

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2020

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: 001-36384

MAGNITE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

20-8881738

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

12181 Bluff Creek Drive,

4th Floor

Los Angeles,

CA

90094

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code:

(310) 207-0272

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.00001 per share	MGNI	Nasdaq Global Select Market

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

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

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

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

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

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

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class	Outstanding as of November 5, 2020
Common Stock, \$0.00001 par value	111,958,965

MAGNITE, INC.
QUARTERLY REPORT ON FORM 10-Q
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PART I. FINANCIAL INFORMATION**Item 1. Condensed Consolidated Financial Statements**

MAGNITE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except per share amounts)
(unaudited)

	September 30, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 103,797	\$ 88,888
Accounts receivable, net	412,435	217,571
Prepaid expenses and other current assets	13,367	6,591
TOTAL CURRENT ASSETS	529,599	313,050
Property and equipment, net	18,876	23,667
Right-of-use lease asset	42,736	21,491
Internal use software development costs, net	17,386	16,053
Intangible assets, net	97,131	11,386
Other assets, non-current	2,942	2,103
Goodwill	157,804	7,370
TOTAL ASSETS	\$ 866,474	\$ 395,120
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	\$ 457,428	\$ 259,439
Lease liabilities, current	11,176	7,282
Other current liabilities	5,019	778
TOTAL CURRENT LIABILITIES	473,623	267,499
Lease liabilities, non-current	34,242	15,231
Other liabilities, non-current	2,478	454
TOTAL LIABILITIES	510,343	283,184
Commitments and contingencies (Note 11)		
STOCKHOLDERS' EQUITY		
Preferred stock, \$0.00001 par value, 10,000 shares authorized at September 30, 2020 and December 31, 2019; 0 shares issued and outstanding at September 30, 2020 and December 31, 2019	—	—
Common stock, \$0.00001 par value; 500,000 shares authorized at September 30, 2020 and December 31, 2019; 110,712 and 53,888 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	2	1
Additional paid-in capital	759,116	453,064
Accumulated other comprehensive loss	(2,585)	(45)
Accumulated deficit	(400,402)	(341,084)
TOTAL STOCKHOLDERS' EQUITY	356,131	111,936
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 866,474	\$ 395,120

The accompanying notes to unaudited condensed consolidated financial statements are an integral part of these statements.

MAGNITE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)
(unaudited)

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
Revenue	\$ 60,982	\$ 37,642	\$ 139,625	\$ 107,928
Expenses:				
Cost of revenue	21,031	13,869	56,579	44,070
Sales and marketing	21,761	11,040	53,059	33,151
Technology and development	13,562	10,293	37,318	29,848
General and administrative	13,314	9,121	38,221	29,428
Merger and restructuring costs	2,254	—	16,677	—
Total expenses	71,922	44,323	201,854	136,497
Loss from operations	(10,940)	(6,681)	(62,229)	(28,569)
Other (income) expense:				
Interest (income) expense, net	30	(218)	(112)	(625)
Other income	(1,194)	(48)	(2,487)	(236)
Foreign exchange (gain) loss, net	293	(296)	(845)	(138)
Total other income, net	(871)	(562)	(3,444)	(999)
Loss before income taxes	(10,069)	(6,119)	(58,785)	(27,570)
Provision (benefit) for income taxes	446	55	533	(569)
Net loss	\$ (10,515)	\$ (6,174)	\$ (59,318)	\$ (27,001)
Net loss per share:				
Basic and Diluted	\$ (0.10)	\$ (0.12)	\$ (0.65)	\$ (0.52)
Weighted average shares used to compute net loss per share:				
Basic and Diluted	110,416	53,023	91,371	52,324

The accompanying notes to unaudited condensed consolidated financial statements are an integral part of these statements.

MAGNITE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)
(unaudited)

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>September 30, 2020</u>	<u>September 30, 2019</u>	<u>September 30, 2020</u>	<u>September 30, 2019</u>
Net loss	\$ (10,515)	\$ (6,174)	\$ (59,318)	\$ (27,001)
Other comprehensive income (loss):				
Unrealized gain on investments	—	—	—	2
Foreign currency translation adjustments	18	(292)	(2,540)	(328)
Other comprehensive income (loss)	18	(292)	(2,540)	(326)
Comprehensive loss	<u>\$ (10,497)</u>	<u>\$ (6,466)</u>	<u>\$ (61,858)</u>	<u>\$ (27,327)</u>

The accompanying notes to unaudited condensed consolidated financial statements are an integral part of these statements.

MAGNITE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)
(unaudited)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2018	51,159	\$ 1	\$ 433,877	\$ (259)	\$ (315,606)	\$ 118,013
Exercise of common stock options	76	—	251	—	—	251
Restricted stock awards, net	(182)	—	—	—	—	—
Issuance of common stock related to employee stock purchase plan	—	—	—	—	—	—
Issuance of common stock related to RSU vesting	1,171	—	—	—	—	—
Shares withheld related to net share settlement	(459)	—	(1,835)	—	—	(1,835)
Stock-based compensation	—	—	4,514	—	—	4,514
Other comprehensive income	—	—	—	94	—	94
Net loss	—	—	—	—	(12,546)	(12,546)
Balance at March 31, 2019	51,765	\$ 1	\$ 436,807	\$ (165)	\$ (328,152)	\$ 108,491
Exercise of common stock options	79	—	132	—	—	132
Restricted stock awards, net	—	—	—	—	—	—
Issuance of common stock related to employee stock purchase plan	118	—	477	—	—	477
Issuance of common stock related to RSU vesting	1,022	—	—	—	—	—
Shares withheld related to net share settlement	—	—	(12)	—	—	(12)
Stock-based compensation	—	—	4,949	—	—	4,949
Other comprehensive income	—	—	—	(128)	—	(128)
Net loss	—	—	—	—	(8,281)	(8,281)
Balance at June 30, 2019	52,984	\$ 1	\$ 442,353	\$ (293)	\$ (336,433)	\$ 105,628
Exercise of common stock options	83	—	146	—	—	146
Issuance of common stock related to RSU vesting	6	—	—	—	—	—
Stock-based compensation	—	—	4,815	—	—	4,815
Other comprehensive loss	—	—	—	(292)	—	(292)
Net loss	—	—	—	—	(6,174)	(6,174)
Balance at September 30, 2019	53,073	\$ 1	\$ 447,314	\$ (585)	\$ (342,607)	\$ 104,123

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2019	53,888	\$ 1	\$ 453,064	\$ (45)	\$ (341,084)	\$ 111,936
Exercise of common stock options	27	—	23	—	—	23
Restricted stock awards, net	—	—	—	—	—	—
Issuance of common stock related to employee stock purchase plan	—	—	—	—	—	—
Issuance of common stock related to RSU vesting	1,861	—	—	—	—	—
Shares withheld related to net share settlement	(716)	—	(7,485)	—	—	(7,485)
Stock-based compensation	—	—	4,218	—	—	4,218
Other comprehensive loss	—	—	—	(789)	—	(789)
Net loss	—	—	—	—	(9,675)	(9,675)
Balance at March 31, 2020	55,060	\$ 1	\$ 449,820	\$ (834)	\$ (350,759)	\$ 98,228
Exercise of common stock options	746	—	2,276	—	—	2,276
Issuance of common stock related to employee stock purchase plan	159	—	693	—	—	693
Issuance of common stock related to RSU vesting	1,904	—	—	—	—	—
Shares withheld related to net share settlement	(107)	—	(349)	—	—	(349)
Issuance of common stock associated with the Merger	52,099	1	275,772	—	—	275,773
Exchange of stock options and RSU related to Merger	—	—	11,646	—	—	11,646
Stock-based compensation	—	—	10,101	—	—	10,101
Other comprehensive loss	—	—	—	(1,769)	—	(1,769)
Net loss	—	—	—	—	(39,128)	(39,128)
Balance at Balance at June 30, 2020	109,861	\$ 2	\$ 749,959	\$ (2,603)	\$ (389,887)	\$ 357,471
Exercise of common stock options	563	—	1,569	—	—	1,569
Issuance of common stock related to RSU vesting	289	—	—	—	—	—
Shares withheld related to net share settlement	(1)	—	(7)	—	—	(7)
Stock-based compensation	—	—	7,595	—	—	7,595
Other comprehensive loss	—	—	—	18	—	18
Net loss	—	—	—	—	(10,515)	(10,515)
Balance at Balance at September 30, 2020	110,712	\$ 2	\$ 759,116	\$ (2,585)	\$ (400,402)	\$ 356,131

The accompanying notes to unaudited condensed consolidated financial statements are an integral part of these statements.

MAGNITE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(unaudited)

	Nine Months Ended	
	September 30, 2020	September 30, 2019
OPERATING ACTIVITIES:		
Net loss	\$ (59,318)	\$ (27,001)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation and amortization	36,157	24,841
Stock-based compensation	21,298	13,877
(Gain) loss on disposal of property and equipment	(17)	92
Provision for doubtful accounts	31	897
Accretion of available-for-sale securities	—	24
Non-cash lease expense	(601)	(469)
Unrealized foreign currency gains, net	(2,108)	(391)
Deferred income taxes	837	(748)
Changes in operating assets and liabilities:		
Accounts receivable	(46,145)	32,149
Prepaid expenses and other assets	(2,896)	672
Accounts payable and accrued expenses	23,464	(34,018)
Other liabilities	5,260	(117)
Net cash (used in) provided by operating activities	(24,038)	9,808
INVESTING ACTIVITIES:		
Purchases of property and equipment	(4,211)	(5,605)
Capitalized internal use software development costs	(6,894)	(6,000)
Cash, cash equivalents and restricted cash acquired in Merger	54,595	—
Maturities of available-for-sale securities	—	7,500
Net cash provided by (used in) investing activities	43,490	(4,105)
FINANCING ACTIVITIES:		
Proceeds from exercise of stock options	3,868	529
Proceeds from issuance of common stock under employee stock purchase plan	693	477
Taxes paid related to net share settlement	(7,841)	(1,847)
Net cash used in financing activities	(3,280)	(841)
EFFECT OF EXCHANGE RATE CHANGES ON CASH, CASH EQUIVALENTS AND RESTRICTED CASH	41	(192)
CHANGE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	16,213	4,670
CASH, CASH EQUIVALENTS AND RESTRICTED CASH — Beginning of period	88,888	80,452
CASH, CASH EQUIVALENTS AND RESTRICTED CASH — End of period	\$ 105,101	\$ 85,122
SUPPLEMENTAL DISCLOSURES OF OTHER CASH FLOW INFORMATION:		
Cash paid for income taxes	\$ 829	\$ 300
Cash paid for interest	\$ 49	\$ 46
Capitalized assets financed by accounts payable and accrued expenses	\$ 2,388	\$ 2,005
Capitalized stock-based compensation	\$ 616	\$ 401
Operating lease right-of-use assets obtained in exchange for new operating lease liabilities	\$ 2,036	\$ 13,074
Change in restricted cash	\$ 1,304	\$ —
Common stock and options issued for Merger	\$ 287,418	\$ —

The accompanying notes to unaudited condensed consolidated financial statements are an integral part of these statements.

MAGNITE, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1—Organization and Summary of Significant Accounting Policies

Company Overview

Magnite, Inc. ("Magnite" or the "Company"), formerly known as The Rubicon Project, Inc., was formed and began operations in April 2007. On April 1, 2020, Magnite completed a stock-for-stock merger ("Merger") with Telaria, Inc., ("Telaria"), a leading provider of connected television ("CTV") technology. The Company operates a sell side advertising platform that offers buyers and sellers of digital advertising a single partner for transacting globally across all channels, formats, and auction types.

On June 8, 2020, the Company voluntarily delisted its common stock from the New York Stock Exchange ("NYSE") and commenced listing on The Nasdaq Global Select Market of The Nasdaq Stock Market LLC ("Nasdaq"). On June 30, 2020, the Company changed its name from "The Rubicon Project, Inc." to "Magnite, Inc." In connection with the name change, the Company also changed its ticker symbol from "RUBI" to "MGNI." Magnite has its principal offices in Los Angeles, New York City, London, and Sydney, and additional offices in Europe, Asia, North America, and South America.

The Company provides a technology solution to automate the purchase and sale of digital advertising inventory for buyers and sellers. The Company's platform features applications and services for sellers of digital advertising inventory, or publishers, that own or operate websites, applications, CTV channels, and other digital media properties, to manage and monetize their inventory; applications and services for buyers, including advertisers, agencies, agency trading desks, and demand side platforms, to buy digital advertising inventory; and a transparent, independent marketplace that brings buyers and sellers together and facilitates intelligent decision making and automated transaction execution at scale. The Company's clients include many of the world's leading publishers of websites, CTV channels, mobile applications, and buyers of digital advertising inventory.

Publishers monetize their inventory through the Company's platform by seamlessly connecting to a global market of integrated buyers that transact through real-time bidding, which includes direct sale of premium inventory to a buyer, referred to as private marketplace ("PMP"), and open auction bidding, where buyers bid against each other in a real-time auction for the right to purchase a publisher's inventory, referred to as open marketplace ("OMP"). At the same time, buyers leverage the Company's platform to manage their advertising spending and reach their target audiences, simplify order management and campaign tracking, obtain actionable insights into audiences for their advertising, and access impression-level purchasing from thousands of sellers.

Basis of Presentation and Summary of Significant Accounting Policies

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with United States Generally Accepted Accounting Principles, or GAAP, for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair statement of the results for the interim period presented have been included. Operating results for the nine months ended September 30, 2020 are not necessarily indicative of the results that may be expected for any future interim period, the year ending December 31, 2020, or for any future year.

The condensed consolidated balance sheet at December 31, 2019 has been derived from the audited financial statements at that date, but does not include all of the disclosures required by GAAP. The accompanying condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the year ended December 31, 2019 included in its 2019 Annual Report on Form 10-K.

There have been no significant changes in the Company's accounting policies from those disclosed in its audited consolidated financial statements and notes thereto for the year ended December 31, 2019 included in its Annual Report on Form 10-K.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation. Specifically, this includes amounts reclassified for the three months ended March 31, 2020 to conform to the current presentation for the three and nine months ended September 30, 2020 in the condensed consolidated statements of operations related to merger and restructuring costs.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported and disclosed financial statements and accompanying footnotes. Due to the economic uncertainty as a result of the COVID-19 pandemic, it has become more difficult to apply certain assumptions and judgments into these estimates. The extent of the impact of COVID-19 pandemic on the Company's operational and financial

performance will depend on future developments, which are highly uncertain and cannot be predicted, including but not limited to, the duration and spread of the outbreak, its severity, including any resurgence, the actions to contain the virus or treat its impact, and how quickly and to what extent normal economic and operating conditions can resume. During the nine months ended September 30, 2020, this uncertainty resulted in a higher level of judgment related to its estimates and assumptions. As of the date of issuance of the condensed consolidated financial statements for the three and nine months ended September 30, 2020, the Company is not aware of any specific event or circumstance that would require the Company to update its estimates, judgments, or revise the carrying value of its assets or liabilities. These estimates may change, as new events occur and additional information is obtained, and are recognized in the consolidated financial statements as soon as they become known. Actual results could differ from those estimates and any such differences may be material to the Company's financial statements.

Recently Adopted Accounting Standards

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-13—*Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"). This guidance requires entities to use a current expected credit loss methodology to measure impairments of certain financial assets and to recognize an allowance for its estimate of lifetime expected credit losses. The main objective of this update is to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments and other commitments to extend credit held by a reporting entity at each reporting date. The guidance was effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. The Company adopted ASU 2016-13 as of January 1, 2020. The standard had no material impact on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13—*Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement* ("ASU 2018-13"), to streamline the disclosure requirements of ASC Topic 820—Fair Value Measurement. ASU 2018 removes certain disclosure requirements, including the valuation process for Level 3 fair value measurements, and adds certain quantitative disclosures around Level 3 fair value measurements. This ASU is effective for annual reporting periods beginning after December 15, 2019, including interim periods within that reporting period, with early adoption permitted. The provisions of ASU 2018-13 are required to be adopted retrospectively, with the exception of disclosure of the range and weighted average of significant unobservable inputs used to develop Level 3 measurements, which can be adopted prospectively. The Company adopted ASU 2018-13 as of January 1, 2020. The standard had no material impact on its consolidated financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-15—*Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract* ("ASU 2018-15"). ASU 2018-15 was issued to clarify the requirements of ASC 350-40—*Intangibles—Goodwill and Other—Internal-Use Software* ("ASC 350-40"). The ASU clarifies that implementation, setup and other upfront costs related to cloud computing agreements ("CCA") should be accounted for under ASC 350-40. ASC 2018-15 will require companies to capitalize certain costs incurred when purchasing a CCA that is a service. Under the new guidance, companies will apply the same criteria for capitalizing implementation costs in a CCA service as they would for internal-use software. The capitalized implementation costs will generally be expensed over the term of the service arrangement and the related assets will be assessed for impairment using the same model applied to long-lived assets. This ASU is effective for annual reporting periods beginning after December 15, 2019, including interim periods within that reporting period, with early adoption permitted. ASU 2018-15 can be applied either retrospectively or prospectively to all implementation costs incurred after the date of adoption. The Company adopted ASU 2018-15 as of January 1, 2020 on a prospective basis. The standard had no material impact on its consolidated financial statements and related disclosures.

Recent Accounting Pronouncements

In December 2019, the FASB issued ASU 2019-12—*Simplifying the Accounting for Income Taxes* ("ASU 2019-12"). ASU 2019-12 simplifies the accounting for income taxes by removing certain exceptions to general principles in Topic 740 and clarifies and amends existing guidance for clarity and consistent application. This guidance is effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2020 including interim reporting periods within those fiscal years. Early adoption is permitted. The Company is evaluating the impact of adopting this new accounting guidance on its consolidated financial statements and related disclosures, but does not anticipate it will have a material impact.

The Company does not believe there are any other recently issued and effective or not yet effective pronouncements that would have or are expected to have any significant effect on the Company's financial position, cash flows or results of operations.

Note 2—Net Income (Loss) Per Share

The following table presents the basic and diluted net loss per share:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands, except per share data)			
Basic and Diluted EPS:				
Net loss	\$ (10,515)	\$ (6,174)	\$ (59,318)	\$ (27,001)
Weighted-average common shares outstanding	110,416	53,029	91,371	52,349
Weighted-average unvested restricted stock	—	(6)	—	(25)
Weighted-average common shares outstanding used to compute net loss per share	110,416	53,023	91,371	52,324
Basic and diluted net loss per share	\$ (0.10)	\$ (0.12)	\$ (0.65)	\$ (0.52)

The following weighted-average shares have been excluded from the calculation of diluted net loss per share attributable to common stockholders for each period presented because they are anti-dilutive:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands)		(in thousands)	
Options to purchase common stock	1,920	1,078	1,720	732
Unvested restricted stock awards	—	—	—	16
Unvested restricted stock units	3,768	5,168	3,851	3,911
Unvested performance stock units	14	—	6	—
ESPP	30	48	40	35
Total shares excluded from net loss per share	5,732	6,294	5,617	4,694

Note 3—Revenues

The Company generates revenue from transactions where it provides a platform for the purchase and sale of digital advertising inventory. The Company also generates revenue from the fee it charges clients for use of its Demand Manager product, which generally is a percentage of the client's advertising spending on any advertising marketplace. The Company's platform dynamically connects sellers and buyers of advertising inventory in a digital marketplace. The Company's solution incorporates proprietary machine-learning algorithms, sophisticated data processing, high-volume storage, detailed analytics capabilities, and a distributed infrastructure. Digital advertising inventory is created when consumers access sellers' content. Sellers provide digital advertising inventory to the Company's platform in the form of advertising requests, or ad requests. When the Company receives ad requests from sellers, it sends bid requests to buyers, which enable buyers to bid on sellers' digital advertising inventory. Winning bids can create advertising, or paid impressions, for the seller to present to the consumer.

The total volume of spending between buyers and sellers on the Company's platform is referred to as advertising spend. The Company keeps a percentage of that advertising spend as a fee, and remits the remainder to the seller. The fee that the Company retains from the gross advertising spend on its platform is recognized as revenue. The fee earned on each transaction is based on the pre-existing agreement between the Company and the seller and the clearing price of the winning bid. The Company recognizes revenue upon fulfillment of its performance obligation to a client, which occurs at the point in time an ad renders and is counted as a paid impression, subject to an underlying agreement existing with the client and a fixed or determinable transaction price. Performance obligations for all transactions are satisfied, and the corresponding revenue is recognized, at a distinct point in time when an ad renders. The Company does not have arrangements with multiple performance obligations.

The determination of whether revenue should be reported on a gross or net basis is based on an assessment of whether the Company is acting as the principal or an agent in the transaction. In determining whether the Company is acting as the principal or an agent, the Company follows the accounting guidance for principal-agent considerations. Making such determinations involves judgment and is based on an evaluation of the terms of each arrangement, none of which are considered presumptive or determinative.

For substantially all transactions on the Company's platform, the Company reports revenue on a net basis as it does not act as the principal in the purchase and sale of digital advertising inventory because it does not have control of the digital advertising inventory and does not set prices agreed upon within the auction marketplace. However, for certain transactions related to revenue streams acquired in connection with the Merger with Telaria, the Company reports revenue on a gross basis, based primarily on its

determination that the Company acts as the primary obligor in the delivery of advertising campaigns for buyers with respect to such transactions. For the three months ended September 30, 2020, revenue reported on a gross basis was less than 2% of total revenue.

The following table presents our revenue by channel for the three and nine months ended September 30, 2020 and 2019:

	Three Months Ended				Nine Months Ended			
	September 30, 2020		September 30, 2019		September 30, 2020		September 30, 2019	
	(in thousands, except percentages)							
Channel:								
CTV	\$ 11,059	18 %	\$ —	— %	\$ 18,978	14 %	\$ —	— %
Desktop	20,901	34	15,936	42	51,468	37	47,745	44
Mobile	29,022	48	21,706	58	69,179	49	60,183	56
Total	<u>\$ 60,982</u>	<u>100 %</u>	<u>\$ 37,642</u>	<u>100 %</u>	<u>\$ 139,625</u>	<u>100 %</u>	<u>\$ 107,928</u>	<u>100 %</u>

The following table presents our revenue disaggregated by geographic location, based on the location of the Company's sellers:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands)			
United States	\$ 45,048	\$ 26,378	\$ 101,168	\$ 73,654
International	15,934	11,264	38,457	34,274
Total	<u>\$ 60,982</u>	<u>\$ 37,642</u>	<u>\$ 139,625</u>	<u>\$ 107,928</u>

Payment terms are specified in agreements between the Company and the buyers and sellers on its platform. The Company generally bills buyers at the end of each month for the full purchase price of impressions filled in that month. The Company recognizes volume discounts as a reduction of revenue as they are incurred. Specific payment terms may vary by agreement, but are generally seventy-five days or less. The Company's accounts receivable are recorded at the amount of gross billings to buyers, net of allowances for the amounts the Company is responsible to collect. The Company's accounts payable related to amounts due to sellers are recorded at the net amount payable to sellers (see Note 5). Accordingly, both accounts receivable and accounts payable appear large in relation to revenue reported on a net basis.

At September 30, 2020, two buyers accounted for 37% and 9%, respectively, of consolidated accounts receivable. At December 31, 2019, two buyers accounted for 23% and 17%, respectively, of consolidated accounts receivable.

Accounts receivable are recorded at the invoiced amount, are unsecured, and do not bear interest. The allowance for doubtful accounts is reviewed quarterly, requires judgment, and is based on the best estimate of the amount of probable credit losses in existing accounts receivable. The Company reviews the status of the then-outstanding accounts receivable on a customer-by-customer basis, taking into consideration the aging schedule of receivables, its historical collection experience, current information regarding the client, subsequent collection history, and other relevant data, in establishing the allowance for doubtful accounts. Accounts receivable is presented net of an allowance for doubtful accounts of \$4.5 million at September 30, 2020, and \$3.4 million at December 31, 2019. Accounts receivable are written off against the allowance for doubtful accounts when the Company determines amounts are no longer collectible.

The Company reviews the associated payable to sellers for recovery of buyer receivable allowance and write-offs; in some cases, the Company can reduce the payable to sellers. The reduction of seller payables related to recovery of uncollected buyer receivables is netted against allowance expense. The contra seller payables related to recoveries were \$1.9 million and \$0.9 million as of September 30, 2020 and December 31, 2019, respectively.

The following is a summary of activity in the allowance for doubtful accounts for the three and nine months ended September 30, 2020 and 2019:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands)		(in thousands)	
Allowance for doubtful accounts, Beginning Balance	\$ 4,672	\$ 1,720	\$ 3,400	\$ 1,340
Allowance for doubtful accounts, Merger-assumed	—	—	1,033	—
Write-offs	(1)	(71)	(1,897)	(3,278)
Increase (decrease) in provision for expected credit losses	(274)	(33)	1,854	3,554
Recoveries of previous write-offs	83	14	90	14
Allowance for doubtful accounts, September 30	\$ 4,480	\$ 1,630	\$ 4,480	\$ 1,630

During the three months ended September 30, 2020 and September 30, 2019, the provision for expected credit losses associated with accounts receivable and the offset by increases of contra seller payables related to recoveries of uncollected buyer receivables were insignificant, resulting in insignificant amount of bad debt. During the nine months ended September 30, 2020, the provision for expected credit losses associated with accounts receivable of \$1.9 million was offset by increases of contra seller payables related to recoveries of uncollected buyer receivables of \$1.8 million, which resulted in an insignificant amount of bad debt expense. During the nine months ended September 30, 2019, the provision for expected credit losses associated with accounts receivable of \$3.6 million was offset by increases of contra seller payables related to recoveries of uncollected buyer receivables of \$2.7 million, which resulted in bad debt expense of \$0.9 million.

