _____, 20__.

Sincerely,
ATERIAN GROUP, INC.

By:
Name:
Title:

Minimum Credit Party Liquidity Worksheet (Attachment to Compliance Certificate)

Credit Party Liquidity is calculated as follows:
The aggregate unrestricted cash and cash equivalents owned by Borrowers and that are (a) held in the name of a Borrower in a bank or financial institution located in the United States and subject to a Deposit Account Control Agreement or Securities

Account Control Agreement, as applicable, in favor of Agent, (b) not subject to any Lien other than a Lien in favor of Agent or any other Permitted Lien and (c) not pledged to or held by Agent to secure a specified Obligation as of the applicable date of determination.

Plus: Revolving Loan Availability, calculated without giving effect to the Availability Reserve, as of the applicable date of determination \$ _____
Credit Party Liquidity as of the applicable date of determination: \$ _____

Covenant Compliance:

A. Credit Party Liquidity as of the applicable date of determination In Compliance if A > \$6,800,000

\$ _____
Yes/No

EBITDA Worksheet (Attachment to Compliance Certificate)

EBITDA for the applicable Defined Period is calculated as follows:

Net income (or loss) for the Defined Period of Borrowers and their Consolidated Subsidiaries, but excluding: (a) the income (or loss) of any Person (other than Subsidiaries of Borrowers) in which Borrowers or any of their Subsidiaries has an ownership interest unless received by Borrower or their Subsidiary in a cash distribution; and (b) the income (or loss) of any Person accrued prior to the date it became a Subsidiary of Borrowers or is merged into or consolidated with Borrowers

- Plus: Any provision for (or *minus* any benefit from) income and franchise taxes deducted in the determination of net income for the Defined Period \$ _____
 - Plus: Interest expense, net of interest income, deducted in the determination of net income for the Defined Period \$ _____
 - Plus: Amortization and depreciation deducted in the determination of net income for the Defined Period \$ _____
 - Plus: stock-based compensation expense for the Defined Period \$ _____
 - Plus: changes in fair-market value of earn-outs to be paid in cash during the Defined Period \$ _____
 - Plus: changes in fair-market value of earn-outs to be paid in shares of common stock of Aterian Holdco, par value \$0.0001 per share ("Common Stock") during the Defined Period \$ _____
 - Plus: profit and loss impacts from the issuance of common stock and/or warrants during the Defined Period \$ _____
 - Plus: changes in fair-market value of warrant liability during the Defined Period \$ _____
 - Plus: litigation settlements or reserves during the Defined Period \$ _____
 - Plus: impairment on goodwill and intangibles during the Defined Period \$ _____
 - Plus: gain from extinguishment of seller note during the Defined Period \$ _____
 - Plus: amortization of inventory step-up from acquisitions (included in cost of goods sold) during the Defined Period \$ _____
 - Plus: professional fees relating to acquisitions paid in cash during the Defined Period \$ _____
 - Plus: professional fees relating to acquisitions paid in Common Stock during the Defined Period \$ _____
 - Plus: restructuring expenses during the Defined Period \$ _____
 - Plus: reserve on barter credits during the Defined Period \$ _____
 - Plus: other expenses, net, during the Defined Period \$ _____
 - Plus: investment write-offs if investment made in Common Stock, during the Defined Period \$ _____
- EBITDA for the Defined Period: \$ _____

EXHIBIT B TO CREDIT AGREEMENT (BORROWING BASE CERTIFICATE)

[SEE ATTACHED]

EXHIBIT C TO CREDIT AGREEMENT (NOTICE OF BORROWING)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of Aterian Group, Inc., a Delaware corporation (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of December 22, 2021 among Aterian Holdco, the Borrower Representative, certain subsidiaries of the Borrower Representative set forth on Annex B thereto and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to on _____, 20__ borrow \$ _____ of Loans on _____, 20____. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstanding will not exceed the Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such

representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 20__.

Sincerely,
ATERIAN GROUP, INC.
By:
Name:
Title:

Exhibit D-1 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit and Security Agreement dated as of December 22, 2021 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3) (B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]
By: _____
Name:
Title:
Date: _____, 20[]

Exhibit D-2 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit and Security Agreement dated as of December 22, 2021 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date: _____, 20[]

Exhibit D-3 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit and Security Agreement dated as of December 22, 2021 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date: _____, 20[]

Exhibit D-4 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit and Security Agreement dated as of December 22, 2021 among the Borrower Representative, the other Borrowers listed therein and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Funding IV Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Financing Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____

Name: _____

Title: _____

Date: _____, 20[] **Exhibit E to Credit Agreement (Closing Checklist)**

CLOSING CHECKLIST

Schedule 1.1 – Applicable Minimum EBITDA Amount

Month End Date	Applicable Minimum EBITDA Amount
July 31, 2024	(\$14,195,000)
August 31, 2024	(\$11,477,000)
September 30, 2024	(\$9,239,000)
October 31, 2024	(\$8,227,000)
November 30, 2024	(\$4,627,000)
December 31, 2024	(\$2,307,000)
January 31, 2025	(\$2,000,000)
February 28, 2025	(\$2,000,000)
March 31, 2025	(\$1,500,000)
April 30, 2025	(\$1,500,000)
May 31, 2025	(\$1,500,000)
June 30 2025,	(\$1,000,000)
July 31, 2025	(\$1,000,000)
August 31, 2025	(\$1,000,000)
September 30, 2025	(\$1,000,000)
October 31, 2025	(\$1,000,000)
November 30, 2025	(\$1,000,000)
December 31, 2025	(\$1,000,000)

Schedule 3.1 – Existence, Organizational ID Numbers, Foreign Qualification, Prior Names

Borrower	Prior Names	Type of Entity / State of Formation	States Qualified	State Org. ID Number	Federal Tax ID Number	Location of Borrower (address)
Schedule 3.4 – Capitalization						

Schedule 3.6 – Litigation

Schedule 3.17 – Material Contracts

Schedule 3.18 – Environmental Compliance

Schedule 3.19 – Intellectual Property

Schedule 4.9 – Litigation, Governmental Proceedings and Other Notice Events

Schedule 5.1 – Debt; Contingent Obligations

Schedule 5.2 – Liens

Schedule 5.7 – Permitted Investments

Schedule 5.8 – Affiliate Transactions

Schedule 5.11 –Business Description

Schedule 5.14 – Deposit Accounts and Securities Accounts

Schedule 9.1 – Collateral

The Collateral consists of all of each Borrower's assets, including without limitation, all of Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

- (a) all goods, Accounts (including health-care insurance receivables), Equipment, Inventory, contracts, together with all contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, Intellectual Property, commercial tort claims (including each such claim listed on Schedule 9.2(d)), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), Vehicles and title documents with respect to Vehicles, cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located;
 - (b) all of Borrowers' books and records relating to any of the foregoing and all rights of access thereto; and
 - (c) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.
-

Schedule 9.2(b) – Collateral Information

Schedule 9.2(d) – Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

ATERIAN, INC.