Note 4—Fair Value Measurements

Recurring Fair Value Measurements

Fair value represents the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Observable inputs are based on market data obtained from independent sources. The fair value hierarchy is based on the following three levels of inputs, of which the first two are considered observable and the last one is considered unobservable:

- Level 1 – Quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2 – Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3 – Unobservable inputs.

The table below sets forth a summary of financial instruments that are measured at fair value on a recurring basis at September 30, 2020:

	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)		Significant Unobservable Inputs (Level 3)
			(in thousands)		
Cash equivalents	\$ 7,868	\$ 7,868	\$ —	\$ —	\$ —

The table below sets forth a summary of financial instruments that are measured at fair value on a recurring basis at December 31, 2019:

	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)		Significant Unobservable Inputs (Level 3)
			(in thousands)		
Cash equivalents	\$ 13,501	\$ 13,501	\$ —	\$ —	\$ —

At September 30, 2020 and December 31, 2019, cash equivalents of \$7.9 million and \$13.5 million, respectively, consisted of money market funds and commercial paper, with original maturities of three months or less. The carrying amounts of cash equivalents are classified as Level 1 or Level 2 depending on whether or not their fair values are based on quoted market prices for identical securities that are traded in an active market.

Note 5—Other Balance Sheet Amounts

Accounts payable and accrued expenses included the following:

	September 30, 2020	December 31, 2019
	(in thousands)	
Accounts payable—seller	\$ 434,340	\$ 247,891
Accounts payable—trade	10,065	4,822
Accrued employee-related payables	13,023	6,726
Total	<u>\$ 457,428</u>	<u>\$ 259,439</u>

Restricted cash was \$1.3 million at September 30, 2020, which is included in the ending balance of cash, cash equivalents and cash in the condensed consolidated statement of cash flows for the nine months ended September 30, 2020. Restricted cash of \$0.6 million was included within prepaid and other current assets and \$0.7 million was included within other assets, non-current. There was no restricted cash at December 31, 2019.

Note 6—Goodwill and Intangible Assets

The Company's goodwill balance as of September 30, 2020 and December 31, 2019 was \$157.8 million and \$7.4 million, respectively. The increase during the nine months ended September 30, 2020 was a result of the Merger with Telaria (see Note 7).

The Company's intangible assets as of September 30, 2020 and December 31, 2019 included the following:

	September 30, 2020	December 31, 2019
	(in thousands)	
Amortizable intangible assets:		
Developed technology	\$ 77,158	\$ 19,658
Customer relationships	37,450	1,650
In-process research and development	8,230	—
Backlog	920	—
Non-compete agreements	70	70
Trademarks	200	20
Total identifiable intangible assets, gross	<u>124,028</u>	<u>21,398</u>
Accumulated amortization—intangible assets:		
Developed technology	(18,110)	(9,823)
Customer relationships	(7,941)	(162)
In-process research and development	—	—
Backlog	(613)	—
Non-compete agreements	(33)	(7)
Trademarks	(200)	(20)
Total accumulated amortization—intangible assets	<u>(26,897)</u>	<u>(10,012)</u>
Total identifiable intangible assets, net	<u>\$ 97,131</u>	<u>\$ 11,386</u>

Amortization of intangible assets for the three months ended September 30, 2020 and 2019 was \$7.8 million and \$0.7 million, respectively, and \$16.9 million and \$2.3 million for the nine months ended September 30, 2020 and 2019, respectively.

The estimated remaining amortization expense associated with the Company's intangible assets was as follows as of September 30, 2020:

Fiscal Year	Amount (in thousands)
Remaining 2020	\$ 7,822
2021	30,772
2022	26,132
2023	13,881
2024	13,697
Thereafter	4,827
Total	\$ 97,131

Due to the economic impact associated with the COVID-19 pandemic, the Company performed a qualitative assessment of its long-lived assets and goodwill and concluded based on the Company's assessment of current market capitalization, adequate cash position, and expected future results, that there were no impairment indicators as of September 30, 2020 that would indicate impairment of its long-lived assets, including fixed assets, intangibles, and internal use capitalized software costs, and goodwill.

Note 7—Business Combinations

On April 1, 2020, (the "Acquisition Date"), the Company completed the Merger with Telaria. Upon completion of the Merger, each share of Telaria common stock issued and outstanding was converted into 1.082 shares of Magnite common stock. As a result, the Company issued 52,098,945 shares of Magnite common stock. In connection with the Merger, Magnite also assumed Telaria's 2013 Equity Incentive Plan, as amended; 2008 Stock Plan, as amended; and the ScanScout, Inc. 2009 Equity Incentive Plan, as amended.

As of the Acquisition Date, former holders of Telaria common stock owned approximately 48% and pre-merger holders of Magnite common stock owned approximately 52% of the common stock of the combined company on a fully diluted basis.

The Merger was accounted for using the acquisition method of accounting in accordance with Accounting Standards Codification, referred to as ASC 805, *Business Combinations*. Magnite management determined that Magnite was the acquiror for financial accounting purposes. In identifying Magnite as the accounting acquiror, management considered the structure of the transaction and other actions contemplated by the merger agreement, relative outstanding share ownership and market values, the composition of the combined company's board of directors, the relative size of Magnite and Telaria, and the designation of certain senior management positions of the combined company.

In accordance with ASC 805, the Company recorded the acquisition based on the fair value of the consideration transferred and then allocated the purchase price to the identifiable assets acquired and liabilities assumed based on their respective fair values as of the Acquisition Date. The excess of the value of consideration transferred over the aggregate fair value of those net assets was recorded as goodwill. Any identified definite lived intangible assets will be amortized over their estimated useful lives and any identified intangible assets with indefinite useful lives and goodwill will not be amortized but will be tested for impairment at least annually. All intangible assets and goodwill will be tested for impairment when certain indicators are present. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates including the selection of valuation methodologies, estimates of future revenues and cash flows, discount rates, and selection of comparable companies.

Management's purchase price allocation is preliminary and subject to change pending finalization of the valuation, including finalization of tax attributes and tax related liabilities. Under the acquisition method of accounting for business combinations, if the Company identifies changes to acquired deferred tax asset ("DTA") valuation allowances or liabilities related to uncertain tax positions during the measurement period, and they are related to new information obtained about facts and circumstances that existed as of the acquisition date, those changes are considered a measurement-period adjustment, and the Company will record the offset to goodwill. The Company records all other changes to DTA valuation allowances and liabilities related to uncertain tax positions in current- period income tax expense.

For purposes of measuring the estimated fair value, where applicable, of the assets acquired and the liabilities assumed as reflected in the unaudited condensed combined financial information, the Company has applied the guidance in ASC 820, Fair Value Measurement, which establishes a framework for measuring fair value. In accordance with ASC 820, fair value is an exit price and is defined as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." Under ASC 805, acquisition-related transaction costs and acquisition-related

restructuring charges are not included as components of consideration transferred but are accounted for as expenses in the period in which the costs are incurred.

As part of the Merger, existing outstanding restricted stock units of Telaria common stock and stock options to purchase common stock of Telaria were exchanged for 1.082 restricted stock units of the Company and options to purchase the Company's common stock, respectively. The fair value of stock options exchanged on the date of the Merger attributable to pre-acquisition services was recorded as purchase consideration. The fair value of the restricted stock units and stock options exchanged on the date of the Merger attributable to post-acquisition services will be recorded as additional stock-based compensation expense in the Company's consolidated statements of operations over their remaining requisite service (vesting) periods.

The following table summarizes the total purchase consideration (in thousands):

Shares of Magnite common stock	\$	274,604
Fair value of stock-based awards exchanged		11,646
Acceleration of single trigger equity awards, converted		1,168
Total purchase consideration	\$	<u>287,418</u>

The purchase consideration for the acquisition included 52,008,316 shares of the Company's common stock with a fair value of approximately \$274.6 million, based on the Company's stock price as reported on the NYSE on the Acquisition Date. The fair value of stock options and restricted stock units exchanged on the Acquisition Date attributable to pre-acquisition services of approximately \$10.4 million and \$1.2 million, respectively, have been recorded as purchase consideration. In addition, the Company recorded additional purchase consideration associated with acceleration of 90,629 shares of common stock issued associated with single-trigger equity awards in the amount of \$1.2 million.

The fair value of stock options and restricted stock units exchanged on the Acquisition Date attributable to post-acquisition services of \$4.7 million and \$12.2 million, respectively, will be recorded as additional stock-based compensation expense on the Company's consolidated statement of operations over their remaining requisite service (vesting) periods.

The fair value of the purchase price was allocated to the identifiable assets acquired and liabilities assumed based upon their estimated fair values as of the date of the acquisition as set forth below:

Cash and cash equivalents	\$	51,848
Accounts receivable, net		150,924
Prepaid expenses and other current assets		3,190
Property and equipment, net		1,814
Right-of-use lease asset		26,627
Intangible assets		102,650
Restricted cash		2,747
Other assets, non-current		369
Deferred tax assets, non-current		103
Goodwill		150,434
Total assets acquired	\$	<u>490,706</u>
Accounts payable and accrued expenses		173,643
Lease liabilities - current portion		5,322
Deferred revenue		11
Other current liabilities		365
Lease liabilities - non-current portion		23,323
Other liabilities, non-current		624
Total liabilities assumed		<u>203,288</u>
Total purchase price	\$	<u>287,418</u>

The Company believes the amount of goodwill resulting from the purchase price allocation is primarily attributable to expected synergies from assembled workforce, an increase in development capabilities, increased offerings to customers, and enhanced opportunities for growth and innovation. Goodwill will not be amortized but instead will be tested for impairment at least

annually or more frequently if certain indicators of impairment are present. In the event that goodwill has become impaired, the Company will record an expense for the amount impaired during the quarter in which the determination is made. The goodwill generated in the Merger is not tax deductible.

The following table summarizes the components of the intangible assets and estimated useful lives (dollars in thousands):

		Estimated Useful Life
Technology	\$ 57,500	5 years
In-process research and development	8,230	4.7 years*
Customer relationships	35,800	2.5 years
Backlog	920	0.75 years
Trademarks	200	0.25 years
Total intangible assets acquired	<u>\$ 102,650</u>	

* In-process research and development consists of two projects with a weighted-average useful life of 4.7 years. Amortization begins once associated projects are completed and it is determined the projects have alternative future use.

The intangible assets are generally amortized on a straight-line basis, which approximates the pattern in which the economic benefits are consumed, over their estimated useful lives. Amortization of developed technology is included in cost of revenues and the amortization of customer relationships, backlog, and trademarks is included in sales and marketing expenses in the condensed consolidated statement of operations. Once the projects associated with acquired in-process research and development are completed, amortization will be included in cost of revenues in the consolidated statement of operations. The intangible assets generated in the Merger are not tax deductible.

As such, as part of the Merger, deferred tax liabilities of \$23.9 million were established related to the acquired intangible assets, which were fully offset by the estimated income tax effect of the partial release of Telaria's valuation allowance. The deferred tax liability was calculated based on an estimated combined tax rate of 23.3%.

The Company recognized approximately \$2.3 million and \$16.7 million of acquisition related costs during the three and nine months ended September 30, 2020, respectively (see Note 8). In addition, as part of the Merger, the Company acquired Telaria's U.S. federal NOLs of approximately \$126.2 million and state NOLs of approximately \$128.0 million. Pursuant to Section 382 of the Internal Revenue Code, Telaria, Inc. underwent an ownership change for tax purposes. As a result, the use of the NOLs will be subject to annual Section 382 use limitations. The Company believes the ownership change will not impact the Company's ability to utilize substantially all of the NOLs to the extent it generates taxable income that can be offset by such losses.

Unaudited Pro Forma Information

The following table provides unaudited pro forma information as if Telaria had been merged with the Company as of January 1, 2019. The unaudited pro forma information reflects adjustments for additional amortization resulting from the fair value adjustments to assets acquired and liabilities assumed, adjustments for alignment of accounting policies, and transaction expenses as if the Merger occurred on January 1, 2019. The pro forma results do not include any anticipated cost synergies or other effects of the integration merged companies. Accordingly, pro forma amounts are not necessarily indicative of the results that actually would have occurred had the acquisition been completed on the dates indicated, nor is it indicative of the future operating results of the combined company.

	Three Months Ended		Nine Months Ended	
	September 30, 2019		September 30, 2020	September 30, 2019
	(in thousands)			
Pro Forma Revenue	\$ 54,206		\$ 154,663	\$ 156,330
Pro Forma Net Loss	\$ (15,592)		\$ (69,706)	\$ (73,358)

During the three and nine months ended September 30, 2020, post-Merger revenue on a stand-alone basis for Telaria was \$19.7 million and \$32.8 million, respectively. During the three and nine months ended September 30, 2020, due to the process of integrating the operations of Telaria into the operations of the Company, the determination of Telaria's post-Merger operating results on a standalone basis were impracticable.

Note 8—Merger and Restructuring Costs

Merger and restructuring costs consist primarily of professional services fees and employee termination costs, including stock-based compensation charges, associated with the Merger and resulting restructuring activities.

The following table summarizes Merger and restructuring cost activity (in thousands):

	<u>Three Months Ended</u>	<u>Nine Months Ended</u>
	<u>September 30, 2020</u>	<u>September 30, 2020</u>
	(in thousands)	
Professional Service (investment banking advisory, legal and other professional services)	\$ 952	\$ 9,533
Personnel related (severance and one-time termination benefit costs)	948	5,590
Non-cash stock-based compensation (double-trigger acceleration and severance)	354	1,554
Total merger and restructuring costs	\$ 2,254	\$ 16,677

Accrued restructuring costs related to the Merger were \$5.1 million at September 30, 2020. Accrued restructuring costs are included within other liabilities on the Company's condensed consolidated balance sheets.

	(in thousands)
Accrued Merger and restructuring costs at December 31, 2019	\$ —
Restructuring costs, personnel related and non-cash stock-based compensation	7,144
Restructuring costs, Merger assumed loss contracts	3,592
Cash paid for restructuring costs	(4,071)
Non-cash stock-based compensation	(1,554)
Accrued Merger and restructuring costs at September 30, 2020	\$ 5,111

Note 9—Stock-Based Compensation

The Company's equity incentive plans provide for the grant of equity awards, including non-statutory or incentive stock options, restricted stock awards ("RSAs"), and restricted stock units ("RSUs"), to the Company's employees, officers, directors, and consultants. The Company's board of directors administers the plans. Outstanding options vest based upon continued service at varying rates, but generally over four years from issuance with 25% vesting after one year of service and the remainder vesting monthly thereafter. RSAs and RSUs vest at varying rates, typically with approximately 25% vesting after approximately one year of service and the remainder vesting semi-annually thereafter, but with certain retention grants vesting 50% on each of the first and second anniversaries of the grant date. Restricted stock units granted in 2020 have approximately 25% of the award vesting after approximately one year of service and the remainder vesting quarterly thereafter. Options, RSAs, and RSUs granted under the plans accelerate under certain circumstances for certain participants upon a change in control, as defined in the governing plan or award agreement. An aggregate of 9,509,867 shares remained available for future grants at September 30, 2020 under the plans.

Stock Options

A summary of stock option activity for the nine months ended September 30, 2020 is as follows:

	Shares Under Option (in thousands)	Weighted- Average Exercise Price	Weighted- Average Contractual Life	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2019	4,262	\$ 6.82		
Granted	1,145	\$ 5.32		
Options assumed in Merger	4,998	\$ 3.80		
Exercised	(1,336)	\$ 2.90		
Expired	(148)	\$ 13.31		
Forfeited	(131)	\$ 5.14		
Outstanding at September 30, 2020	<u>8,790</u>	\$ 5.42	5.54 years	\$ 20,257
Exercisable at September 30, 2020	<u>5,732</u>	\$ 5.68	4.05 years	\$ 13,828

The total intrinsic values of options exercised during the nine months ended September 30, 2020 was \$5.9 million. At September 30, 2020, the Company had unrecognized employee stock-based compensation expense relating to unvested stock options of approximately \$8.3 million, which is expected to be recognized over a weighted-average period of 2.6 years. Total fair value of options vested during the nine months ended September 30, 2020 was \$3.7 million.

The Company estimates the fair value of stock options that contain service and/or performance conditions using the Black-Scholes option pricing model. The grant date fair value of options granted and assumed during the nine months ended September 30, 2020 was \$3.17 per share. The grant date fair value of options granted during the nine months ended September 30, 2020, was \$3.22 per share and the fair value of options assumed in the Merger was \$3.16 per share.

The weighted-average input assumptions used by the Company were as follows for options granted during the respective periods:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
Expected term (in years)	6.3	N/A	6.3	6.1
Risk-free interest rate	0.33 %	N/A	0.45 %	2.51 %
Expected volatility	68 %	N/A	67 %	60 %
Dividend yield	— %	N/A	— %	— %

Restricted Stock Awards

A summary of RSA activity for the nine months ended September 30, 2020 is as follows:

	Number of Shares (in thousands)	Weighted-Average Grant Date Fair Value
Unvested shares of restricted stock awards outstanding at December 31, 2019	2	\$ 13.49
Granted	—	\$ —
Canceled	—	\$ —
Vested	(2)	\$ 13.49
Unvested shares of restricted stock awards outstanding at September 30, 2020	<u>—</u>	<u>\$ —</u>

There is no unrecognized stock-based compensation expense for RSAs at September 30, 2020 as they were fully vested.

Restricted Stock Units

A summary of RSU activity for the nine months ended September 30, 2020 is as follows:

	Number of Shares (in thousands)	Weighted-Average Grant Date Fair Value
Unvested restricted stock units outstanding at December 31, 2019	8,077	\$ 4.46
Granted	4,816	\$ 5.41
Restricted stock units assumed in Merger	2,416	\$ 5.40
Canceled	(773)	\$ 5.17
Vested	(4,054)	\$ 4.08
Unvested restricted stock units outstanding at September 30, 2020	10,482	\$ 5.21

The weighted-average grant date fair value per share of RSUs granted during the nine months ended September 30, 2020 was \$5.41. The aggregate fair value of RSUs that vested during the nine months ended September 30, 2020 was \$32.1 million. At September 30, 2020, the intrinsic value of unvested RSUs was \$72.8 million. At September 30, 2020, the Company had unrecognized stock-based compensation expense relating to unvested RSUs of approximately \$42.8 million, which is expected to be recognized over a weighted-average period of 2.5 years.

Performance Stock Units

In April 2020, the Company granted the Company's CEO 146,341 restricted stock units that vest based on certain stock price performance metrics with a fair value of \$0.9 million. The grant date fair value per share of restricted stock was \$6.15, which was estimated using a Monte-Carlo lattice model. During the three and nine months ended September 30, 2020, the Company recognized \$0.1 million of stock-based compensation related to these performance stock units based on a performance measurement of 44.8%. At September 30, 2020, the Company had unrecognized employee stock-based compensation expense of approximately \$0.8 million, which is expected to be recognized over the remaining 2.5 years. Between 0% and 150% of the performance stock units will vest on the third anniversary of its grant date. The compensation expense will not be reversed if the performance metrics are not met.

Employee Stock Purchase Plan

In November 2013, the Company adopted the Company's 2014 Employee Stock Purchase Plan ("ESPP"). The ESPP is designed to enable eligible employees to periodically purchase shares of the Company's common stock at a discount through payroll deductions of up to 10% of their eligible compensation, subject to any plan limitations. At the end of each six-month offering period, employees are able to purchase shares at a price per share equal to 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the last trading day of the offering period. Offering periods generally commence and end in May and November of each year.

As of September 30, 2020, the Company has reserved 2,271,459 shares of its common stock for issuance under the ESPP. The ESPP has an evergreen provision pursuant to which the share reserve will automatically increase on January 1st of each year in an amount equal to 1% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year, although the Company's board of directors may provide for a lesser increase, or no increase, in any year.

Stock-Based Compensation Expense

Total stock-based compensation expense recorded in the condensed consolidated statements of operations was as follows:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands)		(in thousands)	
Cost of revenue	\$ 122	\$ 110	\$ 412	\$ 308
Sales and marketing	2,309	1,378	5,928	4,182
Technology and development	2,061	1,157	5,469	3,382
General and administrative	2,504	2,068	7,935	6,005
Restructuring and other exit costs	354	—	1,554	—
Total stock-based compensation expense	\$ 7,350	\$ 4,713	\$ 21,298	\$ 13,877

Note 10—Income Taxes

In determining quarterly provisions for income taxes, the Company uses the annual estimated effective tax rate applied to the actual year-to-date income. The Company's annual estimated effective tax rate differs from the statutory rate primarily as a result of state taxes, foreign taxes, nondeductible stock option expenses, and changes in the Company's valuation allowance.

The Company recorded income tax expense of \$0.4 million and \$0.1 million for the three months ended September 30, 2020 and 2019, respectively, and an income tax expense of \$0.5 million and benefit of \$0.6 million for the nine months ended September 30, 2020 and 2019, respectively. The tax expense for the three and nine months ended September 30, 2020 is primarily the result of the domestic valuation allowance and the tax liability associated with the foreign subsidiaries.

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), in response to the COVID-19 pandemic. The CARES Act is meant to infuse negatively affected companies with various tax cash benefits to ease the impact of the COVID-19 pandemic. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer-side social security payments, and net operating loss carryback periods. The Company has determined the tax implications of the CARES Act will not be material. To date the Company has not taken advantage of any relief under the CARES Act. In addition, various foreign jurisdictions where the Company has activity have enacted or are considering enacting a variety of measures that could impact our tax liabilities. The Company is monitoring new legislation and evaluating the potential tax implications of these measures globally.

Due to uncertainty as to the realization of benefits from the Company's domestic and certain international deferred tax assets, including net operating loss carryforwards and research and development tax credits, the Company has a full valuation allowance reserved against such assets. The Company intends to continue to maintain a full valuation allowance on the deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances.

Due to the net operating loss carryforwards, all of the Company's United States federal and a majority of its state returns are open to examination by the Internal Revenue Service and state jurisdictions for all years since inception. The 2017 U.S. Income Tax Return for Telaria, Inc. is under examination by the IRS. The audit is in a preliminary phase and there have been no issues identified through the period ending September 30, 2020. For Canada, the Netherlands, and the United Kingdom, all tax years remain open for examination by the local country tax authorities, for France only 2018 forward are open for examination, for Singapore 2017 and forward are open for examination, for Brazil, New Zealand, and Malaysia 2016 and forward are open for examination, for Australia and Germany 2015 and forward are open for examination, and for Japan 2014 and forward remain open for examination.

Pursuant to Section 382 of the Internal Revenue Code, the Company and Telaria, Inc. both underwent ownership changes for tax purposes (i.e. a more than 50% change in stock ownership in aggregated 5% shareholders) on April 1, 2020 due to the Merger. As a result, the use of our total domestic NOL carryforwards and tax credits generated prior to the ownership change will be subject to annual Section 382 use limitations. We believe that the ownership change will not impact our ability to utilize substantially all of our NOLs and carryforward credits to the extent we generate taxable income that can be offset by such losses.

There were no material changes to the Company's unrecognized tax benefits in the nine months ended September 30, 2020, and the Company does not expect to have any significant changes to unrecognized tax benefits through the end of the fiscal year.

Note 11—Commitments and Contingencies

Commitments

As of September 30, 2020 and December 31, 2019, the Company had \$4.3 million and \$2.5 million, respectively, of letters of credit associated with office leases available for borrowing, on which there were no outstanding borrowings as of either date. The Company also has operating lease agreements, discussed in more detail in Note 12. In addition, during the three months ended September 30, 2020, the Company entered into an agreement for third-party cloud-managed services. As part of the agreement, the Company has a minimum commitment to pay \$20.0 million over the course of five years, with no annual minimum commitment.

Guarantees and Indemnification

The Company's agreements with sellers, buyers, and other third parties typically obligate the Company to provide indemnity and defense for losses resulting from claims of intellectual property infringement, damages to property or persons, business losses, or other liabilities. Generally, these indemnity and defense obligations relate to the Company's own business operations, obligations, and acts or omissions. However, under some circumstances, the Company agrees to indemnify and defend contract counterparties against losses resulting from their own business operations, obligations, and acts or omissions, or the business operations, obligations, and acts or omissions of third parties. For example, because the Company's business interposes the Company between buyers and sellers in various ways, buyers often require the Company to indemnify them against acts and omissions of sellers, and sellers often require the Company to indemnify them against acts and omissions of buyers. In addition, the

Company's agreements with sellers, buyers, and other third parties typically include provisions limiting the Company's liability to the counterparty, and the counterparty's liability to the Company. These limits sometimes do not apply to certain liabilities, including indemnity obligations. These indemnity and limitation of liability provisions generally survive termination or expiration of the agreements in which they appear. The Company has also entered into indemnification agreements with its directors, executive officers, and certain other officers that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers, or employees. No material demands have been made upon the Company to provide indemnification under such agreements and there are no claims that the Company is aware of that could have a material effect on the Company's condensed consolidated financial statements.

Litigation

The Company and its subsidiaries may from time to time be parties to legal or regulatory proceedings, lawsuits and other claims incident to their business activities and to the Company's status as a public company. Such routine matters may include, among other things, assertions of contract breach or intellectual property infringement, claims for indemnity arising in the course of the Company's business, regulatory investigations or enforcement proceedings, and claims by persons whose employment has been terminated. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. Consequently, management is unable to ascertain the ultimate aggregate amount of monetary liability, amounts which may be covered by insurance or recoverable from third parties, or the financial impact with respect to such matters as of September 30, 2020. However, based on management's knowledge as of September 30, 2020, management believes that the final resolution of these matters known at such date, individually and in the aggregate, will not have a material adverse effect upon the Company's condensed consolidated financial position, results of operations or cash flows.

Employment Contracts

The Company has entered into severance agreements with certain employees and officers. The Company may be required to pay severance and accelerate the vesting of certain equity awards in the event of involuntary terminations.

Note 12—Lease Obligations

For the three months ended September 30, 2020 and 2019, the Company recognized \$3.7 million and \$2.0 million, respectively, and \$9.7 million and \$5.7 million during the nine months ended September 30, 2020 and 2019, respectively, of lease expense under ASC 842, which included operating lease expenses associated with leases included in the lease liability and ROU asset on the condensed consolidated balance sheet. In addition, for the three months ended September 30, 2020 and 2019, the Company recognized \$0.4 million and \$0.1 million, respectively, and \$0.8 million and \$0.5 million during the nine months ended September 30, 2020 and 2019, respectively, of lease expense related to short-term leases, and \$5.6 million and \$2.0 million during the three months ended September 30, 2020 and 2019, respectively, and \$14.0 million and \$8.4 million during the nine months ended September 30, 2020 and 2019, respectively, of variable and cloud-based services related to data centers that are not included in the ROU asset or lease liability balances.

The Company also received rental income of \$1.2 million and \$48.4 thousand for real estate leases for which it subleases the property to third parties during the three months ended September 30, 2020 and 2019, respectively, and \$2.5 million and \$0.2 million for the nine months ended September 30, 2020 and 2019, respectively.

As of September 30, 2020, a weighted average discount rate of 5.01% has been applied to the remaining lease payments to calculate the lease liabilities included within the condensed consolidated balance sheet. The lease terms of the Company's operating leases generally range from one year to ten years, and the weighted average remaining lease term of leases included in the lease liability is 6.22 years as of September 30, 2020.

The maturity of the Company's lease liabilities were as follows (in thousands):

Fiscal Year		
Remaining 2020	\$	3,874
2021		11,611
2022		8,403
2023		7,483
2024		6,740
Thereafter		14,954
Total lease payments (undiscounted)		<u>53,065</u>
Less: imputed interest		(7,647)
Lease liabilities—total (discounted)	\$	<u>45,418</u>

Note 13—Debt

On September 25, 2020, the Company amended and restated its loan and security agreement with Silicon Valley Bank ("SVB") (the "Loan Agreement"), which was scheduled to expire on September 26, 2020. The Loan Agreement provides a senior secured revolving credit facility of up to the lesser of \$60.0 million and 85% of eligible accounts receivable, with a maturity date of September 25, 2022. The Loan Agreement includes a letter of credit, foreign exchange and cash management facility with a sublimit up to \$10.0 million, of which \$4.3 million was utilized for letters of credit related to leases as of September 30, 2020 (see Note 11). As of September 30, 2020, the amount available for borrowing was \$55.7 million. The Company incurred \$0.1 million of debt issuance fees that were capitalized and are being amortized over the term of the Loan Agreement.

An unused revolver fee in the amount of 0.15% per annum of the average unused portion of the revolver line is charged and is payable monthly in arrears. The Company may elect for advances to bear interest calculated by reference to prime or LIBOR. If the Company elects LIBOR, amounts outstanding under the amended credit facility bear interest at a rate per annum equal to LIBOR plus 2.25%, with LIBOR having a floor of 3.5%. If the Company elects prime, advances bear interest at a rate of prime plus 0.25%, with prime having a floor of 3.5%.

The Loan Agreement is collateralized by security interests in substantially all of the Company's assets. Subject to certain exceptions, the Loan Agreement restricts the Company's ability to, among other things, pay dividends, sell assets, make changes to the nature of the business, engage in mergers or acquisitions, incur, assume or permit to exist, additional indebtedness and guarantees, create or permit to exist, liens, make distributions or redeem or repurchase capital stock, or make other investments, engage in transactions with affiliates, make payments with respect to subordinated debt, and enter into certain transactions without the consent of the financial institution. The Company is required to maintain a lockbox arrangement where clients payments received in the lockbox will be deposited daily into the Company's operating bank accounts.

The Loan Agreement requires the Company to comply with financial covenants, measured quarterly, with respect to a minimum liquidity ratio and maximum quarterly cash burn. The Company is required to maintain a minimum liquidity ratio of at least 1.25 on the last day of each quarter and not exceed, on an absolute basis, a maximum quarterly cash burn for specific periods, as defined in the Loan Agreement. The Liquidity Ratio is defined as Cash and Cash Equivalents, plus Accounts Receivable, less Accounts Payable - Seller, divided by all obligations the Company has to pay to SVB, including all debt balances, interest, service fees, and unused credit line fees, net of outstanding letters of credit as of the balance sheet date. Cash Burn is defined as Adjusted EBITDA less Capital Expenditures during the trailing periods as outlined in the Loan Agreement. The Loan Agreement defines Capital Expenditures as the current period unfinanced cash expenditures that are capitalized and amortized, including but not limited to property and equipment and capitalized labor costs as they relate to internal use software development costs. As of September 30, 2020, the Company was in compliance with its financial covenants.

The Loan Agreement also includes customary representations and warranties, affirmative covenants, and events of default, including events of default upon a change of control and material adverse change (as defined in the Loan Agreement). Following an event of default, SVB would be entitled to, among other things, accelerate payment of amounts due under the credit facility and exercise all rights of a secured creditor.

As of September 30, 2020, there were no amounts outstanding under the Loan Agreement (other than with respect to letters of credit). Future availability under the credit facility is dependent on several factors including the available borrowing base and compliance with future covenant requirements.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This Quarterly Report on Form 10-Q and related statements by the Company contain forward-looking statements, including statements based upon or relating to our expectations, assumptions, estimates, and projections. In some cases, you can identify forward-looking statements by terms such as "may," "might," "will," "objective," "intend," "should," "could," "can," "would," "expect," "believe," "design," "anticipate," "estimate," "predict," "potential," "plan" or the negative of these terms, and similar expressions. Forward-looking statements may include, but are not limited to, statements concerning the potential impacts of the COVID-19 pandemic on our business operations, financial condition, and results of operations and on the world economy; our anticipated financial performance; anticipated benefits or effects related to the consummation of the Merger with Telaria, including estimated synergies and cost savings resulting from the Merger; strategic objectives, including our focus on connected television ("CTV"), mobile, video, header bidding, Demand Manager, identity solutions, and private marketplace opportunities; investments in our business; development of our technology; industry growth rates for ad-supported CTV and the shift in video consumption from linear TV to CTV; introduction of new offerings; the impact of transparency initiatives we may undertake; the impact of our traffic shaping technology on our business; the effects of our cost reduction initiatives; scope and duration of client relationships; the fees we may charge in the future; business mix and expansion of our CTV, mobile, video and private marketplace offerings; sales growth; client utilization of our offerings; our competitive differentiation; our market share and leadership position in the industry; market conditions, trends, and opportunities; user reach; certain statements regarding future operational performance measures including ad requests, fill rate, paid impressions, average CPM, take rate, and advertising spend; benefits from supply path optimization; and other statements that are not historical facts. These statements are not guarantees of future performance; they reflect our current views with respect to future events and are based on assumptions and estimates and subject to known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from expectations or results projected or implied by forward-looking statements. These risks include, but are not limited to:

- the severity, magnitude, and duration of the COVID-19 pandemic, including impacts of the pandemic and of responses to the pandemic by governments, business and individuals on our operations, personnel, buyers, sellers, and on the global economy and the advertising marketplace;*
- our ability to successfully integrate the Telaria business and realize the anticipated benefits of the merger;*
- our ability to grow and to manage our growth effectively;*
- our ability to develop innovative new technologies and remain a market leader;*
- our ability to attract and retain buyers and sellers of digital advertising inventory, or publishers, and increase our business with them;*
- our vulnerability to loss of, or reduction in spending by, buyers;*
- our reliance on large sources of advertising demand, including demand side platforms ("DSPs") that may have or develop high-risk credit profiles or fail to pay invoices when due, including as a result of general liquidity constraints experienced by buyers from the COVID-19 pandemic, which has caused certain buyers to delay payments or seek revised payment terms;*
- our ability to maintain and grow a supply of advertising inventory from sellers and to fill the increased inventory;*
- the effect on the advertising market and our business from difficult economic conditions or uncertainty;*
- the freedom of buyers and sellers to direct their spending and inventory to competing sources of inventory and demand;*
- the ability of buyers and sellers to establish direct relationships and integrations;*
- our ability to cause buyers and sellers to use our solution to purchase and sell higher value advertising and to expand the use of our solution by buyers and sellers utilizing evolving digital media platforms, including CTV;*
- our reliance on large aggregators of advertising inventory, and the concentration of CTV among a small number of large publishers that enjoy significant negotiating leverage;*
- our ability to introduce new offerings and bring them to market in a timely manner, and otherwise adapt in response to client demands and industry trends, including shifts in linear TV to CTV, digital advertising growth from desktop to mobile channels and other platforms and from display to video formats and the introduction and market acceptance of Demand Manager;*
- uncertainty of our estimates and expectations associated with new offerings;*
- the possibility of lower take rates and the need to grow through increasing the volume and/or value of transactions on our platform and increasing our fill rate;*

- *our vulnerability to the depletion of our cash resources as a result of the adverse impacts of the COVID-19 pandemic, or as we incur additional investments in technology required to support the increased volume of transactions on our exchange and to develop new offerings;*
- *our ability to support our growth objectives in light of reduced resources resulting from the cost reduction initiatives that we implemented;*
- *our ability to raise additional capital if needed;*
- *our limited operating history and history of losses;*
- *our ability to continue to expand into new geographic markets and grow our market share in existing markets;*
- *our ability to adapt effectively to shifts in digital advertising;*
- *increased prevalence of ad-blocking or cookie-blocking technologies and the slow adoption of common identifiers;*
- *the development and use of proprietary identity solutions as a replacement for third party cookies and other identifiers currently used in our platform;*
- *the slowing growth rate of desktop display advertising;*
- *the growing percentage of online and mobile advertising spending captured by owned and operated sites (such as Facebook, Google, and Amazon);*
- *industry growth rates for ad-supported CTV and the shift in video consumption from linear TV to digital mediums such as CTV and over-the-top ("OTT");*
- *the adoption of programmatic advertising by CTV publishers;*
- *the effects, including loss of market share, of increased competition in our market and increasing concentration of advertising spending in a small number of very large competitors;*
- *the effects of consolidation in the ad tech industry;*
- *acts of competitors and other third parties that can adversely affect our business;*
- *our ability to differentiate our offerings and compete effectively to combat commodification and disintermediation;*
- *the effects of buyer transparency initiatives we may undertake;*
- *requests for discounts, fee concessions or revisions, rebates, refunds, favorable payment terms;*
- *our ability to ensure a high level of brand safety for our clients and to detect "bot" traffic and other fraudulent or malicious activity;*
- *the effects of seasonal trends on our results of operations;*
- *costs associated with defending intellectual property infringement and other claims;*
- *our ability to attract and retain qualified employees and key personnel;*
- *political uncertainty and the ability of the company to attract political advertising spend;*
- *our ability to identify future acquisitions of or investments in complementary companies or technologies and our ability to consummate the acquisitions and integrate such companies or technologies; and*
- *our ability to comply with, and the effect on our business of, evolving legal standards and regulations, particularly concerning data protection and consumer privacy and evolving labor standards.*

We discuss many of these risks and additional factors that could cause actual results to differ materially from those anticipated by our forward-looking statements under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," and elsewhere in this report and in other filings we have made and will make from time to time with the Securities and Exchange Commission, or SEC, including our Annual Report on Form 10-K for the year ended December 31, 2019 and subsequent Quarterly Reports on Form 10-Q for 2020. These forward-looking statements represent our estimates and assumptions only as of the date of the report in which they are included. Unless required by federal securities laws, we assume no obligation to update any of these forward-looking statements, or to update the reasons actual results could differ materially from those anticipated, to reflect circumstances or events that occur after the statements are made. Without limiting the foregoing, any guidance we may provide will generally be given only in connection with quarterly and annual earnings announcements, without interim updates, and we may appear at industry conferences or make other public statements without disclosing material nonpublic information in our possession. Given these uncertainties, investors should not place undue reliance on these forward-looking statements.

Investors should read this Quarterly Report on Form 10-Q and the documents that we reference in this report and have filed or will file with the SEC completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

The following discussion should be read in conjunction with our unaudited condensed consolidated financial statements and notes thereto appearing elsewhere in this Quarterly Report on Form 10-Q.

Overview

Magnite, Inc., formerly known as The Rubicon Project, Inc. ("we," or "us"), provides technology solutions to automate the purchase and sale of digital advertising inventory. On April 1, 2020, we completed a stock-for-stock merger ("Merger") with Telaria, Inc., ("Telaria"), a leading provider of connected television ("CTV") technology, creating what we believe is the world's largest independent sell-side advertising platform, offering a single partner for transacting globally across all channels, formats, and auction types.

Our platform features applications and services for sellers of digital advertising inventory, or publishers, that own or operate websites, applications, CTV channels, and other digital media properties, to manage and monetize their inventory; applications and services for buyers, including advertisers, agencies, agency trading desks, and demand side platforms ("DSPs"), to buy digital advertising inventory; and a transparent, independent marketplace that brings buyers and sellers together and facilitates intelligent decision making and automated transaction execution at scale. Our clients include many of the world's leading publishers and buyers of digital advertising inventory. We believe our platform reaches approximately one billion users creating a global, scaled, independent alternative to walled gardens, who both own and sell inventory and maintain control on the demand side.

Digital advertising inventory, or advertising units, can be monetized across multiple channels, including CTV, mobile, desktop and digital out-of-home, and takes various formats, including video, display, and audio. Publishers monetize their inventory through our platform by seamlessly connecting to a global market of integrated buyers that transact through real-time bidding, which includes direct sale of premium inventory to a buyer, which we refer to as private marketplace ("PMP"), and open auction bidding, where buyers bid against each other in a real-time auction for the right to purchase a publisher's inventory, which we refer to as open marketplace ("OMP"). Real-time bidding, or programmatic, transactions automate the publishers' sales process and improve workflow capabilities to increase productivity, while increasing revenue opportunities by enabling buyers and publishers to directly communicate and share data to deliver more valuable targeted advertising.

We provide a full suite of tools for publishers to control their advertising business and protect the consumer viewing experience. These controls are particularly important to CTV publishers who need to ensure a TV-like viewing and advertising experience for consumers. For instance, our "ad-pod" feature provides publishers with a tool analogous to commercial breaks in traditional linear television so that they can request and manage several ads at once from different demand sources. Using this tool, publishers can establish business rules such as competitive separation of advertisers to ensure that competing brand ads do not appear during the same commercial break. In addition, we offer audio normalization tools to control for the volume of an ad relative to content, frequency capping to avoid exposing viewers to repetitive ad placements, and creative review so that a publisher can review and approve the ad units being served to its properties.

At the same time, buyers leverage our platform to manage their advertising spending and reach their target audiences, simplify order management and campaign tracking, obtain actionable insights into audiences for their advertising, and access impression-level purchasing from thousands of sellers. Following the Merger, we believe that we are positioned as an essential omni-channel partner for buyers, offering the ability to reach target audiences at scale on brand-safe premium inventory, while providing industry-leading transparency and robust support for identity solutions.

We generate revenue from the use of our platform for the purchase and sale of digital advertising inventory. Digital advertising inventory is created when consumers access sellers' content. Sellers provide digital advertising inventory to our platform in the form of advertising requests, or ad requests. When we receive ad requests from sellers, we send bid requests to buyers, which enable buyers to bid on sellers' digital advertising inventory. Winning bids can create advertising, or paid impressions, for the seller to present to the consumer. The volume of paid impressions measured as a percentage of ad requests is referred to as fill rate. The price that buyers pay for each thousand paid impressions purchased is measured in units referred to as CPM, or cost per thousand.

The total volume of spending between buyers and sellers on our platform is referred to as advertising spend. We keep a percentage of that advertising spend as a fee, and remit the remainder to the seller. The fee that we retain from the gross advertising spend on our platform is recognized as revenue. The fee earned on each transaction is based on the pre-existing agreement between us and the seller and the clearing price of the winning bid. We also refer to revenue divided by advertising spend as our take rate.

We operate our business on a worldwide basis, with an established operating presence in North America, Australia, and Europe and a developing presence in Asia and South America. Substantially all of our assets are U.S. assets. Our non-U.S. subsidiaries and operations perform primarily sales, marketing, and service functions.

At the closing of the Merger, on April 1, 2020, we issued 52,098,945 shares of common stock to the former stockholders of Telaria. On June 8, 2020, we voluntarily delisted our common stock from the New York Stock Exchange ("NYSE") and commenced listing on the Nasdaq Global Select Market of The Nasdaq Stock Market LLC. On June 30, 2020, we changed our name from "The Rubicon Project, Inc." to "Magnite, Inc." In connection with the name change, we also changed our ticker symbol from "RUBI" to "MGNI."

Trends in Our Business

Macroeconomic Factors - COVID-19 Pandemic Impact on the Economy and the Business

The COVID-19 pandemic and resulting global disruptions have negatively affected our revenue, results of operations, cash flows, and financial condition. Our business depends on the overall demand for advertising and on the economic health of our current and prospective sellers and buyers. In response to the pandemic and associated economic challenges, a significant number of advertisers, in particular with respect to certain categories of advertising that were particularly impacted by the pandemic and resulting stay-at-home orders, reduced their advertising budgets, resulting in an overall decrease in advertising spend through our platform. As a result, during the end of the first quarter and through the second quarter we experienced significant decreases to revenue, with revenue trends improving and stabilizing as the second quarter progressed. Although our growth remained below pre-COVID expectations, these recovery trends accelerated during the third quarter, and our business returned to positive growth, with revenue increasing 12% year-over-year on a pro-forma basis (see Note 7).

In addition to the United States, we have personnel and operations in England, Canada, France, Australia, New Zealand, Germany, Italy, Japan, Singapore, and Brazil, and each of these countries has been affected by the outbreak and taken measures to try to contain it. Our global workforce maintained a work from home policy for the entirety of the second and third quarters of 2020 and is expected to continue in the foreseeable future for the majority of our employees. We intend to approach returning to our offices with caution and to prioritize the safety and health of our employees, while following the guidance set by local authorities and our landlords. In connection with returning to work, we expect to institute a number of protective measures and policies. These measures may increase our expenses as we modify our office spaces to accommodate social distancing, provision personal protective equipment, and roll out enhanced communication software to provide messaging to our employees. We believe that our employees have been able to work productively during the time period in which our global offices have been shut down. However, to the extent we have continued extended work from home requirements, or that work patterns are permanently altered, it is unclear how productivity may be impacted in the long-term, and we may have reduced workforce productivity, which could increase our costs.

The economic health of our current and prospective buyers also impacts the collectability of our accounts receivable. Although our liquidity has not been significantly affected by the effects of COVID-19 to date, any downturn in economic conditions in the future may severely impact our liquidity as we may need additional time to collect from buyers, which will impact our ability to pay sellers.

Due to the substantial uncertainties associated with the COVID-19 pandemic, the extent to which the pandemic (and actions taken in response to it by governments, businesses, and individuals) will ultimately impact our business is currently unknown. There can be no assurance that any decrease in sales resulting from the COVID-19 pandemic will be offset by increased sales in subsequent periods, or that our recently observed partial revenue recovery will continue or will be sustainable over the longer term. The full magnitude of the impact of the COVID-19 pandemic on our business and depends on various factors, many of which are outside of our control. Refer to Part II, Item 1A: "Risk Factors" for additional information related to this risk.

CTV, Mobile, and Desktop Trends

Publishers use our technology to monetize their content across all digital channels, including CTV, mobile and desktop. Each of these channels has its own industry growth rate, with CTV and mobile projected to continue to grow steadily, while desktop growth flattens. Prior to the COVID-19 pandemic, MAGNA's October 2020 Programmatic Market forecast has estimated compound annual growth rates from 2020 to 2024 for mobile and desktop at 18% and down 1%, respectively, and over the same period, eMarketer projected CTV to grow at a 23% compound annual growth rate.

Following the Merger, we expect CTV to be a significant driver of our revenue growth. CTV refers to the viewing of digital content on internet connected televisions, including through stand-alone streaming devices, gaming consoles and smart TV operating systems.

CTV viewership is growing rapidly. A June 2020 study from Leichtman Research Group found that 80 percent of TV-owning households in the U.S. have at least one internet-connected TV device. The adoption of CTV has disrupted the traditional linear TV distribution model, as eMarketer estimates that approximately 50 million people in the U.S. have "cut-the-cord" (i.e., canceled a pay TV service and continue without it) as of the end of 2019, with approximately 34% of U.S. households not reachable through traditional TV. This disruption has created new options for consumers and new economic opportunities for content publishers to compete with traditional linear TV.

Despite the growth in CTV viewership, the CTV advertising market, in particular programmatic advertising, is still in its early stages. Historically, the largest streaming applications have been subscription-based. Moreover, CTV publishers with ad-supported models have been slower to adopt programmatic solutions compared to desktop and mobile publishers due to a variety of technical and business reasons. CTV inventory tends to be concentrated among larger publishers who often have their own direct sales forces and manage a number of media properties. Many of these publishers have backgrounds in cable or broadcast

television and have limited experience with online advertising. For these publishers, it is extremely important to protect the quality of the viewer experience, to maintain brand goodwill and ensure that online advertising efforts do not create sales channel conflicts with their other media properties or otherwise detract from their direct sales efforts. In this regard, programmatic advertising presents a number of potential challenges, including the ability to ensure that ads are brand safe, comply with business rules around competitive separation, are not overly repetitive, are played at the appropriate volume, do not cause delays in load-time of content and can accommodate spikes in video consumption around landmark live events.

Our platform was built to solve these challenges with features such as ad-podding, frequency capping, dynamic live insertion, audio normalization and creative review. In addition, we have invested significant time and resources cultivating relationships with CTV publishers. The sales cycle for these publishers tends to be longer and often involves a competitive process, as these publishers tend to work with fewer partners than digital and mobile publishers. In order to deepen our relationships with CTV partners, our sales engineers often serve a consultative role within a client's sales organization to help establish best practices and evangelize the benefits of programmatic CTV, and for certain larger CTV publishers, we may build custom features or functionality to help drive deeper adoption. For the foregoing reasons, we believe we compete favorably for CTV inventory and believe that we will be able to grow CTV revenue faster than industry growth rates.

As the number of CTV channels continues to proliferate, we believe that ad-supported models or hybrid models that rely on a combination of subscription fees and advertising revenue will continue to gain traction. Furthermore, as the CTV market continues to mature, we believe that a greater percentage of CTV advertising inventory will be sold programmatically, similar to trends that occurred in desktop and mobile. Although we expect the COVID-19 pandemic to cause temporary headwinds relating to demand challenges, we believe that the pandemic and resulting shelter-in-place orders have the potential to accelerate these long-term CTV trends. With people spending more time at home, we have seen a large increase in viewership on CTV. This increase in viewership has the potential to create long-term changes in viewing habits. At the same time, macroeconomic challenges are driving consumers away from pay subscriptions towards ad supported models. Prolonged macroeconomic challenges may also lead CTV advertisers and publishers to more readily embrace programmatic advertising as they look to create economic efficiencies and reduce costs.

We believe that as streaming continues to become mainstream and ad supported models become more prevalent, brand advertisers looking to engage with streaming viewers will continue to shift their budgets from linear to CTV. This inventory is highly sought after, as it combines a traditional TV-like viewing experience with the significant advantage of digital advertising, including the ability to target audiences and measure performance in real-time.

Due primarily to the impact of the COVID-19 pandemic, revenue from our mobile and desktop channels initially decreased during the three months ended June 30, 2020 year-over-year; however, these revenues increased during the three months ended September 30, 2020 year-over-year. In future periods, we expect our mobile business will grow at a higher rate than desktop, consistent with industry trends and our historical results. Our mobile business consists of two components, mobile web and mobile applications. Initially our mobile business consisted primarily of mobile web, which is similar to our desktop business, but our mobile application business has been the growth driver behind our mobile business, and prior to the coronavirus pandemic showed growth rates in excess of industry projections. Lower industry growth rates in desktop will make growth of desktop revenue more challenging; however, in future periods we believe we will be able to grow our desktop business in excess of industry projections by capturing market share through Supply Path Optimization ("SPO") and expansion of publisher relationships.

For the three months ended September 30, 2020, mobile, desktop and CTV represented 48%, 34%, and 18% of our revenue, respectively. Due to the higher growth rates for CTV and mobile, we expect our desktop business to decline as an overall percentage of our revenue. However, we expect our traditional desktop display business to continue to represent a significant part of our revenue in the near term. Therefore, the mix of our desktop display business will continue to have a significant effect on our growth rate until our advertising spend mix has shifted more fully to growth areas.

Supply Path Optimization

SPO refers to efforts by buyers to consolidate the number of vendors they work with to find the most effective and cost-efficient paths to procure media. SPO is important to buyers because it can increase the proportion of their advertising ultimately spent on working media, with the goal of increasing return on their advertising spending, and can help them gain efficiencies by reducing the number of vendors they work with in a complex ecosystem. There are a number of criteria that buyers use to evaluate supply partners, including transparency, cost, quality and breadth of inventory, access to unique inventory and to CTV inventory, privacy standards, brand safety standards, including compliance with ads.txt and similar industry standards, and fraudulent traffic prevention policies. We believe we are well positioned to benefit from supply path optimization in the long run as a result of our transparency, our pricing tools, which reduce the overall cost of working with us, our broad inventory supply across all channels and formats, buyer tools such as traffic shaping, and our brand safety measures. Our SPO positioning was further enhanced by the Merger with Telaria, which operates a leading sell-side video monetization platform built specifically for CTV. Following the combination, we offer buyers a single omni-channel partner to reach target audiences globally across all channels, including CTV, mobile, desktop, and digital out-of-home, and formats, including video, display, and audio. We believe the COVID-19 pandemic,

and the resulting economic downturn, has the potential to accelerate SPO as buyers and publishers seek to work with established, trusted partners who have a strong balance sheet during times of uncertainty.