INSIDER TRADING POLICY

AND GUIDELINES WITH RESPECT TO
CERTAIN TRANSACTIONS IN COMPANY SECURITIES

This Insider Trading Policy (this “*Policy*”) provides guidelines to employees, officers and directors of **Aterian, INC.** and each of its subsidiaries, branches, representative offices and similar entities (collectively, the “*Company*”) with respect to transactions in the Company’s securities. The Company has adopted this Policy, and the procedures set forth herein to help prevent insider trading and to assist the Company’s employees, officers and directors in complying with their obligations under the federal securities laws. Employees, officers and directors are individually responsible for understanding and complying with this Policy.

A. APPLICABILITY OF POLICY.

This Policy applies to all transactions in the Company’s securities, including common stock, restricted stock, restricted stock units, stock appreciation rights, performance units, deferred share units, options and warrants to purchase common stock and any other debt or equity securities the Company may issue from time to time, such as bonds, preferred stock and convertible notes and debentures, as well as to derivative securities relating to the Company’s securities, whether or not issued by the Company, such as exchange-traded options. This Policy applies to all directors, officers and employees (including part-time and temporary employees) of the Company and members of their immediate families who reside with them or anyone else who lives in their household, and family members who live elsewhere but whose transactions in the Company’s securities are directed by them or subject to their influence and control (collectively referred to herein as “*Family Members*”). This Policy also applies to any entities controlled by individuals subject to this Policy, including any corporations, partnerships or trusts, and transactions by such entities should be treated for purposes of this Policy and applicable securities laws as if they were for the individual’s own account. The Company may also determine that other persons should be subject to this Policy, such as contractors or consultants who receive or have access to Material Nonpublic Information (as defined below). Furthermore, this Policy imposes specific blackout period and pre-clearance procedures on directors, officers and certain other designated employees of the Company who receive or have access to Material Nonpublic Information and/or are subject to the reporting provisions and trading restrictions of Section 16 (“*Section 16*”) of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”).

The current “*Insider Trading Compliance Officer*” referred to herein is the General Counsel of the Company; *provided that*, in the General Counsel’s absence or with respect to a proposed transaction in the Company’s securities by the General Counsel, the Insider Trading Compliance Officer is the Chief Executive Officer of the Company.

B. DEFINITION OF MATERIAL NONPUBLIC INFORMATION.

It is not possible to define all categories of material information. However, information should be regarded as material if there is a substantial likelihood that it would be considered important to a reasonable investor in making a voting decision or an investment decision to buy, hold or sell securities. Any information that could be expected to affect the market price of the Company's securities, whether such information is positive or negative, should be considered material. Because trading that receives scrutiny will be evaluated after the fact with the benefit of hindsight, questions as to the materiality of information should be resolved in favor of materiality, and trading should be avoided. Directors, officers and certain other employees of the Company are subject to the Blackout Period provisions described in Section F.1 of this Policy.

While it may be difficult under this standard to determine whether particular information is material, there are various categories of information that are particularly sensitive and, as a general rule, should always be considered material. Examples of such information may include:

- Financial results and forecasts;
 - Significant changes in financial performance outlook or liquidity of the Company as a whole or of a reporting segment of the Company's business;
 - Projections of future earnings or losses;
 - Changes to previously announced earnings guidance, or the decision to suspend earnings guidance;
 - Communications with government agencies, such as the Securities and Exchange Commission (the "**SEC**");
 - Notice of issuance of patents or the acquisition or disposition of other material intellectual property rights;
 - News of, or developments in, a pending or proposed merger, acquisition or tender offer;
 - News of, or developments in, a pending or proposed acquisition or disposition of significant assets;
 - News of, or developments in, strategic partnerships, joint ventures, collaborations or other relationships;
 - Major discoveries or significant changes or developments in products or product lines, research or technologies;
 - Important business developments, such as research results or developments regarding strategic collaborators;
-

- Regulatory actions, approvals or rejections or material correspondence from regulatory bodies;
- Impending bankruptcy or financial liquidity problems;
- Defaults on borrowings;
- Significant expansion or curtailment of operations;
- Significant pricing changes;
- New major contracts, customers, suppliers or orders, or the loss hereof;
- Significant write-downs in assets or increases or decreases in revenues;
- Stock splits and stock repurchase programs;
- New equity or debt offerings;
- Significant cybersecurity incidents;
- Actual or threatened major litigation, or the resolution of such litigation;
- Significant related party transactions;
- A change in auditors or notification that an auditor's report may no longer be relied upon; and
- Changes in directors or senior management.

“Material Nonpublic Information” is material information about the Company that (1) has not been previously disclosed to the general public through the Dow Jones “broad tape,” newswire services, a broadcast on widely-available radio or television programs, publication in a widely-available newspaper, magazine or news website, or in a document filed with the SEC that is available on the SEC’s website or (2) has not been available to the general public for at least two (2) Trading Days. As used in this Policy, the term **“Trading Day”** shall mean a day on which The Nasdaq Stock Market LLC (**“Nasdaq”**), or the primary quotation system or national securities exchange on which the Company’s common stock is then traded or listed, is open for trading. For purposes of this Policy, if such public disclosure occurs on a Trading Day before the markets close, then that day shall be considered the first Trading Day. If such public disclosure occurs after the markets close on a Trading Day, then the date of public disclosure shall not be considered the first trading Day following the date of public disclosure.

STATEMENT OF POLICY

C. GENERAL POLICY.

It is the policy of the Company to prohibit the unauthorized disclosure of any nonpublic information acquired in the workplace, the use of Material Nonpublic Information in securities trading, and any other violation of applicable securities laws.