We believe that benefits from successful outcomes in the SPO process could drive meaningful increases of ad spend across our platform. In order to achieve increased ad spend, we may negotiate discounts to our seller fees with agencies and advertisers, and we have increasingly been receiving requests from buyers for discounts, rebates, or similar incentives in order to move more advertising spending to our platform. We believe that because our business has many fixed costs, increases in ad spend volume create opportunity to disproportionately improve net income, even with increased seller fee discounts. However, our results could be negatively impacted if our advertising spend increases and cost leverage is not adequate to compensate for discounted fees.

Impact of Header Bidding

Header bidding is a programmatic technique where publishers offer inventory to multiple ad exchanges, such as Magnite, at the same time. Header bidding has been rapidly adopted in recent years in the desktop and mobile channels, and while the rise and rapid adoption of header bidding increased revenue for sellers, it also created new challenges. Managing multiple exchanges on the page is technically complex, and in the early days of header bidding this complexity was exacerbated by the lack of independent technology standards. In 2017, we began to address these issues through our support of Prebid.org, a free and open source suite of software products designed by advertising community developers to enable publishers to implement header bidding on their websites and from within their apps. Despite Prebid's adoption by a number of the world's largest sellers, deploying and customizing it still requires dedicated technical resources. In 2019, we launched a new product called Demand Manager. Demand Manager helps sellers effectively monetize their advertising inventory through configuration tools and analytics to make it easier to deploy, configure, and optimize Prebid-based header bidding solutions. In late 2019, we also acquired RTK.io, a provider of header bidding solutions, to complement and further bolster our Demand Manager technology. We believe that adoption of these tools will further strengthen our relationship with sellers and contribute to our future revenue growth. We charge sellers a fee for Demand Manager that is based on all of the sellers' advertising spending managed through Demand Manager, whether the actual inventory monetization runs through our exchange or otherwise.

Privacy Regulation and Identification Solutions

Our business is highly susceptible to emerging privacy regulations and oversight concerning the collection, use and sharing of data. Data protection authorities in a number of territories have expressed a desire to focus on the advertising technology ecosystem. In particular, this scrutiny has focused on the use of technology (including "cookies") to collect or aggregate information about Internet users' online browsing activity. Because we, and our clients, rely upon large volumes of such data, it is essential that we monitor developments in this area domestically and globally, and engage in responsible privacy practices.

The use of and transfer of personal data in EEA member states and the UK is currently governed by the General Data Protection Regulation (the "GDPR"). The GDPR sets out higher potential liabilities for certain data protection violations and establishes significant new regulatory requirements resulting in a greater compliance burden for us in the course of delivering our solution in the EEA and UK. While data protection authorities have started to clarify certain requirements under GDPR, significant uncertainty remains as to how the regulation will be applied and enforced.

In addition to the GDPR, a number of new privacy regulations will or have already come into effect in 2020. The California legislature passed the California Consumer Privacy Act ("CCPA") in 2018, which became effective January 1, 2020. This law imposes new obligations on businesses that handle the personal information of California residents. The obligations imposed require us to maintain ongoing significant resources for compliance purposes. Certain requirements remain unclear due to ambiguities in the drafting of or incomplete guidance. Adding to the uncertainty facing the ad tech industry, a new law, titled the California Privacy Rights Act ("CPRA") recently passed as a ballot initiative in California and will impose additional notice and opt out obligations on the digital advertising space. This law, which will take effect in January 2023, will cause us to incur additional compliance costs and impose additional restrictions on us and on our industry partners. These ambiguities and resulting impact on our business will need to be resolved over time. In addition, other privacy bills have been introduced at both the state and federal level. Certain international territories are also imposing new or expanded privacy obligations. In the coming years, we expect further consumer privacy regulation worldwide.

Until prevailing compliance practices standardize, the impact of worldwide privacy regulations on our business and, consequently, our revenue could be negatively impacted.

In addition to privacy regulations restricting the collection of data through identifiers (such as cookies), other industry participants in the advertising technology ecosystem have taken or may take action to eliminate or restrict the use of cookies and other identifiers. For instance, Google has announced plans to fully eliminate the use of third-party cookies, while Apple has further restricted the use of mobile identifiers on its devices. It is possible that these companies may rely on proprietary algorithms or statistical methods to track web users without cookies, or may utilize log-in credentials entered by users into other web properties owned by these companies, such as their digital email services, to track web usage, including usage across multiple devices, without cookies. Alternatively, such companies may build different and potentially proprietary user tracking methods

into their widely-used web browsers and mobile operating systems. While these new identification solutions will likely provide some level of consistency and compatibility with our platform, they are unreleased and unproven, and will require substantial development and commercial changes for us to support. There is also further risk that the changes will disproportionately benefit the owners of these platforms or the large walled gardens that have access to large amounts of first party data.

Despite these risks, we believe that the elimination of third party cookies has the potential to shift the programmatic ecosystem from an identity model powered by buyers that are able to aggregate and target audiences through cookies to one enabled by publishers that have direct relationships with consumers and are therefore better positioned to obtain user data and consent for implementing first party identifiers. We believe that our platform and scale position us well to provide the infrastructure and tools needed for a publisher-centric identity model to succeed, and we are already enabling publishers to create segments with their first-party data. In addition to actively working with publishers to develop solutions that could leverage their first party data, we are also leading efforts through Prebid.org, with industry support, to create standardized open identity solutions that ensure a smooth transition to a cookieless environment, and offer an alternative to proprietary solutions. Prebid.org is an independent organization that we co-founded, which is dedicated to promoting fair, transparent open source solutions for the programmatic ecosystem.

We support privacy initiatives and believe they will be beneficial to consumers' confidence in advertising, which will ultimately be positive for the advertising ecosystem in the long term. In the short term, however, these changes could create some variability in our revenue across certain buyers or sellers, depending on the timing of changes and developed solutions. As the largest independent supply side platform, we believe we are well positioned to take a leadership position in driving open identity solutions that will benefit buyers and sellers on our platform.

Merger Costs Synergies and Expense Reduction Initiatives

In connection with the Merger, which closed on April 1, 2020, we previously announced expected annual run rate cost synergies to exceed \$20 million, with expected areas of synergy to include duplicative public company costs, vendor rationalization, overlapping general and administrative costs, and other operational streamlining. As a result of these efforts, we reduced our headcount by approximately 8% of our combined workforce during the second quarter of 2020. Our costs cutting efforts have largely been completed as of the end of the third quarter of 2020.

In addition, given the significant impact resulting from the COVID-19 pandemic, we instituted certain additional short-term actions during the second quarter, including compensation reductions, a hiring freeze, and deferment of certain capital expenditures. Given the recovery in revenue we experienced in the third quarter, we reinstated compensation and removed certain of these temporary cost-cutting initiatives during the fourth quarter.

Components of Our Results of Operations

We report our financial results as one operating segment. Our consolidated operating results are regularly reviewed by our chief operating decision maker, principally to make decisions about how we allocate our resources and to measure our consolidated operating performance.

Revenue

We generate revenue from the purchase and sale of digital advertising inventory through our platform. We also generate revenue from the fee we charge clients for use of our Demand Manager product, which generally is a percentage of the client's advertising spending on any advertising marketplace. We recognize revenue upon the fulfillment of our contractual obligations in connection with a completed transaction, subject to satisfying all other revenue recognition criteria. For substantially all transactions executed through our platform, we act as an agent on behalf of the publisher that is monetizing its inventory, and revenue is recognized net of any advertising inventory costs that we remit to publishers. With respect to certain revenue streams acquired in connection with the Merger with Telaria, we report revenue on a gross basis, based primarily on our determination that the Company acts as the primary obligor in the delivery of advertising campaigns for our buyer clients with respect to such transactions. The revenue that we recognized on a gross basis was less than 2% of total revenue during the three and nine months ended September 30, 2020. Our revenue recognition policies are discussed in more detail in Note 3 of the accompanying Notes to the Condensed Consolidated Financial Statements.

Expenses

We classify our expenses into the following categories:

Cost of Revenue. Our cost of revenue consists primarily of data center costs, bandwidth costs, ad protection costs, depreciation and maintenance expense of hardware supporting our revenue-producing platform, amortization of software costs for the development of our revenue-producing platform, amortization expense associated with acquired developed technologies, personnel costs, facilities-related costs, and cloud computing costs. Personnel costs included in cost of revenue include salaries, bonuses, and stock-based compensation, and are primarily attributable to personnel in our network operations group who support our platform. We capitalize costs associated with software that is developed or obtained for internal use and amortize the costs associated with our revenue-producing platform in cost of revenue over their estimated useful lives. We amortize acquired developed technologies over their estimated useful lives.

Sales and Marketing. Our sales and marketing expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, as well as marketing expenses such as brand marketing, travel expenses, trade shows and marketing materials, professional services, and amortization expense associated with client relationships and backlog from our business acquisitions, and to a lesser extent, facilities-related costs and depreciation and amortization. Our sales organization focuses on increasing the adoption of our solution by existing and new buyers and sellers. We amortize acquired intangibles associated with client relationships and backlog from our business acquisitions over their estimated useful lives.

Technology and Development. Our technology and development expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, as well as professional services associated with the ongoing development and maintenance of our solution, and to a lesser extent, facilities-related costs and depreciation and amortization. These expenses include costs incurred in the development, implementation, and maintenance of internal use software, including platform and related infrastructure. Technology and development costs are expensed as incurred, except to the extent that such costs are associated with internal use software development that qualifies for capitalization, which are then recorded as internal use software development costs, net, on our consolidated balance sheets. We amortize internal use software development costs that relate to our revenue-producing activities on our platform to cost of revenue and amortize other internal use software development costs to technology and development costs or general and administrative expenses, depending on the nature of the related project. We amortize acquired intangibles associated with technology and development functions from our business acquisitions over their estimated useful lives.

General and Administrative. Our general and administrative expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, associated with our executive, finance, legal, human resources, compliance, and other administrative personnel, as well as accounting and legal professional services fees, facilities-related costs and depreciation and amortization, and other corporate-related expenses. General and administrative expenses also include amortization of internal use software development costs and acquired intangible assets from our business acquisitions over their estimated useful lives that relate to general and administrative functions.

Merger and Restructuring Costs. Our merger and restructuring costs consist primarily of professional services fees associated with the Merger and employee termination costs, including stock-based compensation charges, associated with the Merger and restructuring activities.

Other (Income), Expense

Interest (Income) Expense, Net. Interest income consists of interest earned on our cash equivalents and marketable securities. Interest expense is mainly related to our credit facility.

Other Income. Other income consists primarily of rental income from commercial office space we hold under lease and have sublet to other tenants.

Foreign Currency Exchange (Gain) Loss, Net. Foreign currency exchange (gain) loss, net consists primarily of gains and losses on foreign currency transactions. We have foreign currency exposure related to our accounts receivable and accounts payable that are denominated in currencies other than the U.S. Dollar, principally the British Pound, Australian Dollar, and the Euro.

Provision (Benefit) for Income Taxes

We are subject to income taxes in the U.S. (federal and state) and numerous foreign jurisdictions. Tax laws, regulations, administrative practices, principles, and interpretations in various jurisdictions may be subject to significant change, with or without notice, due to economic, political, and other conditions, and significant judgment is required in evaluating and estimating our provision and accruals for these taxes. There are many transactions that occur during the ordinary course of business for which the ultimate tax determination is uncertain. Our effective tax rates could be affected by numerous factors, such as changes in our business operations, acquisitions, investments, entry into new businesses and geographies, intercompany transactions, the relative amount of our foreign earnings, including earnings being lower than anticipated in jurisdictions where we have lower statutory rates and higher than anticipated in jurisdictions where we have higher statutory rates, losses incurred in jurisdictions for which we are not able to realize related tax benefits, the applicability of special tax regimes, changes in foreign currency exchange rates, changes in our stock price, changes in our deferred tax assets and liabilities and their valuation, changes in the laws, regulations, administrative practices, principles, and interpretations related to tax, including changes to the global tax framework, competition, and other laws and accounting rules in various jurisdictions.

Results of Operations

The following table sets forth our condensed consolidated results of operations:

	Three Months Ended			Nine Months Ended		
	September 30, 2020	September 30, 2019	Change %	September 30, 2020	September 30, 2019	Change %
	(in thousands)			(in thousands)		
Revenue	\$ 60,982	\$ 37,642	62 %	\$ 139,625	\$ 107,928	29 %
Expenses ⁽¹⁾⁽²⁾ :						
Cost of revenue	21,031	13,869	52 %	56,579	44,070	28 %
Sales and marketing	21,761	11,040	97 %	53,059	33,151	60 %
Technology and development	13,562	10,293	32 %	37,318	29,848	25 %
General and administrative	13,314	9,121	46 %	38,221	29,428	30 %
Merger and restructuring costs	2,254	—	100 %	16,677	—	100 %
Total expenses	71,922	44,323	62 %	201,854	136,497	48 %
Loss from operations	(10,940)	(6,681)	(64)%	(62,229)	(28,569)	(118)%
Other income, net	(871)	(562)	55 %	(3,444)	(999)	245 %
Loss before income taxes	(10,069)	(6,119)	(65)%	(58,785)	(27,570)	(113)%
Provision (benefit) for income taxes	446	55	711 %	533	(569)	(194)%
Net loss	\$ (10,515)	\$ (6,174)	(70)%	\$ (59,318)	\$ (27,001)	(120)%

(1) Stock-based compensation expense included in our expenses was as follows:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands)		(in thousands)	
Cost of revenue	\$ 122	\$ 110	\$ 412	\$ 308
Sales and marketing	2,309	1,378	5,928	4,182
Technology and development	2,061	1,157	5,469	3,382
General and administrative	2,504	2,068	7,935	6,005
Merger and restructuring costs	354	—	1,554	—
Total stock-based compensation expense	\$ 7,350	\$ 4,713	\$ 21,298	\$ 13,877

(2) Depreciation and amortization expense included in our expenses was as follows:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands)		(in thousands)	
Cost of revenue	\$ 9,579	\$ 7,737	\$ 26,407	\$ 23,540
Sales and marketing	4,317	67	8,962	305
Technology and development	143	102	340	476
General and administrative	37	121	448	520
Total depreciation and amortization expense	\$ 14,076	\$ 8,027	\$ 36,157	\$ 24,841

The following table sets forth our condensed consolidated results of operations for the specified periods as a percentage of our revenue for those periods presented:

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
Revenue	100 %	100 %	100 %	100 %
Cost of revenue	34	37	41	41
Sales and marketing	36	29	38	31
Technology and development	22	27	27	28
General and administrative	22	25	27	26
Merger and restructuring costs	4	—	12	—
Total expenses	118	118	145	126
Loss from operations	(18)	(18)	(45)	(26)
Other income, net	(2)	(2)	(3)	—
Loss before income taxes	(16)	(16)	(42)	(26)
Provision (benefit) for income taxes	1	—	—	(1)
Net loss	(17) %	(16) %	(42) %	(25) %

Comparison of the Three and Nine Months Ended September 30, 2020 and 2019

Revenue

Revenue increased \$23.3 million, or 62%, for the three months ended September 30, 2020 compared to the three months ended September 30, 2019. Our revenue growth was driven primarily by the Merger, completed on April 1, 2020, which contributed \$19.7 million in revenue during the three months ended September 30, 2020. Excluding the impact of the Merger, our revenue increased 10%. Despite some recovery in our revenue trends, our third quarter revenue was negatively affected by the impact of the COVID-19 pandemic.

Revenue increased \$31.7 million, or 29%, for the nine months ended September 30, 2020 compared to the prior year period, primarily due to the Merger. Excluding the impact of the Merger, our revenue decreased 1%, primarily due to the impact of the COVID-19 pandemic, which led to an overall decrease in advertiser demand.

Our revenue is largely a function of the number of advertising transactions and the price at which the inventory is sold, which results in total advertising spend on our platform, and the take rate we charge for our services. Because these factors vary across publisher, channel and transaction type, our revenue is impacted by shifts in the mix of advertising spend on our platform. For instance, an increase in PMP transactions as a percentage of the transactions on our platform could also result in reduced revenue, if not offset by increased volume or increased CPMs, because PMP transactions can carry lower take rates than OMP transactions. We believe that contributions to revenue from PMP, in particular with respect to CTV which is largely transacted through PMP, will continue to grow as a percentage of our total revenue. In general, we expect this to result in an increase in the average CPM for inventory monetized through our platform and a decrease in our average take rate.

As a result of the Merger, we expect revenue to increase in 2020 compared to 2019, specifically related to CTV. However, these increases have been tempered, and may be partially offset in the future, by reductions in revenue resulting from the economic impact of the COVID-19 pandemic. Although the full magnitude of the impact of the COVID-19 pandemic on our business and operations remains uncertain, the continued spread of COVID-19, the imposition of related public health measures, and travel and business restrictions will adversely impact the combined company's forecasted business, financial condition, operating results and cash flows. Refer to Part II, Item 1A: "Risk Factors" for additional information related to this risk factor and the impact it may have on our business.

Cost of Revenue

Cost of revenue increased \$7.2 million, or 52%, for the three months ended September 30, 2020 compared to the three months ended September 30, 2019, primarily due to the Merger. Cost of revenue increased by \$4.2 million in data and bandwidth expenses and \$1.8 million in depreciation and amortization during the three months ended September 30, 2020 compared to the same period in the prior year.

For the nine months ended September 30, 2020, cost of revenue increased \$12.5 million, or 28%, compared to the prior year period primarily due to the Merger. Cost of revenue increased by \$6.9 million in data and bandwidth expenses and \$2.9 million in depreciation and amortization during the nine months ended September 30, 2020 compared to the same period in the prior year.

We expect cost of revenue to be higher in 2020 compared to 2019 in absolute dollars due to the increased amortization of intangible assets resulting from the Merger in addition to increased expenses as we continue to expand select data center operations to cloud service providers to accelerate innovation and gain efficiencies, and to support the growth of our business. These increases will be partially offset by a decrease in cost of revenue in the remainder of the year associated with merger synergies and our expense reduction initiatives. For details surrounding our expense reduction initiatives, refer to "Merger Costs Synergies and Expense Reduction Initiatives" discussed above.

Cost of revenue may fluctuate from quarter to quarter and period to period, on an absolute dollar basis and as a percentage of revenue, depending on revenue levels and the volume of transactions we process supporting those revenues, and the timing and amounts of depreciation and amortization of equipment and software.

Sales and Marketing

Sales and marketing expenses increased \$10.7 million, or 97%, for the three months ended September 30, 2020 compared to the three months ended September 30, 2019, primarily due to the Merger and associated increases in headcount and the amortization of acquired intangibles and other assets. Sales and marketing expenses increased by \$7.1 million related to personnel expenses and by \$4.2 million related to depreciation and amortization associated with the Merger. These increases were partially offset by a decrease of \$0.9 million in travel and industry events due to the impact of the COVID-19 pandemic.

For the nine months ended September 30, 2020, sales and marketing expenses increased \$19.9 million, or 60%, compared to the prior year period for the same reasons above. Sales and marketing expenses increased by \$13.1 million related to personnel expenses and by \$8.7 million related to depreciation and amortization associated with the Merger. These increases were partially offset by a decrease of \$2.0 million in travel and industry events due to the impact of the COVID-19 pandemic.

We expect sales and marketing expenses to increase in 2020 compared to 2019 in absolute dollars as a result of the Merger, primarily due to additional headcount. These increases will be partially offset by a decrease in sales and marketing expenses in the remainder of the year associated with merger synergies and our expense reduction initiatives. For details surrounding our expense reduction initiatives, refer to "Merger Costs Synergies and Expense Reduction Initiatives" discussed above.

Sales and marketing expenses may fluctuate quarter to quarter and period to period, on an absolute dollar basis and as a percentage of revenue, based on revenue levels, the timing of our investments and seasonality in our industry and business.

Technology and Development

Technology and development expenses increased \$3.3 million, or 32%, for the three months ended September 30, 2020 compared to the three months ended September 30, 2019, due to an increase of \$3.3 million in personnel costs as a result of the increased headcount associated with the Merger.

For the nine months ended September 30, 2020, technology and development expenses increased \$7.5 million, or 25%, compared to the prior year period, due to an increase of \$7.5 million in personnel costs primarily for the same reasons above and an increase of \$0.9 million in professional services. These increases were offset by individually insignificant drivers.

We expect technology and development expenses to continue to increase in 2020 compared to 2019 in absolute dollars as a result of the Merger, primarily due to additional headcount. These increases will be partially offset by a decrease in technology and development expenses in the remainder of the year associated with merger synergies and our expense reduction initiatives. For details surrounding our expense reduction initiatives, refer to "Merger Costs Synergies and Expense Reduction Initiatives" discussed above.

The timing and amount of our capitalized development and enhancement projects may affect the amount of development costs expensed in any given period. As a percentage of revenue, technology and development expense may fluctuate from quarter to quarter and period to period based on revenue levels, the timing and amounts of technology and development efforts, the timing and the rate of the amortization of capitalized projects and the timing and amounts of future capitalized internal use software development costs.

General and Administrative

General and administrative expenses increased by \$4.2 million, or 46%, for the three months ended September 30, 2020 compared to the three months ended September 30, 2019, primarily due to increases of \$1.8 million in personnel expenses, \$1.4 million in facilities related expenses, and \$0.8 million in professional services primarily associated with the Merger.

For the nine months ended September 30, 2020, general and administrative expenses increased \$8.8 million, or 30%, compared to the prior year period, primarily due to increases of \$5.0 million in personnel expenses, \$3.3 million in facilities related expenses, and \$1.5 million in professional services for the same reasons above. The increase was partially offset by a decrease of \$0.9 million related to bad debt.

We expect general and administrative expenses to continue to increase in 2020 compared to 2019 in absolute dollars as a result of the Merger, primarily due to the additional headcount. These increases will be partially offset by a decrease in general and administrative expenses in the remainder of the year associated with merger synergies and our expense reduction initiatives. For details surrounding our expense reduction initiatives, refer to "Merger Costs Synergies and Expense Reduction Initiatives" discussed above.

General and administrative expenses may fluctuate from quarter to quarter and period to period based on the timing and amounts of expenditures in our general and administrative functions as they vary in scope and scale over periods. Such fluctuations may not be directly proportional to changes in revenue.

Merger and Restructuring Costs

We incurred merger and restructuring costs of \$2.3 million and \$16.7 million during the three and nine months ended September 30, 2020, respectively. These costs included professional fees of \$1.0 million and \$9.5 million related to investment banking advisory, legal, and other professional service fees, one-time cash-based employee termination benefit costs of \$0.9 million and \$5.6 million, and non-cash stock-based compensation expense associated with double-trigger accelerations and severance benefits of \$0.4 million and \$1.6 million during the three and nine months ended September 30, 2020, respectively. There were no merger and restructuring costs incurred during the three and nine months ended September 30, 2019.

Other Income, Net

	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
	(in thousands)		(in thousands)	
Interest (income) expense, net	\$ 30	\$ (218)	\$ (112)	\$ (625)
Other income	(1,194)	(48)	(2,487)	(236)
Foreign exchange (gain) loss, net	293	(296)	(845)	(138)
Total other income, net	<u>\$ (871)</u>	<u>\$ (562)</u>	<u>\$ (3,444)</u>	<u>\$ (999)</u>

Other income increased by \$1.1 million and \$2.3 million during the three and nine months ended September 30, 2020, respectively, compared to the same periods in prior year, primarily due to rental income from commercial office space we hold under lease and have sublet to other tenants.

Foreign exchange (gain) loss, net is impacted by movements in exchange rates and the amount of foreign currency-denominated receivables and payables, which are impacted by our billings to buyers and payments to sellers. During the three and nine months ended September 30, 2020, the net foreign exchange gain was primarily attributable to the currency movements between the British Pound, Australian Dollar, and the Euro relative to the U.S. Dollar.

Provision (Benefit) for Income Taxes

We recorded an income tax expense of \$0.4 million and \$0.5 million for the three and nine months ended September 30, 2020, respectively, and an income tax expense of \$0.1 million and benefit of \$0.6 million for the three and nine months ended September 30, 2019, respectively. The tax expense for the three and nine months ended September 30, 2020 is primarily the result of the domestic valuation allowance and the tax liability associated with the foreign subsidiaries.

Liquidity and Capital Resources

Our principal sources of liquidity are our cash and cash equivalents, marketable securities, cash generated from operations, and our credit facility with Silicon Valley Bank ("SVB"). As of September 30, 2020, we had cash and cash equivalents of \$103.8 million, of which \$18.4 million was held in foreign currency cash accounts. Our cash and marketable securities balances are affected by our results of operations, the timing of capital expenditures which are typically greater in the second half of the year, and by changes in our working capital, particularly changes in accounts receivable and accounts payable. The timing of cash receipts from buyers and payments to sellers can significantly impact our cash flows from operating activities and our liquidity for, and within, any period presented. Our collection and payment cycle can vary from period to period depending upon various circumstances, including seasonality, and may be negatively impacted as a result of COVID-19.

In September 2020, we amended and restated our loan and security agreement with SVB (the "Loan Agreement"). The Loan Agreement provides a senior secured revolving credit facility of up to \$60.0 million with a maturity date of September 25, 2022. The Loan Agreement includes a letter of credit, foreign exchange and cash management facility with a sublimit up to \$10.0 million, of which \$4.3 million was utilized for letters of credit related to leases as of September 30, 2020. As of September 30, 2020, the amount available for borrowing was \$55.7 million (net of letters of letters of credit).

Pursuant to the Loan Agreement, we are required to comply with financial covenants, measured quarterly, with respect to a minimum liquidity ratio and maximum quarterly cash burn. We are required to maintain a minimum liquidity ratio of at least 1.25 on the last day of each quarter and not exceed, on an absolute basis, a maximum quarterly cash burn for specific periods, as defined in the Loan Agreement. The Liquidity Ratio is defined as Cash and Cash Equivalents, plus Accounts Receivable, less Accounts Payable - Seller, divided by all obligations due to SVB, including all debt balances, interest, service fees, and unused credit line fees, net of outstanding letters of credit as of the balance sheet date. Cash Burn is defined as Adjusted EBITDA less Capital Expenditures during the trailing periods as outlined in the Loan Agreement. The Loan Agreement defines Capital Expenditures as the current period unfinanced cash expenditures that are capitalized and amortized, including but not limited to property and equipment and capitalized labor costs as they relate to internal use software development costs. As of September 30, 2020, the Company was in compliance with its financial covenants. While we are currently in compliance with these covenants, this could change in the future depending on our operating results.

As of September 30, 2020, we had no amounts outstanding under our Loan Agreement (other than with respect to letters of credit). Future availability under the credit facility is dependent on several factors including the available borrowing base and compliance with future covenant requirements. See Note 13 of "Notes to Condensed Consolidated Financial Statements" for additional information regarding the Loan Agreement.

We believe our existing cash and cash equivalents, investment balances, and available borrowings under our Loan Agreement will be sufficient to meet our working capital requirements for at least the next twelve months from the issuance of our financial statements. However, there are multiple factors that could impact our cash balances in the future. For example, we typically collect from buyers in advance of payments to sellers, and our collection and payment cycle can vary from period to period depending upon various circumstances, including seasonality. Some buyers have been demanding longer terms to pay us later, and some sellers have been demanding shorter terms to collect from us earlier. If we accept these terms, more of our cash will be required to fund our payment cycle and therefore not be available for other uses. In addition, in the event a buyer defaults on payment, we may still be required to pay sellers for the inventory purchased even if we are unable to collect from buyers. These challenges have been exacerbated by the COVID-19 pandemic and resulting economic impact, as many of our buyers are experiencing financial difficulties and liquidity constraints. In certain cases, buyers have been unable to timely make payments and we have agreed to revised payment schedules. To date, these actions have not had a material negative impact on our cash flow or liquidity. At September 30, 2020, two buyers accounted for 37% and 9%, respectively, of consolidated accounts receivable. The future capital requirements and the adequacy of available funds will depend on many factors, including the duration and severity of the COVID-19 pandemic and its impact on buyers and sellers and the factors and those set forth in Part II, Item 1A: "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2019, Part II, Item 1A: "Risk Factors" of our Quarterly Reports on Form 10-Q for the periods ended March 31, 2020 and June 30, 2020, and in Part II, Item 1A of this Form 10-Q.

In the future, we may attempt to raise additional capital through the sale of equity securities or through equity-linked or debt financing arrangements. If we raise additional funds by issuing equity or equity-linked securities, the ownership of our existing stockholders will be diluted. If we raise additional financing by incurring indebtedness, we will be subject to increased fixed payment obligations and could also be subject to restrictive covenants, such as limitations on our ability to incur additional debt, and other operating restrictions that could adversely impact our ability to conduct our business. Any future indebtedness we incur may result in terms that could be unfavorable to equity investors. Due to the economic uncertainty caused by the COVID-19 pandemic, the debt and equity markets have become less predictable and obtaining financing on favorable terms and at favorable rates has become more difficult.

An inability to raise additional capital could adversely affect our ability to achieve our business objectives. In addition, if our operating performance during the next twelve months is below our expectations, our liquidity and ability to operate our business could be adversely affected.

Cash Flows

The following table summarizes our cash flows for the periods presented:

	Nine Months Ended	
	September 30, 2020	September 30, 2019
	(in thousands)	
Cash flows (used in) provided by operating activities	\$ (24,038)	\$ 9,808
Cash flows provided by (used in) investing activities	43,490	(4,105)
Cash flows used in financing activities	(3,280)	(841)
Effects of exchange rate changes on cash, cash equivalents and restricted cash	41	(192)
Change in cash, cash equivalents and restricted cash	<u>\$ 16,213</u>	<u>\$ 4,670</u>

Operating Activities

Our cash flows from operating activities are primarily driven by revenues generated from advertising activity, offset by the cash costs of operations, and are significantly influenced by the timing of and fluctuations in receipts from buyers and related payments to sellers. Our future cash flows will be diminished if we cannot increase our revenue levels and manage costs appropriately. Cash flows from operating activities have been further affected by changes in our working capital, particularly changes in accounts receivable and accounts payable. The timing of cash receipts from buyers and payments to sellers can significantly impact our cash flows from operating activities for any period presented.

For the nine months ended September 30, 2020, net cash used in operating activities was \$24.0 million compared to net cash provided by operating activities of \$9.8 million for the nine months ended September 30, 2019. Our operating activities included our net losses of \$59.3 million and \$27.0 million for the nine months ended September 30, 2020 and 2019, respectively, which were offset by non-cash adjustments of \$55.6 million and \$38.1 million, respectively. In the nine months ended September 30, 2020, cash used in operating activities was increased by a net decrease in our working capital of \$20.3 million. Net cash provided by operating activities for the nine months ended September 30, 2019 was decreased by a net decrease in our working capital of \$1.3 million. The net changes in working capital for both periods are primarily due to the timing of cash receipts from buyers and the timing of payments to sellers.

We believe that cash flows from operations will continue to be negatively impacted by our ongoing net losses and working capital needs.

Investing Activities

Our primary investing activities have consisted of investments in, and maturities of, available-for-sale securities, purchases of property and equipment, and capital expenditures to develop our internal use software in support of creating and enhancing our technology infrastructure. Purchases of property and equipment and investments in internal use software development may vary from period-to-period due to the timing of the expansion of our operations, changes to headcount, and the cycles of our internal use software development. As we execute on our strategy to be a high volume, low cost advertising exchange, we are developing solutions to manage the growth of our digital advertising inventory volume more efficiently. We anticipate investment in internal use software development to slightly increase compared to past years' investment levels as we continue to innovate new solutions on our platform. As the business continues to grow, we expect our investment in property and equipment to slightly increase compared to 2019. Historically, a majority of our purchases in property and equipment have occurred in the latter half of the year in preparation for the peak volumes of the fourth quarter and early in the first quarter of the following year. We expect those trends to continue, with higher levels of property and equipment spend in the latter half of this year compared to the first half of the year.

During the nine months ended September 30, 2020 and 2019, our investing activities provided net cash of \$43.5 million and net cash used of \$4.1 million, respectively. During the nine months ended September 30, 2020 and 2019, we used cash for purchases of property and equipment of \$4.2 million and \$5.6 million, respectively, and used cash for investments in our internally developed software of \$6.9 million and \$6.0 million, respectively. The cash provided by investing activity for the nine months ended September 30, 2020 included \$54.6 million of cash and restricted cash acquired as part of the Merger with Telaria. For the nine months ended September 30, 2019, we had cash inflows from net maturities of investments in available-for-sale securities of \$7.5 million.

Financing Activities

Our financing activities consisted of transactions related to the issuance of our common stock under our equity plans.

For the nine months ended September 30, 2020 and 2019, we used net cash of \$3.3 million and \$0.8 million, respectively, for financing activities. Cash outflows from financing activities for the nine months ended September 30, 2020 and 2019 included payments of \$7.8 million and \$1.8 million, respectively, for income tax deposits paid in respect of vesting of stock-based

compensation awards that were reimbursed by the award recipients through surrender of shares. Cash provided by financing activities also included cash proceeds from stock options exercised of \$3.9 million and \$0.5 million for the nine months ended September 30, 2020 and 2019, respectively.

Off-Balance Sheet Arrangements

We do not have any relationships with other entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities that have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We did not have any other off-balance sheet arrangements at September 30, 2020 other than the short-term operating leases and the indemnification agreements described below.

Contractual Obligations and Known Future Cash Requirements

Our principal commitments consist of leases for our various office facilities and operating lease agreements including data centers and cloud managed services that expire at various times through 2030. At September 30, 2020, expected future commitments relating to operating leases associated with leases included in the lease liability and ROU asset on the condensed consolidated balance sheet were \$53.1 million. See Note 12 of "Notes to Condensed Consolidated Financial Statements" for our lease commitment for each of the next five years and thereafter. In certain cases, the terms of the lease agreements provide for rental payments on a graduated basis. During the three months ended September 30, 2020 and 2019, we received rental income from subleases of \$1.2 million and \$48.4 thousand, respectively, and \$2.5 million and \$0.2 million during the nine months ended September 30, 2020 and 2019, respectively. In addition, during the three months ended September 30, 2020, we entered into an agreement for third-party cloud-managed services. As part of the agreement, we have a minimum commitment to pay \$20.0 million over the course of five years, with no annual minimum commitment.

There were no significant changes to our unrecognized tax benefits in the nine months ended September 30, 2020 and we do not expect to have any significant changes to unrecognized tax benefits through December 31, 2020.

In the ordinary course of business, we enter into agreements with sellers, buyers, and other third parties pursuant to which we agree to indemnify buyers, sellers, vendors, lessors, business partners, lenders, stockholders, and other parties with respect to certain matters, including, but not limited to, losses resulting from claims of intellectual property infringement, damages to property or persons, business losses, or other liabilities. Generally, these indemnity and defense obligations relate to our own business operations, obligations, and acts or omissions. However, under some circumstances, we agree to indemnify and defend contract counterparties against losses resulting from their own business operations, obligations, and acts or omissions, or the business operations, obligations, and acts or omissions of third parties. These indemnity provisions generally survive termination or expiration of the agreements in which they appear. In addition, we have entered into indemnification agreements with our directors, executive officers and certain other officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers, or employees.

Critical Accounting Policies and Estimates

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

We believe that the following assumptions and estimates have the greatest potential impact on our condensed consolidated financial statements: (i) the determination of revenue recognition as net versus gross in our revenue arrangements, (ii) internal-use software development costs, (iii) intangible asset and goodwill impairment analysis, (iv) assumptions used in the valuation models to determine the fair value of stock options and stock-based compensation expense, (v) the assumptions used in the valuation of acquired assets and liabilities in business combinations, and (vi) income taxes, including the realization of tax assets and estimates of tax liabilities. There have been no significant changes in our accounting policies from those disclosed in our audited consolidated financial statements and notes thereto for the year ended December 31, 2019 included in our Annual Report on Form 10-K.

Our revenue recognition policy is further described below, which is consistent with the policy included in our Annual Report referenced above.

Revenue Recognition

We generate revenue from transactions where we provide a platform for the purchase and sale of digital advertising inventory. We also generate revenue from the fee we charge clients for use of our Demand Manager product, which generally is a percentage of the client's advertising spending on any advertising marketplace. Our platform dynamically connects sellers and

buyers of advertising inventory in a digital marketplace. Our solution incorporates proprietary machine-learning algorithms, sophisticated data processing, high-volume storage, detailed analytics capabilities, and a distributed infrastructure. Digital advertising inventory is created when consumers access sellers' content. Sellers provide digital advertising inventory to our platform in the form of advertising requests, or ad requests. When we receive ad requests from sellers, we send bid requests to buyers, which enable buyers to bid on sellers' digital advertising inventory. Winning bids can create advertising, or paid impressions, for the seller to present to the consumer.

The total volume of spending between buyers and sellers on our platform is referred to as advertising spend. We keep a percentage of that advertising spend as a fee, and remit the remainder to the seller. The fee that we retain from the gross advertising spend on our platform is recognized as revenue. The fee earned on each transaction is based on the pre-existing agreement we have with the seller and the clearing price of the winning bid. We recognize revenue upon fulfillment of our performance obligation to a client, which occurs at the point in time an ad renders and is counted as a paid impression, subject to a contract existing with the client and a fixed or determinable transaction price. Performance obligations for all transactions are satisfied, and the corresponding revenue is recognized, at a distinct point in time; we have no arrangements with multiple performance obligations. We consider the following when determining if a contract exists (i) contract approval by all parties, (ii) identification of each party's rights regarding the goods or services to be transferred, (iii) specified payment terms, (iv) commercial substance of the contract, and (v) collectability of substantially all of the consideration is probable.

The determination of whether revenue should be reported on a gross or net basis is based on an assessment of whether we are acting as the principal or an agent in the transaction. In determining whether we are acting as the principal or an agent, we followed the accounting guidance for principal-agent considerations. Making such determinations involves judgment and is based on an evaluation of the terms of each arrangement, none of which are considered presumptive or determinative.

For substantially all transactions on our platform, we have determined that we do not act as the principal in the purchase and sale of digital advertising inventory because we are not the primary obligor and do not set prices agreed upon within the auction marketplace, and therefore we report revenue on a net basis. However, for certain transactions related to revenue streams acquired in connection with the Merger with Telaria, we report revenue on a gross basis, based primarily on our determination that we act as the primary obligor in the delivery of advertising campaigns for buyers with respect to such transactions.

Recently Issued Accounting Pronouncements

For information regarding recent accounting pronouncements, refer to Note 1 "Organization and Summary of Significant Accounting Policies" to our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

We have operations both in the United States and internationally, and we are exposed to market risks in the ordinary course of our business. These risks include primarily interest rate, foreign exchange, and inflation risks. The risks below may be further exacerbated by the effects of the COVID-19 pandemic on global macroeconomic and market conditions.

Interest Rate Fluctuation Risk

Our cash and cash equivalents consist of cash and money market funds. Our investments consist of repurchase agreements, U.S. government agency debt, and U.S. treasury debt. The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. Because our cash, cash equivalents, and investments have a relatively short maturity, our portfolio's fair value is relatively insensitive to interest rate changes. Our line of credit is at variable interest rates. We had no amounts outstanding under our credit facility at September 30, 2020. We do not believe that an increase or decrease in interest rates of 100 basis points would have a material effect on our operating results or financial condition. In future periods, we will continue to evaluate our investment policy relative to our overall objectives.

Foreign Currency Exchange Risk

We have foreign currency risks related to our revenue and expenses denominated in currencies other than the U.S. Dollar, principally British Pounds, Euros and Australian Dollars. The volatility of exchange rates depends on many factors that we cannot forecast with reliable accuracy. We have experienced and will continue to experience fluctuations in our net income (loss) as a result of transaction gains and losses related to translating certain cash balances, trade accounts receivable and payable balances and intercompany balances that are denominated in currencies other than the U.S. Dollar. The effect of an immediate 10% adverse change in foreign exchange rates on foreign-denominated accounts at September 30, 2020, including intercompany balances, would result in a foreign currency loss of approximately \$1.0 million. In the event our non-U.S. Dollar denominated sales and expenses increase, our operating results may be more greatly affected by fluctuations in the exchange rates of the currencies in which we do business. At this time we do not, but we may in the future, enter into derivatives or other financial instruments in an attempt to

hedge our foreign currency exchange risk. It is difficult to predict the impact hedging activities would have on our results of operations.

Inflation Risk

We do not believe that inflation has had a material effect on our business, financial condition, or results of operations. If our costs were to become subject to significant inflationary pressures, we might not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition, and results of operations.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) under the Exchange Act. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives of ensuring that information we are required to disclose in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures, and is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. There is no assurance that our disclosure controls and procedures will operate effectively under all circumstances. Based upon the evaluation described above, our Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2020, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the three months ended September 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, except as noted below.

On April 1, 2020, we completed the Merger with Telaria. See Note 7 of "Notes to Condensed Consolidated Financial Statements" for more information. We are currently integrating Telaria into our operations and internal control processes. As we complete this integration, we are analyzing, evaluating, and where necessary, making changes in control and procedures related to the Telaria business, which we expect to complete within one year after the date of acquisition. Pursuant to the SEC's guidance that an assessment of a recently acquired business may be omitted from the scope of an assessment in the year of acquisition, the scope of our assessment of the effectiveness of our internal controls over financial reporting at December 31, 2020 may exclude Telaria to the extent that they are not yet integrated into our internal controls environment.

Inherent Limitations on Effectiveness of Controls

Management recognizes that a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud or error, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We and our subsidiaries may from time to time be parties to legal or regulatory proceedings, lawsuits and other claims incident to our business activities and to our status as a public company. Such routine matters may include, among other things, assertions of contract breach or intellectual property infringement, claims for indemnity arising in the course of our business, regulatory investigations or enforcement proceedings, and claims by persons whose employment has been terminated. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. Consequently, we are unable to ascertain the

ultimate aggregate amount of monetary liability, amounts which may be covered by insurance or recoverable from third parties, or the financial impact with respect to such matters as of September 30, 2020. However, based on our knowledge as of September 30, 2020, we believe that the final resolution of such matters pending at the time of this report, individually and in the aggregate, will not have a material adverse effect upon our condensed consolidated financial position, results of operations or cash flows.

Refer to Note 11—"Commitments and Contingencies" for additional information related to legal proceedings.

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. We describe risks associated with our business below and in Part I, Item 1A: "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2019 and in Part II, Item 1A "Risk Factors" of our Quarterly Reports on Form 10-Q for the periods ended March 31, 2020 and June 30, 2020 (the "Risk Factors"). Each of the risks described in our Risk Factors may be relevant to decisions regarding an investment in or ownership of our stock. The occurrence of any such risks could have a significant adverse effect on our reputation, business, financial condition, revenue, results of operations, growth, or ability to accomplish our strategic objectives, and could cause the trading price of our common stock to decline. You should carefully consider such risks and the other information contained in this report, including our condensed consolidated financial statements and related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations, before making investment decisions related to our common stock.

The following risk factors supplement the Risk Factors contained in our Annual Report on Form 10-K for the year ended December 31, 2019 and in our Quarterly Reports on Form 10-Q for the periods ended March 31, 2020 and June 30, 2020. The following disclosures do not address all risks that may be important to you as a Magnite stockholder.

In addition to the following risk factors, there are no additional material changes to the Risk Factors of which we are currently aware; but our Risk Factors cannot anticipate and fully address all possible risks of investing in our common stock, the risks of investing in our common stock may change over time, and additional risks and uncertainties that we are not aware of, or that we do not consider to be material, may emerge. Accordingly, you are advised to consider additional sources of information and exercise your own judgment in addition to the information we provide.

The recent COVID-19 pandemic and spread of COVID-19 has impacted and may have material adverse effects on our business, financial position, results of operations and/or cash flows.

Our business has been impacted and may be materially adversely impacted by the effects of the COVID-19 pandemic. In addition to the United States, we have personnel and operations in England, Canada, France, Australia, New Zealand, Germany, Italy, Japan, Singapore, and Brazil, and each of these countries has been affected by the outbreak and taken measures to try to contain it. These measures have impacted and may further impact our workforce and operations, and the operations of our sellers and buyers.

The COVID-19 pandemic has in the short-run and may over the longer term adversely affect the economies and financial markets of many countries. Adverse economic conditions and general uncertainty about economic recovery or growth, particularly in North America and Europe, where we conduct most of our business, has caused advertisers to significantly reduce their advertising budgets. Our business depends on the overall demand for advertising and on the economic health of our current and prospective sellers and buyers. As a result of advertisers significantly reducing their overall advertising spending, our revenue and results of operations have been directly affected. In addition, because people around the world are spending more time at home and in front of internet-connected devices, the amount of ad requests that we process has spiked, and our infrastructure may not be capable of processing the increased volume of ad requests at cost-efficient levels.

There can be no assurance that any decrease in sales resulting from the COVID-19 pandemic and responses of governments, individuals, and businesses will be offset by increased sales in subsequent periods. The degree to which the COVID-19 pandemic and responses thereto impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including, but not limited to, the duration and spread of the outbreak, its severity, including any resurgence, the actions to contain the virus or treat its impact, and how quickly and to what extent normal economic and operating conditions can resume. Although the full magnitude of the impact of the COVID-19 pandemic on our business and operations remains uncertain, the spread of COVID-19 and the imposition of related public health measures and travel and business restrictions has and is expected to continue to adversely impact our forecasted business, financial condition, operating results and cash flows.

In addition, additional or unforeseen effects from the COVID-19 pandemic and the resulting economic distress could implicate or amplify many of the other risks discussed herein and in Part II, Item 1A: "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2019 and in Part II, Item 1A: "Risk Factors" of our Quarterly Reports on Form 10-Q for the periods ended March 31, 2020 and June 30, 2020.

We rely on technological intermediaries such as DSPs to purchase advertising on behalf of advertisers. Such buyers have or may develop high-risk credit profiles or pay slowly, which may result in credit risk to us or require additional working capital to fund our accounts payable. These risks are heightened as a result of the COVID-19 pandemic and resulting economic downturn.

Generally, we invoice and collect from buyers the full purchase price for impressions they have purchased, retain our fees, and remit the balance to sellers. However, in some cases, we are required or may choose to pay sellers for impressions delivered before we have collected, or even if we are unable to collect from the buyer of those impressions. In the past, certain buyers have sought to slow their payments to us or been forced into filing for bankruptcy protection, resulting in bad debt. These challenges have been exacerbated by the COVID-19 pandemic and resulting economic impact, as many of our buyers are experiencing financial difficulties and liquidity constraints. In certain cases, buyers have been unable to timely make payments and we have agreed to revised payment schedules. To date, these actions have not had a material negative impact on our cash flow or liquidity. However, prolonged economic downturn may lead additional buyers to slow or default on payments or in some cases seek bankruptcy protection.

There can be no assurances that we will not experience bad debt in the future, and write-offs for bad debt could have a materially negative effect on our results of operations for the periods in which the write-offs occur. If our cash collections are significantly diminished as a result of these dynamics, our revenue and/or cash flow could be adversely affected and we may need to use working capital to fund our accounts payable pending collection from the buyers. This may result in additional costs and cause us to forgo or defer other more productive uses of that working capital.

If CTV advertising spend grows more slowly than we expect our operating results and growth prospects could be harmed.

The growth of our platform is dependent, in part, on the continued growth in CTV advertising spend. Growth in the CTV advertising market is dependent on a number of factors, including the pace of cord-cutting (the replacement of traditional cable or broadcast TV for CTV and OTT applications), the continued proliferation of digital content and CTV providers, the adoption of ad-supported models by CTV publishers in lieu of, or in addition to, subscription models, and an acceleration in the shift of ad dollars from traditional linear TV to CTV to keep pace with changing viewership habits. If the market for ad-supported CTV develops more slowly than we expect or fails to develop as a result of these or other factors, our operating results and growth prospects could be harmed.

If CTV publishers fail to adopt programmatic advertising solutions, or adopt such solutions more slowly than we expect, our operating and growth prospects could be harmed.

As online video advertising has continued to scale and evolve, the amount of online video advertising being bought and sold programmatically has increased dramatically. Despite the opportunities created by programmatic advertising, CTV publishers have been slower to adopt programmatic solutions compared to desktop and mobile video publishers. Many CTV publishers have backgrounds in cable or broadcast television and have limited experience with digital advertising, and in particular programmatic advertising. For these publishers, it is extremely important to protect the quality of the viewer experience to maintain brand goodwill and ensure that online advertising efforts do not create sales channel conflicts or otherwise detract from their direct sales force. In this regard, programmatic advertising presents a number of potential challenges, including the ability to ensure that ads are brand safe, comply with business rules around competitive separation, are not overly repetitive, are played at the appropriate volume and do not cause delays in load-time of content. Our platform was designed to address these challenges and we have invested significant time and resources cultivating relationships with CTV publishers to establish best practices and evangelize the benefits of programmatic CTV.

While we believe that programmatic advertising will continue to grow as a percentage of overall CTV advertising, there can be no assurances that CTV publishers will adopt programmatic solutions or the speed at which they may adopt such solutions. Any such failure or delay in adoption could negatively impact our finance results and growth prospects.

We may not be able to maintain or increase access to the CTV advertising inventory monetized through our platform on terms acceptable to us.

Our success requires us to maintain and expand our access to premium video advertising inventory. We do not own or control the video ad inventory upon which our business depends and do not own or create content. Publishers are generally not required to offer a specified level of inventory on our platform, and we cannot be assured that any publisher will continue to make their ad inventory available on our platform. Publishers may seek to change the terms on which they offer inventory on our platform, including with respect to pricing, or may elect to make advertising inventory available to our competitors who offer more

favorable economic terms. Furthermore, publishers may enter into exclusive relationships with our competitors, which preclude us from offering their inventory.

These risks are particularly pronounced with CTV publishers. CTV inventory is highly sought after, and unlike desktop or mobile advertising, which may come from disparate sources, CTV inventory tends to be concentrated on a smaller number of larger publishers that enjoy significant negotiating leverage. This dynamic has been exacerbated by consolidation in the industry, as a number of digital-first CTV publishers have been acquired by larger established television and media brands. In some instances, consolidation may result in the loss of business with an existing client. For example, if an acquiror has a preferred relationship with one of our competitors or has a proprietary solution. As a result of this concentration, the loss of a CTV client may result in a significant decrease in the amount of CTV inventory available through our platform. Any decrease in our ability to access CTV inventory could negatively impact our results, as we view CTV revenue as a key differentiator and driver for our growth.

The purchase price allocation for any acquisition we complete, including our merger with Telaria, is generally not finalized until one year after the closing of the acquisition, and any final adjustment to the valuation could have a material change on what is reported as the fair value assigned to the assets and liabilities.