D. SPECIFIC POLICIES.

1. Trading on Material Nonpublic Information. No employee, officer or director of the Company and no Family Member of any such person (or any other person designated by this Policy or by the Insider Trading Compliance Officer as subject to this Policy), shall engage in any transaction involving a purchase or sale of the Company's securities, including any offer to purchase or offer to sell (other than pursuant to a trading plan that complies with SEC Rule 10b5-

1 and is implemented in accordance with Section G of this Policy), during any period commencing with the date that he or she possesses Material Nonpublic Information and ending at the close of business on the second Trading Day following the date of public disclosure of that information, or at such time as such nonpublic information is no longer material. If, for example, the Company were to make an announcement of previously Material Nonpublic Information on a Monday, employees, officers and directors who had access to such information prior to such time shall not trade in the Company's securities prior to that Thursday. "Purchase" and "sale" are defined broadly under the federal securities laws. "**Purchase**" includes not only the actual purchase of a security, but any contract to purchase or otherwise acquire a security. "**Sale**" includes not only the actual sale of a security, but also any contract to sell or otherwise dispose of a security. These definitions extend to a broad range of transactions, including conventional cash-for-stock transactions, conversions, the exercise of stock options and acquisitions and exercises of warrants or puts, calls or other derivative securities.

2. Tipping. No employee, officer or director of the Company shall disclose or pass on ("**tip**") Material Nonpublic Information to any other person, including a Family Member or friend, nor shall such person make recommendations or express opinions on the basis of Material Nonpublic Information with respect to trading in the Company's securities.

3. Confidentiality of Nonpublic Information. Nonpublic information relating to the Company is the property of the Company and the unauthorized disclosure of such information is forbidden.

E. POTENTIAL CRIMINAL AND CIVIL LIABILITY AND/OR DISCIPLINARY ACTION.

1. Liability for Insider Trading. Any employee, officer or director of the Company who engages in a transaction in the Company's securities at a time when he or she has knowledge of Material Nonpublic Information may be subject to an SEC civil investigation, cease and desist order or other administrative action, and incur federal and state law penalties and sanctions, including but not limited to:

- up to 20 years in jail;
- a criminal fine of up to \$5,000,000;
- a civil penalty of up to three (3) times the profit gained or loss avoided as a result of the insider trading;
- SEC civil enforcement injunctions; and
- Permanent bar from serving as an officer or director of a public company.

There is no *de minimis* exception to the rule against insider trading. Use of inside information to gain personal benefit is as illegal with respect to one share of stock as it is with respect to a large number of shares.

2. Liability for Tipping. Any employee, officer or director of the Company who tips (“*tippers*”) a third party (commonly referred to as a “*tippee*”) may also be liable for improper transactions by tippees to whom they have tipped Material Nonpublic Information regarding the Company or to whom they have made recommendations or expressed opinions on the basis of such information as to trading in the Company’s securities. Tippers and tippees would be subject to the same penalties and sanctions as described above, and the SEC has imposed large penalties even when the tipper or tippee did not profit from the trading. The SEC and the national securities exchanges use sophisticated electronic surveillance techniques to assess and uncover insider trading.

3. Control Persons. The Company and its supervisory personnel, if they fail to take appropriate steps to prevent illegal insider trading, may in certain circumstances be subject to the following penalties, among others:

- a civil penalty of up to the greater of \$1,000,000 (subject to adjustment) or three (3) times the profit gained or loss avoided as a result of the employee’s violation; and
- a criminal penalty for individuals of up to \$5,000,000 and for entities of up to \$25,000,000.

4. Possible Company-Imposed Disciplinary Actions. Violations of this Policy will not be tolerated. Any employee who violates the standards in this Policy may be subject to disciplinary action, which, depending on the nature of the violation and the history of the employee, may range from a warning or reprimand up to and including ineligibility for future participation in the Company’s equity incentive plans, termination of the employment relationship and, in appropriate cases, civil legal action or referral for regulatory or criminal prosecution.

F. MANDATORY GUIDELINES.

1. Trading Blackout Period. To ensure compliance with this Policy and applicable securities laws, and to avoid even the appearance of trading on the basis of inside information, the Company requires that its directors and executive officers, each of whom is set forth on **APPENDIX A** attached hereto, any other employees in the finance department of the Company set forth on **APPENDIX B** attached hereto, and any other employees designated by the Insider Trading Compliance Officer as subject to the Blackout Period (as defined below) prohibitions because of their access to the Company’s internal financial statements or other Material Nonpublic Information regarding the Company’s performance during annual and quarterly fiscal periods, which employees are set forth on **APPENDIX C** attached hereto (each of the individuals identified in **APPENDICES A through C** are collectively referred to herein as the “*Designated Insiders*”), and Family Members of the foregoing, refrain from conducting transactions involving the purchase or sale of the Company’s securities during the Blackout Periods established below. Each of the following periods will constitute a “Blackout Period”:

The period commencing 15 days prior to the end of each fiscal quarter and ending at the close of business on the second Trading Day following the date of public disclosure of the Company’s financial results for that quarter. For purposes of clarification, the 15th day of such 15-day period shall be the last date of such fiscal quarter, such that the first day of the Blackout Period each year for (a) the first quarter shall be March 17th; (b) the second quarter shall be June 16th; (c) the third quarter shall be September 16th; and (d) the fourth quarter shall be December 17th. If such public disclosure occurs on a Trading Day before the markets close, then that day shall be considered the first Trading Day. If such public disclosure occurs after the markets close on a Trading Day, then the date of public disclosure shall not be considered the first Trading Day following the date of public disclosure.

In addition to the Blackout Periods described above, the Company may announce “special” Blackout Periods from time to time if, in the judgment of the Company’s Chief Executive Officer or the Insider Trading Compliance Officer, there are nonpublic developments that would be considered material for insider trading law purposes, such as, among other things, developments relating to regulatory matters, litigation or a major corporate transaction. Depending on the circumstances, a “special” Blackout Period may apply to all Designated Insiders or only to a specific group of Designated Insiders. The Insider Trading Compliance Officer will provide written notice to Designated Insiders subject to a “special” Blackout Period. Any person made aware of the existence of a “special” Blackout Period should not disclose the existence of the “special” Blackout Period to any other person. The failure of the Company to designate a person as being subject to a “special” Blackout Period will not relieve that person of the obligation not to trade while he or she is aware of Material Nonpublic Information. As used in this Policy, the term “Blackout Period” shall mean all periodic Blackout Periods and all “special” Blackout Periods announced by the Company.

The purpose behind the Blackout Period is to help establish a diligent effort to avoid any improper transactions. Trading in the Company’s securities outside a Blackout Period should not be considered a “safe harbor,” and all employees, officers and directors of the Company and other persons subject to this Policy should use good judgment at all times. Even outside a Blackout Period, any person possessing Material Nonpublic Information concerning the Company should not engage in any transactions in the Company’s securities until such information has been known publicly for at least two Trading Days after the date of announcement. Although the Company may from time to time impose “special” Blackout Periods, because of developments known to the Company and not yet disclosed to the public, each person is individually responsible at all times for compliance with the prohibitions against insider trading.

Transactions effected pursuant to a SEC Rule 10b5-1 trading plan implemented in accordance with Section G of this Policy are not subject to Blackout Periods.

2. Pre-clearance of Trades. Subject to Sections G and H of this Policy, the Company has determined that all directors and executive officers and their Family Members must refrain from transacting in the Company's securities without first complying with the Company's "pre-clearance" process. Each director or executive officer must contact the Insider Trading Compliance Officer prior to commencing any such transaction, or before any of their Family Members commences any transaction, in the Company's securities. This pre-clearance requirement applies to any transaction or transfer involving the Company's securities, including a gift, transfer to a trust or any other transfer.

The Company may also find it necessary, from time to time, to require compliance with the pre-clearance process from other employees designated as Designated Insiders. In such event, the Company will provide notice to such employees of their need to comply with the Company's pre-clearance process.

No Designated Insider may engage in any transaction in the Company's securities unless the transaction is pre-cleared by the Insider Trading Compliance Officer (provided that transactions in the Company's securities by the Insider Trading Compliance Officer are subject to approval by the Company's Chief Legal Officer). The Insider Trading Compliance Officer

and the Company's Chief Legal Officer are not under any obligation to approve a transaction submitted for pre-clearance, and each may determine not to permit a transaction.

To facilitate the process, the Insider Trading Compliance Officer will email all employees when they may request pre-clearance. Employees may then email the Insider Trading Compliance Officer seeking approval of trades noting whether they plan to buy or sell stock and the number of shares they plan to buy or sell. After approval, the employee will then be cleared to trade on the Company's stock administration portal, E*TRADE for a period not to exceed the start of a Blackout Period. No transaction may be effected until the employee has received approval from the Insider Trading Compliance Officer. If, upon requesting pre-clearance or otherwise, a director or executive officer or a Family Member of a director or executive officer is advised that Company securities may not be traded or transferred, such director, executive officer or Family Member may not buy, sell or otherwise trade or transfer any Company securities under any circumstance, and may not inform anyone of such restriction. This trading and transfer restriction will apply until the director, officer or Family Member receives a subsequent pre-clearance to trade or transfer his or her Company securities.

Transactions effected pursuant to a SEC Rule 10b5-1 trading plan implemented in accordance with Section G of this Policy will not require further pre-clearance at the time of each such transaction.

3. Hardship Exceptions. Any Designated Insider or Family Member of such insider who has an unexpected and urgent need to sell Company securities in order to generate cash may, in appropriate circumstances, be permitted to sell Company securities even during a Blackout Period. Hardship exceptions may be granted only by the Insider Trading Compliance Officer and must be requested at least two (2) days in advance of the proposed trade. A hardship exception may be granted only if the Insider Trading Compliance Officer concludes that the Company's earnings information for the applicable quarter does not constitute Material Nonpublic Information. Under no circumstances will a hardship exception be granted during a "special" Blackout Period or to a director or executive officer of the Company.

4. Individual Responsibility. Every director, officer and employee of the Company has the individual responsibility (and must take appropriate measures to cause such person's Family Members) to comply with this Policy regardless of whether a transaction is executed outside a Blackout Period or is pre-cleared by the Insider Trading Compliance Officer. The restrictions and procedures are intended to help avoid inadvertent instances of improper insider trading, but appropriate judgment should always be exercised by each director, officer and employee of the Company in connection with any transaction in the Company's securities.

A director, officer or employee of the Company, or a Family Member of any such individual, may, from time to time, need to forego a proposed transaction in the Company's securities even if he or she planned to make the transaction before learning of Material Nonpublic Information and even though the individual believes he or she may suffer an economic loss or forego anticipated profit by waiting. **Employees, officers and directors of the Company are responsible for ensuring compliance with this Policy by their Family Members.**

G. RULE 10B5-1 TRADING PLANS.

SEC Rule 10b5-1 provides an affirmative defense from insider trading liability under the federal securities laws for trading plans that meet certain requirements. It does not prevent someone from bringing a lawsuit. This Policy permits individuals to adopt SEC Rule 10b5-1 trading plans with brokers that outline a pre-set plan for transacting in the Company's securities, including the exercise of equity awards.

As required by SEC Rule 10b5-1, a director, executive officer or other employee of the Company identified as a Designated Insider may implement a trading plan under SEC Rule 10b5-1 only when he or she is not in possession of Material Nonpublic Information. In addition, a trading plan may not be entered into or once entered into, changed, during a Blackout Period. Any officer or other employee of the Company identified as a Designated Insider who wishes to implement a trading plan under SEC Rule 10b5-1 must first pre-clear the plan with the Insider Trading Compliance Officer at least five (5) days prior to the entry into the plan, and also must pre-clear any amendment to such plan and any termination of a plan in advance of its expiration date, with the Insider Trading Compliance Officer. Except as set forth above, no further pre-approval of transactions conducted pursuant to trading plan under SEC Rule 10b5-1 will be required.

Establishing a trading plan under SEC Rule 10b5-1 does not exempt transactions from the short-swing profit provisions of Section 16.

H. CERTAIN EXCEPTIONS.

1. Equity Award Exercises. For purposes of this Policy, the Company considers the exercise of equity awards under the Company's equity incentive plans, including any net exercise of an equity award pursuant to which you have elected to have the Company withhold shares of stock to satisfy tax withholding requirements or the exercise price of the equity award, to be exempt from this Policy. This Policy does apply, however, to any sale of stock as part of a broker.

assisted "cashless" exercise of an equity award, any market sale for the purpose of generating the cash needed to pay the exercise price of an equity award and any other sale of the underlying stock received upon exercise of any equity award.