The final purchase price allocation for any acquisition we complete, including our merger with Telaria that was completed on April 1, 2020, depends upon the finalization of asset and liability valuations, among other things. The valuation studies necessary to estimate the fair values of acquired assets and assumed liabilities and the related allocation of purchase price generally are not finalized until one year after the closing of the acquisition. Initially, we allocate the total estimated purchase price to the acquired assets and assumed liabilities based on preliminary estimates of their fair values. The final determination of these fair values is subsequently determined based upon the actual net tangible and intangible assets that existed on the closing date of the acquisition. Any final adjustment could change the fair values assigned to the assets and liabilities, resulting in a change to our consolidated financial statements, including a change to goodwill. Such change could be material.

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

The GDPR generally prohibits the transfer of personal data of EEA and UK subjects outside of the European Union and the UK, unless a lawful data transfer solution has been implemented. On July 16, 2020, in a case known as Schrems II, the Court of Justice of the European Union ("CJEU") ruled on the validity of two of the primary data transfer solutions. The first method, EU-U.S. Privacy Shield operated by the U.S. Department of Commerce, was declared invalid as a legal mechanism to transfer data from the EEA and UK to the U.S. As a result, despite the fact that we have certified our compliance to the EU-U.S. Privacy Shield, our customers may no longer rely on this mechanism as a lawful means to transfer EEA and UK data to us in the U.S. For the time being, the Department of Commerce continues to operate the EU-U.S. Privacy Shield however and, if we fail to comply with the Privacy Shield requirements, we risk investigation and sanction by U.S. regulatory authorities, including the Federal Trade Commission. Such investigation could cost us significant time and resources, and could potentially result in fines, criminal prosecution, or other penalties.

The second mechanism, Standard Contractual Clauses ("SCCs"), an alternative transfer measure that we also offer to our EEA customers for extra-EEA data transfers, was upheld as a valid legal mechanism for transnational data transfer. However, the ruling requires that EEA and UK organizations seeking to rely on the SCCs to export data out of the EEA and UK to ensure the data is protected to a standard that is "essentially equivalent" to that in the European Union including, where necessary, by taking "supplementary measures" to protect the data. It remains unclear what "supplementary measures" must be taken to allow the lawful transfer of personal data to the United States, and it is possible that EEA data protection authorities may determine that there are no supplementary measures that can legitimize data transfers from the EEA and the UK to the U.S. For the time being, we will rely on SCCs for transfers of EEA and UK personal data to the U.S. and explore what "supplementary measures" can be implemented to protect such personal data that is transferred to us in the United States.

We may also need to restructure our data export practices as a result of Brexit. At the end of 2020, European Union law will cease to apply to the United Kingdom ("UK"). This means that data may not be able to flow freely between the EEA and the UK and our UK subsidiaries may have to enter into the SCCs, and implement "supplementary measures" both with customers and other group entities, in order to ensure the continuing flow of data to and from the UK subsidiary. We would likely need to restructure our transfers of EEA data via another EEA subsidiary and have such entity enter into the SCCs with other group entities and implement "supplementary measures" to ensure the continuing flow of data from the EEA to the United States. In the event that use of the SCCs is subsequently invalidated as a solution for data transfers to the United States, EEA and UK clients may be more inclined to work with businesses that do not rely on such compliance mechanisms to ensure legal and regulatory compliance, such as EEA-based companies or other competitors that do not need to transfer personal data to the United States in order to avoid the above-identified risks and legal issues.

Additionally, on September 8, 2020, the Swiss Federal Data Protection and Information Commissioner declared the Swiss-U.S. Privacy Shield invalid as a legal mechanism to transfer data from Switzerland to the U.S., applying a similar rationale to that of the CJEU in Schrems II. As with the EU-U.S. Privacy Shield, the U.S. Department of Commerce continues to operate the Swiss-U.S. Privacy Shield and, if we fail to comply with the Privacy Shield requirements, we risk investigation and sanction by U.S. regulatory authorities, including the Federal Trade Commission. However, the invalidation of the Swiss-U.S. Privacy Shield creates legal uncertainty and may impact the ability for Swiss customers to transfer data to us in the U.S. As a result, we may need to implement additional legal solutions, or consider restructuring our data transfers, to enable the continuing flow of data from these customers.

Legislation and regulation of digital businesses, including privacy and data protection regimes, could create unexpected additional costs, subject us to enforcement actions for compliance failures, or cause us to change our technology solution or business model, which may have an adverse effect on the demand for our solution.

Many local, state, federal, and international laws and regulations apply to the collection, use, retention, protection, disclosure, transfer, and other processing of data collected from and about consumers and devices, and the regulatory framework for privacy issues is evolving worldwide. Various U.S. and foreign governments, consumer agencies, self-regulatory bodies, and public advocacy groups have called for or implemented new regulation directed at the digital advertising industry in particular, and we expect to see an increase in legislation and regulation related to the collection and use of data to target advertisements and communicate with consumers—including the use of mobile device and cross-device data, geo-location data, Internet user data and unique device identifiers, such as IP address or mobile advertising identifiers—and the collection of data from apps and websites that are directed to children. Such legislation or regulation could affect the costs of doing business online and may adversely affect the demand for or the effectiveness and value of our solution. Some of our competitors may have more access to lobbyists or governmental officials and may use such access to effect statutory or regulatory changes in a manner that commercially harms us while favoring their solutions.

Various federal privacy bills have been introduced in the U.S. Congress recently and a number of states, including California, have passed or are considering privacy bills. These regulations may place significant restrictions on the collection and use of certain types of data used for behavioral advertising. The FTC has issued guidance on how companies should apply privacy principles to tracking and delivering targeted advertisements to consumers across multiple devices. The FTC has also adopted revisions to the Children's Online Privacy Protection Act that expand liability for the collection of information (including certain device information such as persistent identifiers) by operators of websites and other online services that are directed to children or that otherwise use (for certain purposes) information collected from or about children.

Recently, California passed two privacy laws broadly regulating business' processing of personal information, the California Consumer Privacy Act of 2018 ("CCPA") and the California Privacy Rights Act ("CPRA"). The CCPA, which went into effect on January 1, 2020, is the most comprehensive data privacy regulation to date in the United States, and could be the precursor to other similar legislation in other states or at the federal level. The CCPA expands the definition of personal information, in a way that captures the types of data that we collect, such as device identifiers and IP addresses. Under the CCPA, businesses are required to grant expansive access, deletion and portability rights to California residents, similar to those provided under the GDPR. In addition, the CCPA gives California residents the right to opt-out of the sale of their personal information; this opt-out right may impact the ability of ad tech companies to provide services to their customers. The law also imposes burdensome storage and compliance obligations on publishers and ad tech companies. Interpretation of the requirements remains unclear due to ambiguities in the regulations and a lack of enforcement actions to date. The Attorney General also recently issued additional proposed modifications to the regulations implementing the CCPA.

The recently-passed CPRA will take effect in January 2023 and will impose additional notice and opt out obligations on the digital advertising space, including an obligation to provide an opt-out for behavioral advertising. It will also give the Attorney General broad rulemaking authority to issue regulations that could have additional impacts on our business. The CPRA, like the CCPA, will cause us to incur additional compliance costs and may impose additional restrictions on us and on our industry partners.

The CCPA and CPRA may precipitate additional privacy regulation by federal, state and local governments, which may increase our compliance costs and strain our technical capabilities, and which may conflict with each other. If we are unable to comply with the CCPA, CPRA, or other related legislation in the future, we may be subject to regulatory or private investigations, and if we are unable to use information for behavioral advertising as we have in the past, our business could be materially affected.

In the European Union, the General Data Protection Regulation, Regulation (EU) 2016/679, has now been in effect for more than two years. A key feature of the GDPR is that it treats much of the end-user information that is critical to programmatic digital advertising as "personal data" and therefore subject to significant conditions and restrictions on its collection and use. Without this end-user information, the value of programmatic advertising inventory diminishes, resulting in lower demand and prices, and potentially less ad spend and revenue for us and other industry participants. The GDPR also sets out higher potential liabilities for certain data protection violations and creates a greater compliance burden for us in the course of delivering our

solution in Europe (as outlined further below). The regulatory climate in Europe, in particular, has grown increasingly unfavorable for advertising technology-based business. Regulators have expressed antipathy towards common technologies deployed in digital advertising and we anticipate increased regulatory scrutiny on the digital advertising industry as a whole.

Further, many governments are restricting the transmission or storage of information about individuals beyond their national borders. Such restrictions could, depending upon their scope, limit our ability to utilize technology infrastructure consolidation, redundancy, and load-balancing techniques, resulting in increased infrastructure costs, decreased operational efficiencies and performance, and increased risk of system failure.

These laws and regulations are continually evolving, not always clear, and not always consistent across the jurisdictions in which we do business. Any failure to protect, and comply with applicable laws and regulations or industry standards applicable to, personal data or other data relating to consumers could result in enforcement action against us, including fines, imprisonment of our officers, and public censure, claims for damages by consumers and other affected individuals, damage to our reputation, and loss of goodwill. This is particularly true given that the FTC, Attorneys General of various U.S. States and various international regulators (including numerous data protection authorities in the European Union), have specifically cited as enforcement priorities certain practices that relate to digital advertising. Even the perception of concerns relating to our collection, use, disclosure, processing, and retention of data, including our security measures applicable to the data we collect, whether or not valid, may harm our reputation (and the reputation of the digital advertising ecosystem) and inhibit adoption of our solution by current and future buyers and sellers. We are aware of ongoing lawsuits filed against, or regulatory investigations into, companies in the digital advertising industry concerning various alleged violations of consumer protection, data protection, and computer crime laws, asserting various privacy-related theories. Any such proceedings brought against us could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, adversely affect the demand for our services or the digital advertising industry at large, and ultimately result in the imposition of monetary liability or restrictions on our ability to conduct our business. We are sometimes contractually liable to indemnify and hold harmless buyers or sellers from the costs or consequences of litigation or regulatory investigations resulting from using our services or from the disclosure of confidential information, which could damage our reputation among our current and potential sellers or buyers, require significant expenditures of capital and other resources and cause us to lose business and revenue.

We are subject to regulation with respect to political advertising, which lacks clarity and uniformity.

We are subject to regulation with respect to political advertising activities, which are governed by various federal and state laws in the U.S., and national and provincial laws worldwide. Online political advertising laws are rapidly evolving and in certain jurisdictions we have compliance requirements with respect to political ads delivered on our platform. In some jurisdictions we may determine not to serve political advertisements due to uncertainty around these requirements and potential burdens of compliance. In addition, our publishers may impose restrictions on receiving political advertising. The lack of uniformity and increasing compliance requirements around political advertising may adversely impact the amount of political advertising spent through our platform, increase our operating and compliance costs, and subject us to potential liability from regulatory agencies.

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

(a) Recent Sales of Unregistered Securities

None.

(b) Use of Proceeds

Not Applicable.

(c) Purchases of Equity Securities by the Company and Affiliated Purchasers

We currently have no publicly announced repurchase plan or program.

Upon vesting of most restricted stock units or stock awards, we are required to deposit statutory employee withholding taxes on behalf of the holders of the vested awards. As reimbursement for these tax deposits, we have the option to withhold from shares otherwise issuable upon vesting a portion of those shares with a fair market value equal to the amount of the deposits we paid. Withholding of shares in this manner is accounted for as a repurchase of common stock.

Item 6. Exhibits

Number	Description
10.1	Second Amended and Restated Loan and Security Agreement, dated as of September 25, 2020, between Silicon Valley Bank and Magnite, Inc., Magnite Hopper, Inc., Magnite Bell, Inc. and Magnite CTV, Inc.
21.1	List of Subsidiaries
31.1*	Certification of Principal Executive Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32*(1)	Certification 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.
101.ins *	Instance Document- the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.sch *	XBRL Taxonomy Schema Linkbase Document
101.cal *	XBRL Taxonomy Calculation Linkbase Document
101.def *	XBRL Taxonomy Definition Linkbase Document
101.lab *	XBRL Taxonomy Label Linkbase Document
101.pre *	XBRL Taxonomy Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith

(1) The information in this exhibit is furnished and deemed not filed with the Securities and Exchange Commission for purposes of section 18 of the Exchange Act of 1934, as amended (the "Exchange Act"), and is not to be incorporated by reference into any filing of Magnite, Inc. under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MAGNITE, INC. (Registrant)

/s/ David Day

David Day

Chief Financial Officer

(Principal Financial Officer and Duly Authorized Officer)

Date November 9, 2020

EXHIBIT 10.1

SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “**Agreement**”) dated as of September 25, 2020 (the “**Effective Date**”), between **SILICON VALLEY BANK**, a California corporation (“**Bank**”), and **MAGNITE, INC.** (f/k/a The Rubicon Project, Inc.), a Delaware corporation (“**Magnite**”), **MAGNITE Hopper, Inc.** (f/k/a Rubicon Project Hopper, Inc.), a Delaware corporation (“**Hopper**”), **MAGNITE BELL, INC.** (f/k/a Rubicon Project Bell, Inc.), a Delaware corporation (“**Bell**”), and **MAGNITE CTV, INC.**, a Delaware corporation (“**CTV**”, and together with Magnite, Hopper, and Bell individually and collectively, “**Borrower**”), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

Recitals

A. Bank, Magnite, Hopper, and Bell entered into that certain Amended and Restated Loan and Security Agreement dated as of September 26, 2018 (as amended, the “**Prior Loan Agreement**”).

B. Pursuant to a transaction permitted under the Prior Loan Agreement, CTV became a Subsidiary of Magnite on or about December 18, 2019. Each Borrower hereby acknowledges, confirms, and agrees that on and as of the date of this Agreement, CTV has become a “Borrower” (as that term is defined in this Agreement), and, along with Magnite, Hopper, and Bell, is included in the definition of “Borrower” under this Agreement and the other Loan Documents for all purposes thereof, and as such shall be jointly and severally liable, as provided in the Loan Documents, for all Obligations thereunder (whether incurred or arising prior to, on, or subsequent to the date hereof) and otherwise bound by all of the terms, provisions and conditions thereof.

C. Borrower has further requested, and Bank has agreed, to amend and restate the Prior Loan Agreement in its entirety. Bank and Borrower hereby agree that the Prior Loan Agreement is amended and restated in its entirety as follows:

• **ACCOUNTING AND OTHER TERMS**

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP; provided that if at any time any change in GAAP would affect the computation of any covenant or requirement set forth in any Loan Document, and either Borrower or Bank shall so request, Borrower and Bank shall negotiate in good faith to amend such covenant or requirement to preserve the original intent thereof in light of such change in GAAP; provided, further, that, until so amended (a) such covenant or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide Bank financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, any obligations of a Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016, of an Accounting Standards Update (the “**ASU**”) shall continue to be accounted for as operating leases for purposes of all financial definitions, calculations and covenants for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized lease obligations in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

• **LOAN AND TERMS OF PAYMENT**

a. **Promise to Pay.** Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

i.Revolving Line.

1. **Availability.** Subject to the terms and conditions of this Agreement and to deduction of Reserves, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

2. **Termination; Repayment.** The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

3. **Reserves.** Notwithstanding anything in this Agreement to the contrary, Bank shall have the right (but not the obligation) to establish, increase, reduce, eliminate, or otherwise adjust Reserves from time to time against the Borrowing Base or the Revolving Line in such amounts, and with respect to such matters, as Bank in its sole discretion shall deem necessary or appropriate with notice to Borrower (provided that no notice is required if an Event of Default has occurred and is continuing).

ii.Letters of Credit Sublimit.

1. As part of the Revolving Line, Bank shall issue or have issued Letters of Credit denominated in Dollars or a Foreign Currency for Borrower's account. The aggregate Dollar Equivalent amount utilized for the issuance of Letters of Credit shall at all times reduce the amount otherwise available for Advances under the Revolving Line. The aggregate Dollar Equivalent of the face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve) may not exceed the lesser of (i) (x) the Bank Services Sublimit, minus (y) the sum of all amounts used for Cash Management Services, minus (z) the FX Reduction Amount or (ii) (A) the lesser of the Revolving Line or the Borrowing Base, minus (B) the sum of all outstanding principal amounts of any Advances (including any amounts used for Cash Management Services), minus (C) the FX Reduction Amount.

2. If, on the Revolving Line Maturity Date (or the effective date of any termination of this Agreement), there are any outstanding Letters of Credit, then on such date Borrower shall provide to Bank cash collateral in an amount equal to at least one hundred five percent (105.0%) for Letters of Credit denominated in Dollars or at least one hundred ten percent (110.0%) for Letters of Credit denominated in a Foreign Currency, in each case of the aggregate Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or estimated by Bank to become due in connection therewith, to secure all of the Obligations relating to such Letters of Credit. All Letters of Credit shall be in form and substance acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank's standard Application and Letter of Credit Agreement (the "**Letter of Credit Application**"). Borrower agrees to execute any further documentation in connection with the Letters of Credit as Bank may reasonably request. Borrower further agrees to be bound by the regulations and interpretations of the issuer of any Letters of Credit guaranteed by Bank and opened for Borrower's account or by Bank's interpretations of any Letter of Credit issued by Bank for Borrower's account, and Borrower understands and agrees that Bank shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letters of Credit or any modifications, amendments, or supplements thereto.

3. The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional, and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, such Letters of Credit, and the Letter of Credit Application.

4. Borrower may request that Bank issue a Letter of Credit payable in a Foreign Currency. If a demand for payment is made under any such Letter of Credit, Bank shall treat such demand as an Advance to Borrower of the Dollar Equivalent of the amount thereof (plus fees and charges in connection therewith such as wire, cable, SWIFT or similar charges).

5. To guard against fluctuations in currency exchange rates, upon the issuance of any Letter of Credit payable in a Foreign Currency, Bank shall create a reserve (the “**Letter of Credit Reserve**”) under the Revolving Line in an amount equal to a percentage (which percentage shall be determined by Bank in its sole discretion) of the face amount of such Letter of Credit. The amount of the Letter of Credit Reserve may be adjusted by Bank from time to time to account for fluctuations in the exchange rate. The availability of funds under the Revolving Line shall be reduced by the amount of such Letter of Credit Reserve for as long as such Letter of Credit remains outstanding.

iii.Foreign Exchange Sublimit. As part of the Revolving Line, Borrower may enter into foreign exchange contracts with Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency (each, a “**FX Contract**”) on a specified date (the “**Settlement Date**”). FX Contracts shall have a Settlement Date of at least one (1) FX Business Day after the contract date. The aggregate FX Reduction Amount at any one time may not exceed the lesser of (a) (i) the Bank Services Sublimit, minus (ii) the sum of all amounts used for Cash Management Services, minus (iii) the aggregate Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve) or (b) (i) the lesser of the Revolving Line or the Borrowing Base, minus (ii) the sum of all outstanding principal amounts of any Advances (including any amounts used for Cash Management Services), minus (iii) the aggregate Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve). The amount otherwise available for Credit Extensions under the Revolving Line shall be reduced by the FX Reduction Amount. Any amounts needed to fully reimburse Bank for any amounts not paid by Borrower in connection with FX Contracts will be treated as Advances under the Revolving Line and will accrue interest at the interest rate applicable to Advances.

iv.Cash Management Services Sublimit. Borrower may use the Revolving Line in an aggregate amount not to exceed the lesser of (a) (i) the Bank Services Sublimit, minus (ii) the aggregate Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), minus (iii) the FX Reduction Amount, or (b) (i) the lesser of the Revolving Line or the Borrowing Base, minus (ii) the sum of all outstanding principal amounts of any Advances, minus (iii) the aggregate Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), minus (iv) the FX Reduction Amount, for Bank’s cash management services, which may include merchant services, direct deposit of payroll, business credit card, and check cashing services identified in Bank’s various cash management services agreements (collectively, the “**Cash Management Services**”). Any amounts Bank pays on behalf of Borrower for any Cash Management Services will be treated as Advances under the Revolving Line and will accrue interest at the interest rate applicable to Advances.

b. Overadvances. If, at any time, the sum of (a) the outstanding principal amount of any Advances (including any amounts used for Cash Management Services), plus (b) the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), plus (c) the FX Reduction Amount exceeds the lesser of the Revolving Line or the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the “**Overadvance**”). Without limiting Borrower’s obligation to repay Bank any Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at a per annum rate equal to the rate that is otherwise applicable to Advances plus five percent (5.00%).

c. Payment of Interest on the Credit Extensions.

1. Interest; Payment. Each Advance shall bear interest on the outstanding principal amount thereof from the date when made, continued or converted until paid in full at a rate per annum equal to (i) for Prime Rate Advances, the greater of (A) the Prime Rate plus the applicable Prime Rate Margin, or (B) three and one-half

percent (3.50%), and (ii) for LIBOR Advances, the greater of (A) the LIBOR Rate plus the applicable LIBOR Rate Margin, or (B) three and one-half percent (3.50%). On and after the expiration of any Interest Period applicable to any LIBOR Advance outstanding on the date of occurrence of an Event of Default or acceleration of the Obligations, the amount of such LIBOR Advance shall, during the continuance of such Event of Default or after acceleration, bear interest at a rate per annum equal to the Prime Rate plus five percent (5.00%). Pursuant to the terms hereof, interest on each Advance shall be paid in arrears on each Interest Payment Date. Interest shall also be paid on the date of any prepayment of any Advance pursuant to this Agreement for the portion of any Advance so prepaid and upon payment (including prepayment) in full thereof. All accrued but unpaid interest on the Advances shall be due and payable on the Revolving Line Maturity Date.

2. Prime Rate Advances. Each change in the interest rate of the Prime Rate Advances based on changes in the Prime Rate shall be effective on the effective date of such change and to the extent of such change.

3. LIBOR Advances. The interest rate applicable to each LIBOR Advance shall be determined in accordance with Section 3.6(a) hereunder. Subject to Sections 3.5 and 3.6, such rate shall apply during the entire Interest Period applicable to such LIBOR Advance, and interest calculated thereon shall be payable on the Interest Payment Date applicable to such LIBOR Advance.

a. Computation of Interest. Any interest hereunder will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days. In computing interest on any Credit Extension, the date of the making of such Credit Extension shall be included and the date of payment shall be excluded.

b. Default Rate. Except as otherwise provided in Section 2.3(a), upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percent (5.00%) above the rate that would otherwise be applicable thereto (the "**Default Rate**"). Payment or acceptance of the increased interest provided in this Section 2.3(e) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

d. Fees. Borrower shall pay to Bank:

c. Revolving Line Commitment Fee. A fully earned, non-refundable commitment fee of Ninety Thousand Dollars (\$90,000), on the Effective Date;

d. Unused Revolving Line Facility Fee. Payable monthly in arrears on the last day of each calendar month occurring prior to the Revolving Line Maturity Date, and on the Revolving Line Maturity Date, a fee (the "**Unused Revolving Line Facility Fee**") in an amount equal to fifteen-hundredths of one percent (0.15%) per annum of the average unused portion of the Revolving Line, as determined by Bank, computed on the basis of a year with the applicable number of days as set forth in Section 2.3(d). The unused portion of the Revolving Line, for purposes of this calculation, shall be calculated on a calendar year basis and shall equal the difference between (i) the Revolving Line, and (ii) (A) the average for the period of the daily closing balance of the Revolving Line outstanding (including any amounts used for Cash Management Services), plus (B) the aggregate amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve);

e. Letter of Credit Fee. Bank's customary fees and expenses for the issuance or renewal of Letters of Credit upon the issuance of such Letter of Credit, each anniversary of the issuance during the term of such Letter of Credit, and upon the renewal of such Letter of Credit by Bank; and

f. Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

g. Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.4 pursuant to the terms of Section 2.5(c). Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.4.

e. Payments; Application of Payments; Debit of Accounts.

h. All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

i. Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

j. Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

f. Withholding. Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

• **CONDITIONS OF LOANS**

g. Conditions Precedent to Initial Credit Extension. Bank's obligation to make the initial Credit Extension after the Effective Date is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

- k. duly executed signatures to this Agreement;
- l. duly executed signatures to the Third Amendment to Stock Pledge Agreement;
- m. duly executed signatures to the Stock Pledge Agreement from CTV;

- n. the Operating Documents and long-form good standing certificates of Borrower certified by the Secretary of State (or equivalent agency) of Borrower's jurisdiction of organization or formation and each jurisdiction in which Borrower is qualified to conduct business;
- o. a secretary's certificate of Borrower with respect to Borrower's Operating Documents, incumbency, specimen signatures and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents to which it is a party;
- p. duly executed signatures to the completed Borrowing Resolutions for Borrower;
- q. certified copies, dated as of a recent date, of financing statement searches, as Bank may request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements constitute Permitted Liens;
- r. the Perfection Certificates of Borrower, together with the duly executed signatures thereto;
- s. evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank;
- t. the completion of the Initial Audit;
- u. with respect to the initial Advance, a completed Borrowing Base Statement (and any schedules related thereto and including any other information requested by Bank with respect to Borrower's Accounts); and
- v. payment of the fees and Bank Expenses then due as specified in Section 2.4 hereof.

h. Conditions Precedent to all Credit Extensions. Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

- w. timely receipt of the Credit Extension request and any materials and documents required by Section 3.4;
- x. the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the proposed Credit Extension and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and
- y. Bank determines to its satisfaction that there has not been a Material Adverse Change.

i. Covenant to Deliver. Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of

Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

j. Procedures for Borrowing.

z. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, an Advance shall be made upon Borrower's (via an individual duly authorized by an Administrator) irrevocable written notice delivered to Bank in the form of a Notice of Borrowing or without instructions if any Advances is necessary to meet Obligations which have become due. The Notice of Borrowing shall be made by Borrower through Bank's online banking program, provided, however, if Borrower is not utilizing Bank's online banking program, then such Notice of Borrowing shall be in the form attached hereto as Exhibit C and shall be executed by an Authorized Signer. For purposes of clarification, to the extent that Bank's online banking program does not allow an electronic submission of a Notice of Borrowing for a LIBOR Advance then Borrower shall be permitted to submit a Notice of Borrowing for a LIBOR Advance by email or other means described in Section 10, using a Notice of Borrowing in the form attached hereto as Exhibit C and executed by an Authorized Signer. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances. The Notice of Borrowing must be received by Bank prior to 12:00 p.m. Pacific time, (i) at least three (3) Business Days prior to the requested Funding Date, in the case of any LIBOR Advance, and (ii) on the requested Funding Date, in the case of a Prime Rate Advance, specifying: (1) the amount of the Advance; (2) the requested Funding Date; (3) whether the Advance is to be comprised of LIBOR Advances or Prime Rate Advances; and (4) the duration of the Interest Period applicable to any such LIBOR Advances included in such notice; provided that if the Notice of Borrowing shall fail to specify the duration of the Interest Period for any Advance comprised of LIBOR Advances, such Interest Period shall be one (1) month. Notwithstanding any terms in this Agreement to the contrary, each LIBOR Advance shall not be less than One Million Dollars (\$1,000,000) and shall be in a multiple of One Hundred Thousand Dollars (\$100,000). In addition to such Notice of Borrowing, Borrower must promptly deliver to Bank by electronic mail or through Bank's online banking program such reports and information, including without limitation, sales journals, cash receipts journals, accounts receivable aging reports, as Bank may request in its sole discretion.

aa. On the Funding Date, Bank shall credit proceeds of an Advance to the Designated Deposit Account and, subsequently, shall transfer such proceeds by wire transfer to such other account as Borrower may instruct in the Notice of Borrowing. No Advances shall be deemed made to Borrower, and no interest shall accrue on any such Advance, until the related funds have been deposited in the applicable Designated Deposit Account.

k. Conversion and Continuation Elections.

ab. So long as (i) no Event of Default exists; (ii) Borrower shall not have sent any notice of termination of this Agreement; and (iii) Borrower shall have complied with such customary procedures as Bank has established from time to time for Borrower's requests for LIBOR Advances, Borrower may, upon irrevocable written notice to Bank:

1. elect to convert on any Business Day, Prime Rate Advances into LIBOR Advances;
2. elect to continue on any Interest Payment Date any LIBOR Advances maturing on such Interest Payment Date; or
3. elect to convert on any Interest Payment Date any LIBOR Advances maturing on such Interest Payment Date into Prime Rate Advances.

ac. Borrower shall deliver a Notice of Conversion/Continuation by electronic mail via Bank's online banking program to be received by Bank prior to 12:00 p.m. Pacific time (i) at least three (3) Business Days in advance of the Conversion Date or Continuation Date, if any Advances are to be converted into or continued

as LIBOR Advances; and (ii) on the Conversion Date, if any Advances are to be converted into Prime Rate Advances, in each case specifying the:

4. proposed Conversion Date or Continuation Date;
5. aggregate amount of the Advances to be converted or continued;
6. nature of the proposed conversion or continuation; and
7. if the resulting Advance is to be a LIBOR Advance, the duration of the requested Interest Period.

ad. If upon the expiration of any Interest Period applicable to any LIBOR Advances, Borrower shall have timely failed to select a new Interest Period to be applicable to such LIBOR Advances or request to convert a LIBOR Advance into a Prime Rate Advance, Borrower shall be deemed to have elected to convert such LIBOR Advances into Prime Rate Advances.

ae. Any LIBOR Advances shall, at Bank's option, convert into Prime Rate Advances in the event that (i) an Event of Default exists and has not been cured, or (ii) the aggregate principal amount of the Prime Rate Advances which have been previously converted to LIBOR Advances, or the aggregate principal amount of existing LIBOR Advances continued, as the case may be, at the beginning of an Interest Period shall at any time during such Interest Period exceed the lesser of the Revolving Line or the Borrowing Base, in each case, less any applicable Reserves. Borrower agrees to pay Bank, upon demand by Bank (or Bank may, at its option, debit the Designated Deposit Account or any other account Borrower maintains with Bank) any amounts required to compensate Bank for any loss (excluding loss of anticipated profits), cost, or expense incurred by Bank, as a result of the conversion of LIBOR Advances to Prime Rate Advances pursuant to this Section 3.5(d).

af. Notwithstanding anything to the contrary contained herein, Bank shall not be required to purchase Dollar deposits in the London interbank market or other applicable LIBOR market to fund any LIBOR Advances, but the provisions hereof shall be deemed to apply as if Bank had purchased such deposits to fund the LIBOR Advances.

I. Special Provisions Governing LIBOR Advances. Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall govern with respect to LIBOR Advances as to the matters covered:

ag. Determination of Applicable Interest Rate. As soon as practicable on each Interest Rate Determination Date, Bank shall determine (which determination shall, absent manifest error in calculation, be final, conclusive and binding upon all parties) the interest rate that shall apply to the LIBOR Advances for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower.

ah. Inability to Determine Applicable Interest Rate. In the event that Bank shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any LIBOR Advance, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBOR Advance on the basis provided for in the definition of LIBOR, Bank shall on such date give notice (by facsimile or by telephone confirmed in writing) to Borrower of such determination, whereupon (i) no Advances may be made as, or converted to, LIBOR Advances until such time as Bank notifies Borrower that the circumstances giving rise to such notice no longer exist, and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Borrower with respect to LIBOR Advances in respect of which such determination was made shall be deemed to be rescinded by Borrower.

ai. Compensation for Breakage or Non-Commencement of Interest Periods. If (i) for any reason, other than a default by Bank or any failure of Bank to fund LIBOR Advances due to impracticability or illegality under Sections 3.7(c) and 3.7(d) of this Agreement, a borrowing or a conversion to or continuation of any LIBOR Advance does not occur on a date specified in a Notice of Borrowing or a Notice of Conversion/Continuation, as the case may be, or (ii) any complete or partial principal payment or reduction of a LIBOR Advance, or any conversion of any LIBOR Advance, occurs on a date prior to the last day of an Interest Period applicable to that LIBOR Advance, including due to voluntary or mandatory prepayment or acceleration, then, in each case, Borrower shall compensate Bank, upon written request by Bank, for all losses and expenses incurred by Bank in an amount equal to the excess, if any, of:

i. the amount of interest that would have accrued on the amount (1) not borrowed, converted or continued as provided in clause (i) above, or (2) paid, reduced or converted as provided in clause (ii) above, for the period from (y) the date of such failure to borrow, convert or continue as provided in clause (i) above, or the date of such payment, reduction or conversion as provided in clause (ii) above, as the case may be, to (z) in the case of a failure to borrow, convert or continue as provided in clause (i) above, the last day of the Interest Period that would have commenced on the date of such borrowing, conversion or continuing but for such failure, and in the case of a payment, reduction or conversion prior to the last day of an Interest Period applicable to a LIBOR Advance as provided in clause (ii) above, the last day of such Interest Period, in each case at the applicable rate of interest or other return for such LIBOR Advance(s) provided for herein (excluding, however, in each case, the LIBOR Rate Margin included therein, if any, and any incremental interest payable as a result of the existence of an Event of Default), over

ii. the interest which would have accrued to Bank on the applicable amount provided in clause (A) above through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to the definition of LIBOR Rate on the date of such failure to borrow, convert or continue as provided in clause (i) above, or the date of such payment, reduction or conversion as provided in clause (ii) above, as the case may be, for a period equal to the remaining period of such applicable Interest Period provided in clause (A) above.

Bank's request shall set forth the manner and method of computing such compensation and such determination as to such compensation shall be conclusive absent manifest error.

aj. Assumptions Concerning Funding of LIBOR Advances. Calculation of all amounts payable to Bank under this Section 3.6 and under Section 3.7 shall be made as though Bank had actually funded each relevant LIBOR Advance through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to the definition of LIBOR Rate in an amount equal to the amount of such LIBOR Advance and having a maturity comparable to the relevant Interest Period; provided, however, that Bank may fund each of its LIBOR Advances in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 3.6 and under Section 3.7.

ak. LIBOR Advances After an Event of Default. After the occurrence and during the continuance of an Event of Default, (i) Borrower may not elect to have an Advance be made or continued as, or converted to, a LIBOR Advance after the expiration of any Interest Period then in effect for such Advance and (ii) subject to the provisions of Section 3.6(c), any Notice of Conversion/Continuation given by Borrower with respect to a requested conversion/continuation that has not yet occurred shall, at Bank's option, be deemed to be rescinded by Borrower and be deemed a request to convert or continue Advances referred to therein as Prime Rate Advances.

m. Additional Requirements/Provisions Regarding LIBOR Advances.

al. Borrower shall pay Bank, upon demand by Bank, from time to time such amounts as Bank may determine to be necessary to compensate it for any costs incurred by Bank that Bank determines are attributable to its making or maintaining of any amount receivable by Bank hereunder in respect of any LIBOR Advances relating thereto (such increases in costs and reductions in amounts receivable being herein called “**Additional Costs**”), in each case resulting from any Regulatory Change (exclusive of Regulatory Changes that are already accounted for in the determination of LIBOR Rate) which:

1. changes the basis of taxation of any amounts payable to Bank under this Agreement in respect of any LIBOR Advances (other than changes which affect taxes measured by or imposed on the overall net income of Bank by the jurisdiction in which Bank has its principal office);
2. imposes or modifies any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with, or other liabilities of Bank (including any LIBOR Advances or any deposits referred to in the definition of LIBOR); or
3. imposes any other condition affecting this Agreement (or any of such extensions of credit or liabilities).

Bank will notify Borrower of any event occurring after the Effective Date which will entitle Bank to compensation pursuant to this Section 3.7(a) as promptly as practicable after it obtains knowledge thereof and determines to request such compensation. Bank will furnish Borrower with a statement setting forth the basis (including reasonable supporting detail) and amount of each request by Bank for compensation under this Section 3.7(a). Determinations and allocations by Bank for purposes of this Section 3.7(a) of the effect of any Regulatory Change on its costs of maintaining its obligations to make LIBOR Advances, of making or maintaining LIBOR Advances, or on amounts receivable by it in respect of LIBOR Advances, and of the additional amounts required to compensate Bank in respect of any Additional Costs, shall be conclusive absent manifest error.

am. If Bank shall determine that the adoption or implementation of any applicable law, rule, regulation, or treaty regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by Bank (or its applicable lending office) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank, or comparable agency, has or would have the effect of reducing the rate of return on capital of Bank or any person or entity controlling Bank (a “**Parent**”) as a consequence of its obligations hereunder to a level below that which Bank (or its Parent) could have achieved but for such adoption, change, or compliance (taking into consideration policies with respect to capital adequacy) by an amount deemed by Bank to be material, then from time to time, within five (5) days after demand by Bank, Borrower shall pay (without duplication of amounts contemplated by Section 3.7(a)) to Bank such additional amount or amounts as will compensate Bank for such reduction. A statement of Bank claiming compensation under this Section 3.7(b) and setting forth the additional amount or amounts to be paid to it hereunder (including reasonable supporting detail in respect thereof) shall be conclusive absent manifest error.

Notwithstanding anything to the contrary in this Section 3.7, Borrower shall not be required to compensate Bank pursuant to this Section 3.7(b) for any amounts incurred more than nine (9) months prior to the date that Bank notifies Borrower of Bank’s intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retroactive effect, then such nine-month period shall be extended to include the period of such retroactive effect. The obligations of Borrower arising pursuant to this Section 3.7(b) shall survive the Revolving Line Maturity Date, the termination of this Agreement and the repayment of all Obligations.

an. If, at any time, Bank, in its sole and absolute discretion, determines that (i) the amount of LIBOR Advances for periods equal to the corresponding Interest Periods are not available to Bank in the offshore currency interbank markets, or (ii) LIBOR does not accurately reflect the cost to Bank of lending the LIBOR Advances, then Bank shall promptly give notice thereof to Borrower. Upon the giving of such notice, Bank’s

obligation to make the LIBOR Advances shall terminate; provided, however, LIBOR Advances shall not terminate if Bank and Borrower agree in writing to a different interest rate applicable to LIBOR Advances.

ao. If it shall become unlawful for Bank to continue to fund or maintain any LIBOR Advances, or to perform its obligations hereunder, upon demand by Bank, Borrower shall convert to Prime Rate Advances all LIBOR Advances, and in connection therewith pay all amounts payable hereunder in connection with such conversion pursuant to Section 3.6(c)(ii). Notwithstanding the foregoing, to the extent a determination by Bank as described above relates to a LIBOR Advance then being requested by Borrower pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, Borrower shall have the option, subject to the provisions of Section 3.6(c)(ii), to (i) rescind such Notice of Borrowing or Notice of Conversion/Continuation by giving notice (by facsimile, email, or by telephone confirmed in writing) to Bank of such rescission on the date on which Bank gives notice of its determination as described above, or (ii) modify such Notice of Borrowing or Notice of Conversion/Continuation to obtain a Prime Rate Advance or to have outstanding Advances converted into or continued as Prime Rate Advances by giving notice (by facsimile, email, or by telephone confirmed in writing) to Bank of such modification on the date on which Bank gives notice of its determination as described above.

• **CREATION OF SECURITY INTEREST**

n. **Grant of Security Interest.** Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (a) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (b) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall cash collateralize all such Letters of Credit in accordance with Section 2.1.2(b).

o. **Priority of Security Interest.** Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

p. **Authorization to File Financing Statements.** Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion.

• **REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

q. Due Organization, Authorization; Power and Authority. Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank completed certificates signed by Borrower, entitled "Perfection Certificate" (collectively, the "**Perfection Certificate**"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete in all material respects (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except (i) such Governmental Approvals which have already been obtained and are in full force and effect or are being obtained pursuant to Section 6.1(b), and (ii) any filings required by the Code in connection with perfecting the security interests granted herein), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

r. Collateral. Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the terms of Section 6.8(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as permitted pursuant to Section 7.2. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) licenses permitted under clause (g) of the definition of Permitted Liens, (c) over-the-counter software that is commercially available to the public, and (d) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate or in written notice to

Bank. To the best of Borrower's knowledge, each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate or in written notice to Bank, Borrower is not a party to, nor is it bound by, any Restricted License.

s. Accounts Receivable.

ap. For each Account with respect to which Advances are requested, on the date each Advance is requested and made, such Account shall be an Eligible Account.

aq. All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Statement. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

t. **Litigation.** Except as set forth in the Perfection Certificate or in written notice to Bank, there are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000).

u. **Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank by submission to the Financial Statement Repository or otherwise submitted to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations (except with respect to unaudited financial statements, subject to normal year-end adjustments and the absence of footnotes). There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to the Financial Statement Repository, posted on Borrower's website on the internet at Borrower's website address or otherwise submitted to Bank.

v. **Solvency.** The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

w. **Regulatory Compliance.** Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as

currently conducted except where the failure to do so could not reasonably be expected to cause a material adverse effect on Borrower's business.

x. Subsidiaries; Investments. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

y. Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Fifty Thousand Dollars (\$50,000).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower in excess of Fifty Thousand Dollars (\$50,000). Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

z. Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

aa. Full Disclosure. No written representation, warranty or other statement of Borrower in any report, certificate, or written statement submitted to the Financial Statement Repository or otherwise submitted to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written reports, written certificates and written statements submitted to the Financial Statement Repository or otherwise submitted to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the reports, certificates, or written statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

ab. Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

• **AFFIRMATIVE COVENANTS**

Borrower shall do all of the following:

ac. Government Compliance.

ar. Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations; provided that

nothing in this Section 6.1 shall prohibit or prevent Borrower from discontinuing the legal existence and qualification of any Immaterial Subsidiary, with prior written notice to Bank, if in the reasonable good faith judgment of Borrower, such discontinuance or qualification is no longer desirable in the conduct of its business or such Subsidiary is no longer useful to the business of Borrower or such Subsidiary. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject, noncompliance with which could reasonably be expected to have a material adverse effect on Borrower's business.

as. Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

ad. Financial Statements, Reports. Provide Bank with the following by submitting to the Financial Statement Repository or otherwise submitting to Bank:

at. a Borrowing Base Statement (and any schedules related thereto and including any other information requested by Bank with respect to Borrower's Accounts, including, without limitation, an accounts receivable ledger report), (i) at all times when Advances are outstanding, within seven (7) Business Days after the end of each month, and (ii) at all other times, within five (5) days after Magnite files its 10-Q and 10-K reports with the SEC;

au. (i) accounts receivable agings, aged by invoice date, (ii) accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (iii) reconciliations of accounts receivable agings (aged by invoice date), transaction reports, a detailed debtor listing, and general ledger, within five (5) days after Magnite files its 10-Q and 10-K reports with the SEC;

av. a completed Compliance Statement, confirming that, as of the end of the applicable quarter, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement (if applicable) and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such quarter there were no held checks, within five (5) days after Magnite files its 10-Q and 10-K reports with the SEC;

aw. the earlier of (i) thirty (30) days after the approval by the Board or (ii) sixty (60) days after the end of each fiscal year of Borrower, and contemporaneously with any updates or amendments thereto, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by quarter) for the upcoming fiscal year of Borrower, and (B) annual financial projections for the following fiscal year (on a quarterly basis), in each case as approved by the Board, together with any related business forecasts used in the preparation of such annual financial projections;

ax. as long as Borrower is subject to the reporting requirements under the Exchange Act, within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower and/or any Guarantor with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be, including without limitation any 10-Q or 10-K of Borrower filed with the SEC. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address;

ay. within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

az. prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs, if adversely determined, to Borrower or any of its

Subsidiaries of, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000) or more, net of insurance contributions;

ba. prompt written notice of any changes to the beneficial ownership information set out in items 2d, 2e, 2f, and 2g of the Perfection Certificate. Borrower understands and acknowledges that Bank relies on such true, accurate and up-to-date beneficial ownership information to meet Bank's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers; and

bb. promptly, from time to time, such other information regarding Borrower or compliance with the terms of any Loan Documents as reasonably requested by Bank.

Any submission by Borrower of a Compliance Statement, a Borrowing Base Statement or any other financial statement submitted to the Financial Statement Repository pursuant to this Section 6.2 or otherwise submitted to Bank shall be deemed to be a representation by Borrower that (i) as of the date of such Compliance Statement, Borrowing Base Statement or other financial statement, the information and calculations set forth therein are true, accurate and correct, (ii) as of the end of the compliance period set forth in such submission, Borrower is in complete compliance with all required covenants except as noted in such Compliance Statement, Borrowing Base Statement or other financial statement, as applicable, (iii) as of the date of such submission, no Events of Default have occurred or are continuing, (iv) all representations and warranties other than any representations or warranties that are made as of a specific date in Section 5 remain true and correct in all material respects as of the date of such submission except as noted in such Compliance Statement, Borrowing Base Statement or other financial statement, as applicable, (v) as of the date of such submission, Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9, and (vi) as of the date of such submission, no Liens have been levied or claims made against Borrower relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

ae. Accounts Receivable.

bc. Schedules and Documents Relating to Accounts. Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 6.2, on Bank's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Bank's Lien and other rights in all of Borrower's Accounts, nor shall Bank's failure to advance or lend against a specific Account affect or limit Bank's Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.

bd. Disputes. Borrower shall promptly notify Bank of all disputes or claims relating to Accounts in excess of Five Hundred Thousand Dollars (\$500,000). Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, the total outstanding Advances will not exceed the lesser of the Revolving Line or the Borrowing Base.

be. Collection of Accounts. Borrower shall direct Account Debtors to deliver or transmit all proceeds of Accounts into a lockbox account or such other "blocked account" as specified by Bank (either such account, the "**Cash Collateral Account**"). Whether or not an Event of Default has occurred and is continuing, Borrower shall immediately deliver all payments on and proceeds of Accounts to the Cash Collateral Account. Subject to Bank's right to maintain a reserve pursuant to Section 6.3(d), all amounts received in the Cash Collateral Account shall be transferred on a daily basis to Borrower's operating account with Bank. Borrower hereby

authorizes Bank to transfer to the Cash Collateral Account any amounts that Bank reasonably determines are proceeds of the Accounts (provided that Bank is under no obligation to do so and this allowance shall in no event relieve Borrower of its obligations hereunder).

bf. **Reserves.** Notwithstanding any terms in this Agreement to the contrary, at times when an Event of Default exists, Bank may hold any proceeds of the Accounts and any amounts in the Cash Collateral Account that are not applied to the Obligations pursuant to Section 6.3(c) above (including amounts otherwise required to be transferred to Borrower's operating account with Bank) as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.

bg. **Verifications; Confirmations; Credit Quality; Notifications.** Bank may, from time to time with notice to Borrower (no such notice shall be required if an Event of Default has occurred and is continuing), (i) verify and confirm directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrower or Bank or such other name as Bank may choose, and notify any Account Debtor of Bank's security interest in such Account and/or (ii) conduct a credit check of any Account Debtor to approve any such Account Debtor's credit.

bh. **No Liability.** Bank shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Bank be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Bank from liability for its own gross negligence or willful misconduct.

af. **Remittance of Proceeds.** Except as otherwise provided in Section 6.3(c), deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, pursuant to the terms of Section 6.3(c) hereof, and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of Five Hundred Thousand Dollars (\$500,000) or less (for all such transactions in any fiscal year). Borrower agrees that it will maintain in an account with Bank proceeds of Collateral and will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this Section 6.4 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

ag. **Taxes; Pensions.** Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

ah. **Access to Collateral; Books and Records.** At reasonable times, on three (3) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. The foregoing inspections and audits shall be conducted no more often than once every twelve (12) months (or more frequently as Bank in its sole discretion determines that conditions warrant) unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Bank shall determine is necessary. Borrower hereby acknowledges that the Initial Audit shall be conducted prior to the initial Advance occurring after the Effective Date and, in any event, not more than ninety (90) days after the Effective Date. The foregoing inspections and audits shall be conducted at Borrower's expense and the charge therefor shall be One Thousand Dollars (\$1,000) per person per day (or such higher amount as shall represent Bank's then-current standard charge

for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than eight (8) days in advance, and Borrower cancels or seeks to or reschedules the audit with less than eight (8) days written notice to Bank, then (without limiting any of Bank's rights or remedies) Borrower shall pay Bank a fee of Two Thousand Dollars (\$2,000) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

ai. Insurance.

bi. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

bj. Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations. Notwithstanding the foregoing, (i) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Five Hundred Thousand Dollars (\$500,000) in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (A) shall be of equal or like value as the replaced or repaired Collateral and (B) shall be deemed Collateral in which Bank has been granted a first priority security interest (except for Liens permitted under clause (c) of the definition of Permitted Liens), and (ii) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations.

bk. At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.7 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank twenty (20) days (ten (10) days for nonpayment of premium) prior written notice before any such policy or policies shall be canceled. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.7, and take any action under the policies Bank deems prudent.

aj. Accounts.

bl. Maintain its and all of its Material Subsidiaries' primary domestic operating and other deposit accounts, and the Cash Collateral Account with Bank and Bank's Affiliates, which accounts shall represent at least eighty-five percent (85%) of the dollar value of Borrower's and such Subsidiaries' accounts at all financial institutions.

bm. Except as set forth in clause (g) of the definition of Permitted Indebtedness herein, Borrower and all of its Material Subsidiaries shall obtain any business credit cards and letters of credit exclusively from Bank.

bn. In addition to and without limiting the restrictions in clause (a) above, Borrower shall provide Bank five (5) days prior written notice before establishing any domestic Collateral Account (other than Collateral Accounts described in clauses (i) and (ii) in the definition of Excluded Accounts below) at or with any bank or financial institution other than Bank or Bank's Affiliates. For each domestic Collateral Account (other than Excluded Accounts) that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such

Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower’s employees and identified to Bank by Borrower as such, (ii) payment processing accounts for which Borrower has provided written notice to Bank and provided that all funds in such payment processing accounts are swept to the Designated Deposit Account on a weekly basis and (iii) escrow or trust accounts established in connection with a merger or acquisition, so long as the merger or acquisition is a Permitted Acquisition and Bank has approved the establishment of such escrow or trust fund prior to the escrow or trust fund being established (“**Excluded Accounts**”).

ak. Financial Covenants.

bo. Minimum Liquidity Ratio. Maintain at all times, tested on a consolidated basis with respect to Borrower on the last day of each calendar quarter, a Liquidity Ratio of at least 1.25 to 1.00.