2. Restricted Stock Awards. This Policy does not apply to the vesting of restricted stock, or the exercise of a tax withholding right pursuant to which an individual elects to have the Company withhold shares of stock to satisfy tax withholding requirements upon the vesting of any restricted stock. The Policy does apply, however, to any market sale of restricted stock.

3. 401(k) Plan. This Policy does not apply to purchases of Company stock in the Company's 401(k) plan resulting from periodic contributions of money to the plan pursuant to payroll deduction elections. This Policy does apply, however, to certain elections that may be made under the 401(k) plan, including: (i) an election to increase or decrease the percentage of periodic contributions that will be allocated to the Company stock fund, if any; (ii) an election to make an intra-plan transfer of an existing account balance into or out of the Company stock fund; (iii) an election to borrow money against a 401(k) plan account if the loan will result in a liquidation of some or all of a participant's Company stock fund balance; and (iv) an election to pre-pay a plan loan if the pre-payment will result in allocation of loan proceeds to the Company stock fund.

4. Employee Stock Purchase Plan. This Policy does not apply to purchases of Company stock in any employee stock purchase plan of the Company resulting from periodic contributions of money to the plan pursuant to the elections made at the time of enrollment in the plan. This Policy also does not apply to purchases of Company stock resulting from lump sum contributions to the plan; *provided that* the participant elected to participate by lump-sum payment at the beginning of the applicable enrollment period. This Policy does apply to a participant's election to participate, or increase his or her participation, in the plan, and to a participant's sales of Company stock purchased pursuant to the plan.

5. Dividend Reinvestment Plan. This Policy does not apply to purchases of Company stock under any dividend reinvestment plan of the Company resulting from reinvestment of dividends paid on Company securities. This Policy does apply, however, to voluntary purchases of Company stock that result from additional contributions a participant chooses to make to the plan, and to a participant's election to participate in the plan or increase his or her level of participation in the plan. This Policy also applies to his or her sale of any Company stock purchased pursuant to the plan.

I. APPLICABILITY OF POLICY TO INSIDE INFORMATION REGARDING OTHER COMPANIES.

This Policy and the guidelines described herein also apply to material nonpublic information relating to other companies, including the Company's customers, vendors or suppliers (collectively, "*business partners*"), when that information is obtained in the course of employment with, or other services performed on behalf of, the Company. Civil and criminal penalties, and termination of employment or removal from our Board of Directors, may result from trading on inside information regarding the Company's business partners. All Company employees should treat material nonpublic information about the Company's business partners with the same care required with respect to information related directly to the Company.

J. SECTION 16 LIABILITY - DIRECTORS AND OFFICERS.

Directors and certain officers of the Company must also comply with the reporting obligations and limitations on short-swing profit transactions set forth in Section 16. The practical effect of these provisions is that these officers and directors who purchase and sell the Company's securities within a six-month period must disgorge all profits to the Company whether or not they had knowledge of any Material Nonpublic Information. Under these provisions, and so long as certain other criteria are met, neither the receipt of stock or stock options under the Company's stock plans, nor the exercise of options nor the receipt of stock under a Company dividend reinvestment plan or the Company's 401(k) retirement plan is deemed a purchase that can be matched against a sale for Section 16(b) short-swing profit disgorgement purposes; however, the sale of any such shares so obtained is a sale for these purposes. The Company will provide separate memoranda and other appropriate materials to the affected officers and directors regarding compliance with Section 16 and its related rules upon request.

The rules on recovery of short-swing profits are absolute and do not depend on whether a person has Material Nonpublic Information.

K. SHORT SALES.

No director, officer, other employee or consultant of the Company may engage in short sales of the Company's securities, including a "sale against the box," at any time. Short sales of the Company's securities evidence an expectation on the part of the seller that the securities will decline in value, and therefore signal to the market that the seller has no confidence in the Company or its short-term prospects. In addition, short sales may reduce the seller's incentive to improve the Company's performance. Furthermore, Section 16(c) of the Exchange Act expressly prohibits directors and certain officers of the Company from making short sales of the Company's securities.

L. PUBLICLY TRADED OPTIONS.

A transaction in a publicly-traded option is, in effect, a bet on the short-term movement of the Company's stock and therefore creates the appearance that the director or employee is trading based on inside information. Transactions in options also may focus the trader's attention on short-term performance at the expense of the Company's long-term objectives. Accordingly, transactions in puts, calls or other derivative securities, on an exchange or in any other organized market, are prohibited. Option positions arising from certain types of hedging transactions are governed by Section M of this Policy.

M. HEDGING OR MONETIZATION TRANSACTIONS.

Certain forms of hedging or monetization transactions, such as zero-cost collars and forward sale contracts, allow a director, officer or employee to lock in much of the value of his or her stock holdings, often in exchange for all or part of the potential for upside appreciation in the stock. These transactions would allow them to continue to own the covered securities, but without the full risks and rewards of ownership. When that occurs, their interests and the interests of the Company and its stockholders may be misaligned and may signal a message to the trading market when disclosed in Section 16 reports that may not be in the best interests of the Company and its stockholders at the time it is conveyed. Accordingly, transactions in hedging or monetization transactions involving Company securities are prohibited.

N. MARGIN ACCOUNTS AND PLEDGES.

Securities held in a margin account may be sold by the broker without the customer's consent if the customer fails to meet a margin call. Similarly, securities pledged (or hypothecated) as collateral for a loan may be sold in foreclosure if the borrower defaults on the loan. A margin sale or foreclosure sale may occur at a time when the pledgor is aware of Material Nonpublic Information or otherwise is not permitted to trade in Company securities pursuant to a Blackout Period restriction. Thus, unless pre-cleared by the Insider Trading Compliance Officer, directors, officers and employees are prohibited from pledging Company securities as collateral for a loan.

Any director, officer or employee of the Company preparing to pledge his or her Company securities must clearly demonstrate his or her financial capacity to repay the loan without resort to the pledged securities. Any person proposing to pledge Company securities as collateral for a loan must submit a request for approval to the Insider Trading Compliance Officer at least two (2) weeks prior to the proposed execution of documents evidencing the proposed pledge.

O. STANDING ORDERS.

Standing orders should be used only for a very brief period. A standing order placed with a broker or other nominee to sell or purchase stock at a specified price leaves an employee, officer or director of the Company with no control over the timing of the transaction. A standing order transaction executed by the broker or other nominee when such employee, officer or director of the Company is aware of Material Nonpublic Information may result in unlawful insider trading.

P. GIFTS.

Because charitable and other nonprofit organizations may sell securities given to them very soon after receiving them, and because there is also the potential for manipulation (or perceived manipulation) by the donor to gain a larger tax deduction by donating securities before the release of material negative news, charitable gifts may not be made at a time when the donor is aware of Material Nonpublic Information.

Q. POST-TERMINATION TRANSACTIONS.

In the event a director, officer or employee of the Company resigns or terminates employment or service with the Company, this Policy shall continue to apply to transactions in Company securities by such individual for so long as he or she remains in possession of any Material Nonpublic Information possessed by such director, officer or employee as of his or her resignation or termination. Notwithstanding the foregoing, all former directors, officers and employees shall remain subject to the prohibitions against insider trading set forth under federal and state securities laws any time they engage in transactions in Company securities following their resignation or termination.

R. COMMUNICATIONS WITH THE PUBLIC.

The Company is subject to the SEC's Regulation FD (Fair Disclosure) and must avoid selective disclosure of Material Nonpublic Information. The Company has established procedures for releasing material information in a manner that is designed to achieve broad public dissemination of the information immediately upon its release. Pursuant to Company policy, only the executive officers who have been authorized to engage in communications with the public may disclose information to the public regarding the Company and its business activities and financial affairs. The public includes, without limitation, research analysts, portfolio managers, financial and business reporters, news media and investors. In addition, because of the risks associated with the exchange of information through such communications media, Company employees must adhere to the Company's Social Media Policy in posting or responding to messages containing information regarding the Company on Internet "bulletin boards," Internet "chat rooms," "blogs", finance message boards and chat rooms or in similar online forums. Employees who inadvertently disclose any Material Nonpublic Information must immediately advise the Insider Trading Compliance Officer so the Company can assess its obligations under Regulation FD and other applicable securities laws.

S. INQUIRIES.

Please direct questions as to any of the matters discussed in this Policy to the Insider Trading Compliance Officer:

General Counsel
Aterian, Inc.
E-mail: chris@aterian.io

T. SUSPECTED VIOLATIONS.

Any director, officer, other employee or consultant of the Company who knows of or suspects a violation of this Policy should report the violation immediately to the Insider Trading Compliance Officer or through the procedures for reporting outlined in the Company's Code of Conduct and Ethics. The Company will comply with all requests from the SEC, The Financial Industry Regulatory Authority, Inc., Nasdaq and any other quotation system or national securities exchange on which the Company's common stock is then traded or listed, and other agencies for information related to insider trading investigations.

U. CERTIFICATION.

All directors, officers and employees of the Company must certify their understanding of, and intent to comply with, this Policy by executing the Certification form attached hereto as EXHIBIT A and returning it to the Insider Trading Compliance Officer. By executing the Certification form, each director, officer and employee indicates that he or she received, read, understands and agrees to comply with this Policy. The Certification form must be returned to the Insider Trading Compliance Officer promptly following commencement of employment or directorship.

V. ADDITIONAL INFORMATION

Nothing in this Policy creates or implies an employment contract or term of employment. Employment at the Company is employment at-will unless otherwise expressly provided in an employment contract signed by the employee and the Company's Chief Executive Officer (or another authorized officer of the Company). Employment at-will may be terminated with or without cause and with or without notice at any time by the employee or the Company. Nothing in this Policy shall limit the right to terminate employment at-will. No one other than the Company's Chief Executive Officer is authorized to change this at-will employment relationship, or to enter into an agreement to employ employees for a specified period of time. If the Company's Chief Executive Officer makes this kind of different agreement with an employee, it will not be effective unless it is in writing, clearly states that the at-will employment relationship is changed, and is signed by the employee and the Company's Chief Executive Officer (or another authorized officer of the Company).

W. AMENDMENTS.

This Policy will be subject to the periodic review of our Board of Directors. The Company anticipates that modifications to this Policy will be necessary from time to time as the Company's needs and circumstances evolve, and as applicable legal or listing standards change. The Company reserves the right to amend, supplement or discontinue this Policy and the matters addressed herein, without prior notice, at any time. However, employees are expected to adhere to this Policy, and the procedures established under it, until they receive any contrary instruction from the Insider Trading Compliance Officer.

Adopted on May 22, 2019

Amended on November 1, 2024

EXHIBIT A

ATERIAN, INC.

INSIDER TRADING POLICY

CERTIFICATION

I have received and read, and I understand, Insider Trading Policy (the “*Policy*”) of Aterian, Inc. (the “*Company*”). I understand the standards and policies contained in the Policy and understand that there may be additional policies or laws specific to me depending on my role with the Company.

I further agree, as a condition of my employment (or continued employment) with the Company or appointment (or future nomination for election) to the Board of Directors of the Company, to comply with the Policy.

I further understand that I should contact the Insider Trading Compliance Officer if I have any questions about the Policy generally. I understand that the Policy sets forth, in Section T thereof, specific ways to report an actual or potential violation of the Policy, or of any rule, law, regulation or other Company policy. I agree that I will ask the Insider Trading Compliance Officer if I have any questions about how to make such reports, or about any potential conflict of interest. This signed “Insider Trading Policy Certification” page must be returned to the Insider Trading Compliance Officer, who is also the Company’s Chief Operating Officer, within ten (10) business days of my receipt of the Policy and otherwise as may be required by the Company.

[SIGNATURE]

[PRINT NAME]

[DATE]

APPENDIX A

MEMBERS OF THE BOARD OF DIRECTORS AND EXECUTIVE OFFICERS

NON-EMPLOYEE DIRECTORS: ALL

EXECUTIVE OFFICERS: ALL

APPENDIX B

EMPLOYEES IN THE FINANCE DEPARTMENT

ALL.

APPENDIX C

OTHER EMPLOYEES

ALL EMPLOYEES, AND CONTRACTORS WHO DO OR MAY HAVE ACCESS TO POWERBI

List of Subsidiaries of Aterian, Inc.

Name of Subsidiary	Jurisdiction
Aterian Group, Inc.	Delaware
Xtava LLC	Delaware
Sunlabz LLC	Delaware
RIF6 LLC	Delaware
Vremi LLC	Delaware
hOmelabs LLC	Delaware
Vidazen LLC	Delaware
Urban Source LLC	Delaware
ZephyrBeauty LLC	Delaware
Discocart LLC	Delaware
Vueti LLC	Delaware
Punched LLC	Delaware
SweetHomeDealz LLC	Delaware
KitchenVox LLC	Delaware
Exorider LLC	Delaware
Kinetic Wave LLC	Delaware
3GirlsFromNY LLC	Delaware
ChicAlley LLC	Delaware
BoxWhale LLC	Delaware
Aussie Health Co, LLC	Delaware
Truweo, LLC	Delaware
Spiralizer, LLC	Delaware
PurSteam, LLC	Delaware
Products for Change, LLC	Delaware
Pohl & Schmidt, LLC	Delaware
Mueller Austria, LLC	Delaware
Maison Contempo, LLC	Delaware
KNDirect, LLC	Delaware
Commerce Planet, LLC	Delaware
Chromatic Jammer, LLC	Delaware
Trucom, LLC	Delaware
Posture Products, LLC	Delaware
Rencare, LLC	Delaware
Kitchen Products, LLC	Delaware
Healing Solutions (Remedy) LLC	Delaware
First Hour Commerce (Remedy) LLC	Delaware
Model Trading Company (Remedy) LLC	Delaware
Choice Product Selection (Remedy) LLC	Delaware
Finest Screen (Remedy) LLC	Delaware
Sari Foods, LLC	Delaware
Squatty Potty USA LLC	Delaware
Photo Paper Direct, LLC	Delaware
Photo Paper Direct Limited	United Kingdom
Mohawk Innovations Limited	Ireland
Shenzhen Mohawk Technology Ltd. Co.	China
Mohawk Innovations Canada Inc.	Canada
Mohawk Group Poland Sp. z.o.o.	Poland
Mohawk Research & Development Ltd.	Israel
Mohawk Group Inc. Philippines Branch	Philippines

We consent to the incorporation by reference in Registration Statement Nos. 333-278147, 333-23087, 333-251295, 333-256612, 333-263906, 333-265298, and 333-270669 on Form S-8 of our report dated March 19, 2024 (March 21, 2025, as to the effects of the adoption of ASU No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, described in Note 2) and reverse stock split, described in Note 1, relating to the 2023 consolidated financial statement of Aterian Inc. and its subsidiaries, appearing in this Annual Report on Form 10-K of Aterian Inc, for the year ended December 31, 2024.

/s/ Deloitte & Touche LLP

New York, New York
March 25, 2025

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statement of Aterian, Inc. and on Form S-8 (File Nos. 333-278147, 333-270669, 333-265298, 333-263906, 333-256612, 333-251295 and 333-232087) of our report dated March 25, 2025, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audit of the consolidated financial statements of Aterian, Inc. and Subsidiaries as of December 31, 2024 and for the year ended December 31, 2024, which report is included in this Annual Report on Form 10-K of Aterian, Inc. for the year ended December 31, 2024.

/s/ UHY LLP

Melville, NY
March 25, 2025

**CERTIFICATION OF FINANCIAL EXECUTIVE OFFICER PURSUANT
TO RULE 13a-14(a) UNDER
THE SECURITIES EXCHANGE ACT OF 1934
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Arturo Rodriguez, certify that:

1. I have reviewed this Annual Report on Form 10-K of Aterian, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting

Date: March 25, 2025

/s/ Arturo Rodriguez

Arturo Rodriguez

Chief Executive Officer

(Principal Executive Officer)

**CERTIFICATION OF FINANCIAL EXECUTIVE OFFICER PURSUANT
TO RULE 13a-14(a) UNDER
THE SECURITIES EXCHANGE ACT OF 1934
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joshua Feldman, certify that:

1. I have reviewed this Annual Report on Form 10-K of Aterian, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting

Date: March 25, 2025

/s/ Joshua Feldman

Joshua Feldman

Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Aterian, Inc. (the "Company") for the period ended December 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to their knowledge that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Arturo Rodriguez

Arturo Rodriguez
Chief Executive Officer
(Principal Executive Officer)
March 25, 2025

/s/ Joshua Feldman

Joshua Feldman
Chief Financial Officer
(Principal Financial Officer)
March 25, 2025

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report, is not deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the Exchange Act), or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

COMPENSATION RECOVERY POLICY**Adopted as of November 3, 2023**

Aterian, Inc., a Delaware corporation (the “Company”), has adopted a Compensation Recovery Policy (this “Policy”) as described below.

1. Overview

The Policy sets forth the circumstances and procedures under which the Company shall recover Erroneously Awarded Compensation from current and former Executive Officers and any other designated employees of the Company in accordance with rules issued by the United States Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the Nasdaq Stock Market. Please refer to Section 3 below for definitions of capitalized terms used and not otherwise defined herein.

2. Compensation Recovery Requirement

In the event the Company is required to prepare a Material Financial Restatement, the Company shall reasonably promptly recover all Erroneously Awarded Compensation with respect to such Material Financial Restatement, and each Covered Person shall be required to take all actions necessary to enable such recovery.

3. Definitions

- a. “Applicable Recovery Period” means with respect to a Material Financial Restatement, the three completed fiscal years immediately preceding the Restatement Date for such Material Financial Restatement. In addition, in the event the Company has changed its fiscal year: (i) any transition period of less than nine months occurring within or immediately following such three completed fiscal years shall also be part of such Applicable Recovery Period and (ii) any transition period of nine to 12 months will be deemed to be a completed fiscal year.
- b. “Applicable Rules” means any rules or regulations adopted by the Exchange pursuant to Rule 10D-1 under the Exchange Act and any applicable rules or regulations adopted by the SEC pursuant to Section 10D of the Exchange Act.
- c. “Board” means the Board of Directors of the Company.
- d. “Committee” means the Compensation Committee of the Board or, in the absence of such committee, a majority of independent directors serving on the Board.
- e. A “Covered Person” means any Executive Officer and any other person designated by the Board or the Committee as being subject to this Policy. A person’s status as a Covered Person with respect to Erroneously Awarded Compensation shall be determined as of the time of receipt of such Erroneously Awarded Compensation regardless of their current role or status with the Company (e.g., if a person began service as an Executive Officer after the beginning of an Applicable Recovery Period, that person would not be considered a Covered Person with respect to Erroneously Awarded Compensation received before the person began service as an Executive Officer, but would be considered a Covered Person with respect to Erroneously Awarded Compensation received after the person began service as an Executive Officer where such person served as an Executive Officer at any time during the performance period for such Erroneously Awarded Compensation).
- f. “Effective Date” means October 2, 2023.
- g. “Erroneously Awarded Compensation” means, with respect to a Material Financial Restatement, the amount of any Incentive-Based Compensation received by a Covered Person on or after the Effective Date during the Applicable Recovery Period that exceeds the amount that otherwise would have been received by the Covered Person had such compensation been determined based on the restated amounts in the Material Financial Restatement, computed without regard to any taxes paid. Calculation of Erroneously Awarded Compensation with respect to 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 a Material Financial Restatement, shall be based on a reasonable estimate of the effect of the Material Financial Restatement on the stock price or total shareholder return upon which the Incentive-Based Compensation was received, and the Company shall maintain documentation of the determination of such reasonable estimate and provide such documentation to the Exchange in accordance with the Applicable Rules.
- h. “Exchange” means The Nasdaq Stock Market LLC
- i. An “Executive Officer” means any person who served the Company in any of the following roles, received Incentive-Based Compensation after beginning service in any such role (regardless of whether such Incentive-Based Compensation was received during or after such person’s service in such role) and served in such role at any time during the performance period for such Incentive-Based Compensation: the president, the principal financial officer, the principal accounting officer (or if there is no such accounting officer the controller), any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer.
- j. “Financial Reporting Measures” mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, any measures that are derived wholly or in part from such measures (including, for example, a non-GAAP financial measure), and stock price and total shareholder return.
- k. “Incentive-Based Compensation” means any compensation provided, directly or indirectly, by the Company or any of its subsidiaries that is granted, earned, or vested based, in whole or in part, upon the attainment of a Financial Reporting Measure. Incentive-Based Compensation is deemed received, earned or vested when the Financial Reporting Measure is attained, not when the actual payment, grant or vesting occurs.
- l. A “Material Financial Restatement” means an accounting restatement of previously issued financial statements of the Company 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.

- m. “**Restatement Date**” means, with respect to a Material Financial Restatement, the earlier to occur of: (i) the date the Board or the Audit Committee of the Board concludes, or reasonably should have concluded, that the Company is required to prepare the Material Financial Restatement or (ii) the date a court, regulator or other legally authorized body directs the Company to prepare the Material Financial Restatement.

4. Exception to Compensation Recovery Requirement

The Company may elect not to recover Erroneously Awarded Compensation pursuant to this Policy if the Committee determines that recovery would be impracticable, and one or more of the following conditions, together with any further requirements set forth in the Applicable Rules, are met: (i) the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered, and the Company has made a reasonable attempt to recover such Erroneously Awarded Compensation or (ii) recovery would likely cause an otherwise tax-qualified retirement plan to fail to be so qualified under applicable regulations.

5. Tax Considerations

To the extent that, pursuant to this Policy, the Company is entitled to recover any Erroneously Awarded Compensation that is received by a Covered Person, the gross amount received (i.e., the amount the Covered Person received, or was entitled to receive, before any deductions for tax withholding or other payments) shall be returned by the Covered Person.

7. Method of Compensation Recovery

The Committee shall determine, in its sole discretion, the method for recovering Erroneously Awarded Compensation hereunder, which may include, without limitation, any one or more of the following:

- a. requiring reimbursement of cash Incentive-Based Compensation previously paid;
- b. seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer or other disposition of any equity-based awards;
- c. canceling or rescinding some or all outstanding vested or unvested equity-based awards;
- d. adjusting or withholding from unpaid compensation or other set-off;
- e. canceling or setting-off against planned future grants of equity-based awards; and/or
- f. any other method permitted by applicable law or contract.

Notwithstanding the foregoing, a Covered Person will be deemed to have satisfied such person’s obligation to return Erroneously Awarded Compensation to the Company if such Erroneously Awarded Compensation is returned in the exact same form in which it was received; provided that equity withheld to satisfy tax obligations will be deemed to have been received in cash in an amount equal to the tax withholding payment made.

8. Policy Interpretation

This Policy shall be interpreted in a manner that is consistent with the Applicable Rules and any other applicable law and shall otherwise be interpreted (including in the determination of amounts recoverable) in the business judgment of the Committee. The Committee shall take into consideration any applicable interpretations and guidance of the SEC in interpreting this Policy, including, for example, in determining whether a financial restatement qualifies as a Material Financial Restatement hereunder. To the extent the Applicable Rules require recovery of Incentive-Based Compensation in additional circumstances besides those specified above, nothing in this Policy shall be deemed to limit or restrict the right or obligation of the Company to recover Incentive-Based Compensation to the fullest extent required by the Applicable Rules. This Policy shall be deemed to be automatically amended, as of the date the Applicable Rules become effective with respect to the Company, to the extent required for this Policy to comply with the Applicable Rules.

9. Policy Administration

This Policy shall be administered by the Committee. The Committee shall have such powers and authorities related to the administration of this Policy as are consistent with the governing documents of the Company and applicable law. The Committee shall have full power and authority to take, or direct the taking of, all actions and to make all determinations required or provided for under this Policy and shall have full power and authority to take, or direct the taking of, all such other actions and make all such other determinations not inconsistent with the specific terms and provisions of this Policy that the Committee deems to be necessary or appropriate to the administration of this Policy. The interpretation and construction by the Committee of any provision of this Policy and all determinations made by the Committee under this policy shall be final, binding and conclusive.

10. Compensation Recovery Repayments not Subject to Indemnification

Notwithstanding anything to the contrary set forth in any agreement with, or the organizational documents of, the Company or any of its subsidiaries, Covered Persons are not entitled to indemnification for Erroneously Awarded Compensation recovered under this Policy and, to the extent any such agreement or organizational document purports to provide otherwise, Covered Persons hereby irrevocably agree to forego such indemnification.