[NOTE TO DRAFT-SECTION 6.9(b) WAS MODIFIED AS SET FORTH BELOW TO CORRECT CERTAIN DRAFTING ERRORS]

bp. Maximum Cash Burn. Measured as of the last day of each calendar quarter, beginning with the calendar quarter ending September 30, 2020, Borrower’s Cash Burn shall not exceed (on an absolute basis) the amounts listed in the table immediately below for the corresponding measuring period:

Measuring Period	Maximum Cash Burn
Three months ended September 30, 2020	(\$22,508,000)
Six months ending December 31, 2020	(\$29,305,000)
Nine months ending March 31, 2021	(\$36,124,000)
12 months ending June 30, 2021	(\$39,196,000)
12 months ending September 30, 2021	(\$19,188,000)
12 months ending December 31, 2021	(\$13,641,000)
12 months ending March 31, 2022	(\$6,822,000)
12 months ending June 30, 2022	(\$3,750,000)

al. Protection of Intellectual Property Rights.

bq. (i) Use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property material to its business; (ii) promptly advise Bank in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property material to its business; and (iii) not allow any Intellectual Property material to Borrower’s business to be abandoned, forfeited or dedicated to the public without Bank’s written consent.

br. Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank requests in its reasonable discretion to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed “Collateral” and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank’s rights and remedies under this Agreement and the other Loan Documents.

am. Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower; provided, however, that any information provided to Bank shall be subject to the confidentiality provisions set forth in Section 12.9.

an. Online Banking.

bs. Utilize Bank's online banking platform for all matters requested by Bank which shall include, without limitation (and without request by Bank for the following matters), uploading information pertaining to Accounts and Account Debtors, requesting approval for exceptions, requesting Credit Extensions, and uploading financial statements and other reports required to be delivered by this Agreement (including, without limitation, those described in Section 6.2 of this Agreement); provided, however, if Bank's online banking platform is not operational then Borrower shall notify Bank and arrange with Bank for an alternative method of delivering the applicable information.

bt. Comply with the terms of Bank's Online Banking Agreement as in effect from time to time and ensure that all persons utilizing Bank's online banking platform are duly authorized to do so by an Administrator. Bank shall be entitled to assume the authenticity, accuracy and completeness on any information, instruction or request for a Credit Extension submitted via Bank's online banking platform and to further assume that any submissions or requests made via Bank's online banking platform have been duly authorized by an Administrator.

ao. Formation or Acquisition of Subsidiaries. Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, within thirty (30) days of the date that Borrower forms any direct or indirect Material Subsidiary or acquires any direct or indirect Material Subsidiary after the Effective Date (including, without limitation, pursuant to a Division), or if any Immaterial Subsidiary subsequently becomes a Material Subsidiary, Borrower shall (a) cause such Material Subsidiary to provide to Bank a joinder to this Agreement to become a co-borrower hereunder, together with such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Material Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Material Subsidiary, in form and substance satisfactory to Bank; and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.13 shall be a Loan Document.

ap. Further Assurances. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Bank, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

• **NEGATIVE COVENANTS**

Borrower shall not do any of the following without Bank's prior written consent:

aq. Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted

Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2 of this Agreement; (e) consisting of Borrower's use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; and (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business.

ar. Changes in Business, Control, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; or (c) permit or suffer any Change in Control in regard to any Borrower.

Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Million Dollars (\$1,000,000) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of One Million Dollars (\$1,000,000) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of One Million Dollars (\$1,000,000) of Borrower's assets or property, then Borrower shall use commercially reasonable efforts to cause the landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance satisfactory to Bank in Bank's reasonable discretion. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of One Million Dollars (\$1,000,000) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower shall use commercially reasonable efforts to cause such bailee to execute and deliver a bailee agreement in form and substance satisfactory to Bank in Bank's reasonable discretion.

as. Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary or pursuant to a Division), except for Permitted Acquisitions and Permitted Investments. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower (if such Subsidiary is also a Borrower hereunder).

at. Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

au. Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein (except for Liens permitted under clause (c) of the definition of Permitted Liens), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

av. Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.8(b) hereof.

aw. Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that Borrower may (i) convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) pay dividends solely in common stock; (iii) withholding of shares otherwise issuable to employees or former employees upon the vesting of such employee's restricted stock or restricted stock units in order to cover such employee's tax liabilities; (iv) repurchase the stock of former or current employees or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of any such repurchase and would not exist after

giving effect to any such repurchase, provided that the aggregate amount of all such repurchases does not exceed One Million Dollars (\$1,000,000) per fiscal year; (v) repurchase the stock of former or current employees, officers, directors or consultants by the cancellation of indebtedness owed to Borrower by such former or current employees, officers, directors or consultants; (vi) purchase capital stock in connection with the exercise of stock options, warrants or other equity awards by way of cashless exercise or in connection with the satisfaction of withholding tax obligations, in either case, so long as no cash is paid by Borrower in connection therewith; and (vii) pay cash in lieu of the issuance of fractional shares arising out of stock dividends, splits, combinations or business combinations not otherwise prohibited hereunder or in connection with exercises or conversions of options, warrants and other convertible securities; or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

ax. Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (i) equity financing transactions in which Borrower's stockholders or their Affiliates participate; (ii) commercially reasonable and customary compensation, indemnification and benefit arrangements with Borrower's employees, officers, directors and managers; or (iii) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

ay. Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

az. Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

• **EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

ba. Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

bb. Covenant Default.

bu. Borrower fails or neglects to perform any obligation in Sections 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10(b), 6.12, or 6.13 or violates any covenant in Section 7;

bv. Borrower fails or neglects to perform, keep, or observe any obligation in Section 6.2 and has failed to cure the default within five (5) days after the occurrence thereof; or

bw. Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

bc. Material Adverse Change. A Material Adverse Change occurs;

bd. Attachment; Levy; Restraint on Business.

bx. (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

by. (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

be. Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and is not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

bf. Other Agreements. There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Five Hundred Thousand Dollars (\$500,000); or (b) any breach or default by Borrower or Guarantor, the result of which could have a material adverse effect on Borrower's or any Guarantor's business; provided, however, that the Event of Default under this Section 8.6 caused by the occurrence of a breach or default under such other agreement shall be cured or waived for purposes of this Agreement upon Bank receiving written notice from the party asserting such breach or default of such cure or waiver of the breach or default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Bank has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement or any Loan Document; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith business judgment of Bank be materially less advantageous to Borrower or any Guarantor;

bg. Judgments; Penalties. One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars (\$100,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof,

stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

bh. Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

bi. Subordinated Debt. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in material breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any applicable subordination or intercreditor agreement;

bj. Guaranty. (a) Any guaranty of any Obligations terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any guaranty of the Obligations; (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.7, or 8.8 of this Agreement occurs with respect to any Guarantor, (d) the death, liquidation, winding up, or termination of existence of any Guarantor (except to the extent that Guarantor is (i) a Subsidiary of Borrower, (ii) a Borrower hereunder, and (iii) such winding up or termination is otherwise permitted under the terms of this Agreement); or (e) (i) a material impairment in the perfection or priority of Bank's Lien in the collateral provided by Guarantor or in the value of such collateral or (ii) a material adverse change in the general affairs, management, results of operation, condition (financial or otherwise) or the prospect of repayment of the Obligations occurs with respect to any Guarantor; or

bk. Governmental Approvals. Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in a materially adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) causes, or could reasonably be expected to cause, a Material Adverse Change, or (ii) adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to materially adversely affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

• **BANK'S RIGHTS AND REMEDIES**

bl. Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

 bz. declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

 ca. stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

 cb. demand that Borrower (i) deposit cash with Bank in an amount equal to at least (A) one hundred five percent (105.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in Dollars remaining undrawn, and (B) one hundred ten percent (110.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit

and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

cc. terminate any FX Contracts;

cd. verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds. Borrower shall collect all payments in trust for Bank and, if requested by Bank, immediately deliver the payments to Bank in the form received from the Account Debtor, with proper endorsements for deposit;

ce. make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

cf. apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Bank owing to or for the credit or the account of Borrower;

cg. ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

ch. place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

ci. demand and receive possession of Borrower's Books; and

cj. exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

bm. Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable following the occurrence of an Event of Default, to: (a) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses); (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and the Loan Documents have been terminated. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than

inchoate indemnity obligations) have been fully repaid and performed and the Loan Documents have been terminated.

bn. Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

bo. Application of Payments and Proceeds. Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Bank shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

bp. Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

bq. No Waiver; Remedies Cumulative. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

br. Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

bs. Borrower Liability. Any Borrower may, acting singly, request Credit Extensions hereunder. Each Borrower hereby appoints each other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay all Credit Extensions made hereunder, regardless of which Borrower actually receives said Credit Extension, as if each Borrower hereunder directly received all Credit Extensions. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, including, without limitation, the benefit of California Civil Code Section 2815 permitting revocation as to future transactions and the benefit of California Civil Code Sections 1432, 2809, 2810, 2819, 2839, 2845, 2847, 2848, 2849, 2850, and 2899 and 3433, and (b) any right to require Bank to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Bank may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, each

Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Bank under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section 9.8 shall be null and void. If any payment is made to a Borrower in contravention of this Section 9.8, such Borrower shall hold such payment in trust for Bank and such payment shall be promptly delivered to Bank for application to the Obligations, whether matured or unmatured.

- **NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: c/o Magnite, Inc.

12181 Bluff Creek, 4th floor
Playa Vista, CA 90094
Attn: Chief Accounting Officer and General Counsel
Email: legal@rubiconproject.com

If to Bank: Silicon Valley Bank

1901 Main Street, #3000
Santa Monica, CA 90405
Attn: Andy Riggs
Email: ariggs@svb.com

- **CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE**

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING

OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure Section 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

This Section 11 shall survive the termination of this Agreement.

- **GENERAL PROVISIONS**

bt. Termination Prior to Maturity Date; Survival. All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied (other than inchoate indemnity obligations). So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

bu. Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents.

bv. Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or

asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

bw. Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

bx. Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

by. Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties, so long as Bank provides Borrower with written notice of such correction and allows Borrower at least ten (10) days to object to such correction. In the event of such objection, such correction shall not be made except by an amendment signed by both Bank and Borrower.

bz. Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

ca. Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

cb. Confidentiality. In handling any confidential information, which shall include all information about Borrower provided by Borrower to Bank hereunder and any other information the nature of which should reasonably be understood to be confidential, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "**Bank Entities**"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use its best efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

cc. Attorneys' Fees, Costs and Expenses. In any action or proceeding between Borrower and Bank arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

cd. Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

ce. Right of Setoff. Borrower hereby grants to Bank a Lien and a right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a subsidiary of Bank) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may setoff the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmaturred and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

cf. Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

cg. Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

ch. Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

ci. Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

cj. No Novation. Nothing contained herein shall in any way impair the Prior Loan Agreement and the other Loan Documents now held for the Obligations, nor affect or impair any rights, powers, or remedies under the Prior Loan Agreement or any Loan Document, it being the intent of the parties hereto that this Agreement shall not constitute a novation of the Prior Loan Agreement or an accord and satisfaction of the Obligations. Except as expressly provided for in this Agreement, the Loan Documents are hereby ratified and reaffirmed and shall remain in full force and effect. Borrower hereby ratifies and reaffirms the validity and enforceability of all of the liens and security interests heretofore granted pursuant to the Loan Documents, as collateral security for the Obligations, and acknowledges that all of such liens and security interests, and all Collateral heretofore pledged as security for the Obligations, continues to be and remains in full force and effect as Collateral for the Obligations from and after the date of this Agreement.

• **DEFINITIONS**

ck. Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular

includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“**Account**” is, as to any Person any “account” of such Person as “account” is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

“**Account Debtor**” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“**Additional Costs**” is defined in Section 3.7(a).

“**Adjusted EBITDA**” shall mean (a) Net Income, plus (b) Interest Expense, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense and amortization expense, plus (d) income tax expense, plus (e) impairment charges, plus (f) non-cash stock compensation expense, plus (g) other non-cash expenses less any non-cash gains, plus (h) other non-recurring expenses agreed to in writing by Bank, minus (i) interest income.

“**Administrator**” is an individual that is named:

ck. as an “Administrator” in the “SVB Online Services” form completed by Borrower with the authority to determine who will be authorized to use SVB Online Services (as defined in Bank’s Online Banking Agreement as in effect from time to time) on behalf of Borrower; and

cl. as an Authorized Signer of Borrower in an approval by the Board.

“**Advance**” or “**Advances**” means a revolving credit loan (or revolving credit loans) under the Revolving Line.

“**Affiliate**” is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members. For purposes of the definition of Eligible Accounts, Affiliate shall include a Specified Affiliate.

“**Agreement**” is defined in the preamble hereof.

“**ASU**” is defined in Section 1.

“**Authorized Signer**” is any individual listed in Borrower’s Borrowing Resolution who is authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of Borrower.

“**Availability Amount**” is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base, minus (b) the outstanding principal balance of any Advances, minus (c) the aggregate Dollar Equivalent amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) plus an amount equal to the Letter of Credit Reserve, minus (d) any amounts used for Cash Management Services, minus (e) the FX Reduction Amount.

“**Bank**” is defined in the preamble hereof.

“**Bank Entities**” is defined in Section 12.9.

“**Bank Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents

(including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Bank Services Agreement**” is defined in the definition of Bank Services.

“**Bank Services Sublimit**” is Ten Million Dollars (\$10,000,000).

“**Bell**” is defined in the preamble hereof.

“**Board**” is Borrower’s board of directors or equivalent governing body.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrowing Base**” is eighty-five percent (85%) of Eligible Accounts, as determined by Bank from Borrower’s most recent Borrowing Base Statement (and as may subsequently be updated by Bank based upon information received by Bank including, without limitation, Accounts that are paid and/or billed following the date of the Borrowing Base Statement); provided, however, that Bank has the right to decrease the foregoing percentage in its good faith business judgment to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect the Collateral or its value.

“**Borrowing Base Statement**” is that certain report of the value of certain Collateral in the form specified by Bank to Borrower from time to time.

“**Borrowing Resolutions**” are, with respect to any Person, those resolutions adopted by such Person’s board of directors (and, if required under the terms of such Person’s Operating Documents, stockholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“**Capitalized Expenditures**” means current period unfinanced cash expenditures that are capitalized and amortized over a period of time in accordance with GAAP, including but not limited to capitalized cash expenditures for capital equipment, capitalized manufacturing and labor costs as they relate to inventory, and capitalized cash expenditures for software development.

“**Cash Burn**” is, for any period, (a) Adjusted EBITDA, minus (b) Capitalized Expenditures.

“**Cash Collateral Account**” is defined in Section 6.3(c).

“**Cash Equivalents**” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; (c) Bank’s certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

“**Cash Management Services**” is defined in Section 2.1.4.

“**Change in Control**” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)5 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the ordinary voting power for the election of directors of Magnite (determined on a fully diluted basis) other than by the sale of Magnite’s equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of twelve (12) consecutive months, a majority of the Board of Magnite cease to be composed of individuals (i) who were members of the Board on the first day of such period, (ii) whose election or nomination to the Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the Board or (iii) whose election or nomination to the Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the Board; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100%) of each class of outstanding capital stock of each subsidiary of Borrower free and clear of all Liens (except Liens created by this Agreement).

“**Claims**” is defined in Section 12.3.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Compliance Statement**” is that certain statement in the form attached hereto as Exhibit B.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co made, discounted or sold with recourse by that Person,

or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“**Continuation Date**” means any date on which Borrower continues a LIBOR Advance into another Interest Period.

“**Conversion Date**” means any date on which Borrower converts a Prime Rate Advance to a LIBOR Advance or a LIBOR Advance to a Prime Rate Advance.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Advance, any Overadvance, Letter of Credit, amount utilized for Cash Management Services, or any other extension of credit by Bank for Borrower’s benefit.

“**CTV**” is defined in the preamble hereof.

“**Default Rate**” is defined in Section 2.3(e).

“**Deferred Revenue**” is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is the account number ending 640 (last three digits) maintained by Borrower with Bank (provided, however, if no such account number is included, then the Designated Deposit Account shall be any deposit account of Borrower maintained with Bank as chosen by Bank).

“**Division**” means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity.

“**Dollars,**” “**dollars**” or use of the sign “\$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “\$” sign to denote its currency or may be readily converted into lawful money of the United States.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as

determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“**Domestic Subsidiary**” means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

“**Effective Date**” is defined in the preamble hereof.

“**Eligible Accounts**” means Accounts owing to Borrower which arise in the ordinary course of Borrower’s business that meet all Borrower’s representations and warranties in Section 5.3, that have been, at the option of Bank, confirmed in accordance with Section 6.3(e) of this Agreement, and are due and owing from Account Debtors deemed creditworthy by Bank in its good faith business judgment. Bank reserves the right at any time after the Effective Date to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment after notice to Borrower. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

- a. Accounts (i) for which the Account Debtor is Borrower’s Affiliate, officer, employee, investor, or agent, or (ii) that are intercompany Accounts;
- b. Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;
- c. Accounts with credit balances over ninety (90) days from invoice date;
- d. Accounts owing from an Account Debtor if fifty percent (50%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date;
- e. Accounts owing from an Account Debtor (i) which does not have its principal place of business in the United States or (ii) whose billing address (as set forth in the applicable invoice for such Account) is not in the United States, unless in the case of both (i) and (ii) such Accounts are otherwise Eligible Accounts and (A) are covered in full by credit insurance (which respect to which Bank is the beneficiary) satisfactory to Bank from an insurer with investment grade debt ratings (unless otherwise approved by Bank in writing), less any deductible, (B) are supported by letter(s) of credit acceptable to Bank, (C) are Accounts owing from Microsoft, Yahoo, AOL, Google, Criteo or AdForm, or (D) are otherwise approved of in writing by Bank; provided, however, that Accounts described in clause (A) through (D) above shall not be deemed to be Eligible Accounts to the extent that such Accounts, in the aggregate, represent more than twenty percent (20%) of the Borrowing Base;
- f. Accounts billed from and/or payable to Borrower outside of the United States (sometimes called foreign invoiced accounts);
- g. Accounts in which Bank does not have a first priority, perfected security interest under all applicable laws;
- h. Accounts billed and/or payable in a Currency other than Dollars (other than Accounts which are Eligible Accounts under clause (e) above), unless approved by Bank in writing on a case by case basis;
- i. Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts), provided that Accounts owing from any publisher (to the extent the amounts thereunder are not aged more than thirty (30) days) shall not be offset under this clause (i), so long as Borrower provides appropriate payment tracking reports showing that such publisher’s obligations are met within thirty (30) days of their respective due date;

- j. Accounts with or in respect of accruals for marketing allowances, incentive rebates, price protection, cooperative advertising and other similar marketing credits, unless otherwise approved by Bank in writing;
- k. Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;
- l. Accounts with customer deposits and/or with respect to which Borrower has received an upfront payment, to the extent of such customer deposit and/or upfront payment;
- m. Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;
- n. Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);
- o. Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);
- p. Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor’s satisfaction of Borrower’s complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);
- q. Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;
- r. Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called “bill and hold” accounts);
- s. Accounts for which the Account Debtor has not been invoiced;
- t. Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower’s business;
- u. Accounts for which Borrower has permitted Account Debtor’s payment to extend beyond ninety (90) days (including Accounts with a due date that is more than ninety (90) days from invoice date);
- v. Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;
- w. Accounts arising from product returns and/or exchanges (sometimes called “warranty” or “RMA” accounts);
- x. Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding (whether voluntary or involuntary), or becomes insolvent, or goes out of business;

y. Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);

z. Accounts owing from an Account Debtor, whose total obligations to Borrower exceed twenty-five percent (25.0%) of all Accounts, for the amounts that exceed that percentage, unless Bank approves in writing; and

aa. Accounts for which Bank in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by “refreshed” or “recycled” invoices.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, and its regulations.

“**Event of Default**” is defined in Section 8.

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

“**Excluded Accounts**” is defined in Section 6.8(b).

“**Financial Statement Repository**” is each of (a) the following Bank email address: S43da5@svb.com, or such other means of collecting information approved and designated by Bank after providing notice thereof to Borrower from time to time, and (b) Bank’s online banking platform as described in Section 6.12.

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Foreign Subsidiary**” means any Subsidiary which is not a Domestic Subsidiary.

“**Funding Date**” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“**FX Business Day**” is any day when (a) Bank’s Foreign Exchange Department is conducting its normal business and (b) the Foreign Currency being purchased or sold by Borrower is available to Bank from the entity from which Bank shall buy or sell such Foreign Currency.

“**FX Contract**” is defined in Section 2.1.3.

“**FX Reduction Amount**” means, with respect to a given FX Contract, the notional amount thereof multiplied by the currency exchange risk factor for the currencies involved in the FX Contract, multiplied by the current foreign exchange spot rates, in each instance as determined and calculated by Bank in its sole discretion.

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

“**General Intangibles**” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract,

tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“Governmental Approval” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Guarantor” is any Person providing a Guaranty in favor of Bank.

“Guaranty” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“Hopper” is defined in the preamble hereof.

“Immaterial Subsidiary” is any Subsidiary of Borrower which is not a Material Subsidiary.

“Indebtedness” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations. For purposes of clarification, operating lease obligations shall not be deemed to be “Indebtedness” hereunder.

“Indemnified Person” is defined in Section 12.3.

“Initial Audit” is Bank’s initial inspection of Borrower’s Accounts, the Collateral, and Borrower’s Books, with results satisfactory to Bank in its sole and absolute discretion.

“Insolvency Proceeding” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following:

- a. its Copyrights, Trademarks and Patents;
- b. any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
- c. any and all source code;
- d. any and all design rights which may be available to such Person;
- e. any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- f. all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“Interest Expense” means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

“Interest Payment Date” means, with respect to any LIBOR Advance, the last day of each Interest Period applicable to such LIBOR Advance and, with respect to Prime Rate Advances, the Payment Date.

“Interest Period” means, as to any LIBOR Advance, the period commencing on the date of such LIBOR Advance, or on the conversion/continuation date on which the LIBOR Advance is converted into or continued as a LIBOR Advance, and ending on the date that is one (1), two (2), or three (3) months thereafter, in each case as Borrower may elect in the applicable Notice of Borrowing or Notice of Conversion/Continuation; provided, however, that (a) no Interest Period with respect to any LIBOR Advance shall end later than the Revolving Line Maturity Date, (b) the last day of an Interest Period shall be determined in accordance with the practices of the LIBOR interbank market as from time to time in effect, (c) if any Interest Period would otherwise end on a day that is not a Business Day, that Interest Period shall be extended to the following Business Day unless, in the case of a LIBOR Advance, the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day, (d) any Interest Period pertaining to a LIBOR Advance that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period, and (e) interest shall accrue from and include the first Business Day of an Interest Period but exclude the last Business Day of such Interest Period.

“Interest Rate Determination Date” means each date for calculating the LIBOR for purposes of determining the interest rate in respect of an Interest Period. The Interest Rate Determination Date shall be the second Business Day prior to the first day of the related Interest Period for a LIBOR Advance.

“Inventory” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“Letter of Credit” means a standby letter of credit issued by Bank or another institution based upon an application, guarantee, indemnity or similar agreement on the part of Bank as set forth in Section 2.1.2.

“Letter of Credit Application” is defined in Section 2.1.2(b).

“Letter of Credit Reserve” is defined in Section 2.1.2(e).

“LIBOR” means, for any Interest Rate Determination Date with respect to an Interest Period for any Advance to be made, continued as or converted into a LIBOR Advance, the rate of interest per annum determined by Bank to be the per annum rate of interest at which deposits in Dollars are offered to Bank in the London interbank market (rounded upward, if necessary, to the nearest 0.00001%) in which Bank customarily participates at 11:00 a.m. (local time in such interbank market) two (2) Business Days prior to the first day of such Interest Period for a period approximately equal to such Interest Period and in an amount approximately equal to the amount of such Advance; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**LIBOR Advance**” means an Advance that bears interest based at the LIBOR Rate.

“**LIBOR Rate**” means, for each Interest Period in respect of LIBOR Advances comprising part of the same Advances, an interest rate per annum (rounded upward, if necessary, to the nearest 0.00001%) equal to LIBOR for such Interest Period divided by one (1) minus the Reserve Requirement for such Interest Period.

“**LIBOR Rate Margin**” is two and one-quarter percent (2.25%).

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Liquidity**” is, at any time, the sum of (a) the aggregate amount of unrestricted and unencumbered cash and Cash Equivalents held at such time by Borrower in Collateral Accounts maintained with Bank or its Affiliates, plus (b) accounts receivable, minus (c) Publisher Payables.

“**Liquidity Ratio**” is (a) Liquidity, divided by (b) all Obligations.

“**Loan Documents**” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Bank, all as amended, restated, or otherwise modified.

“**Magnite**” is defined in the preamble hereof.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or financial condition of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Material Subsidiary**” is any direct or indirect Domestic Subsidiary of Borrower that has assets or annual revenue in excess of Five Hundred Thousand Dollars (\$500,000) or is a Borrower hereunder.

“**Net Income**” means, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net profit (or loss), after provision for taxes, of Borrower and its Subsidiaries for such period taken as a single accounting period.

“**Notice of Borrowing**” means a notice given by Borrower to Bank in accordance with Section 3.4(a), substantially in the form of Exhibit C, with appropriate insertions.

“**Notice of Conversion/Continuation**” means a notice given by Borrower to Bank in accordance with Section 3.5, substantially in the form of Exhibit D, with appropriate insertions.

“**Obligations**” are Borrower’s obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Unused Revolving Line Facility Fee, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents, or otherwise, including, without limitation, all obligations relating to Bank Services and interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower’s duties under the Loan Documents.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Overadvance**” is defined in Section 2.2.

“**Parent**” is defined in Section 3.7(b).

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“**Payment Date**” is the last calendar day of each month.

“**Perfection Certificate**” is defined in Section 5.1.

“**Permitted Acquisition**” means any merger or consolidation with any other Person, or the acquisition of all or substantially all of the capital stock or property of another Person that meets the following requirements: (a) Bank shall receive at least twenty (20) days' prior written notice of each such Permitted Acquisition, which notice shall include a reasonably detailed description of the transaction, and such other financial information, financial analysis, documentation or other information relating to such transaction as Bank shall reasonably request; (b) the total consideration for all such transactions, including cash and the value of any non-cash consideration, does not in the aggregate exceed Five Million Dollars (\$5,000,000) in any twelve month period; (c) the total cash consideration for all such transactions does not in the aggregate exceed Three Million Dollars (\$3,000,000) in any twelve month period; (d) no Event of Default has occurred and is continuing or would exist after giving effect to each such transaction; (e) Borrower is the surviving legal entity; (f) Borrower shall demonstrate compliance, both before and after (on a pro forma basis) giving effect to such transaction, with the terms of this Agreement; (g) the credit risk to Bank, in its sole discretion, shall not be increased as a result of the Permitted Acquisition; (h) such transaction shall only involve assets located in the United States and comprising a business, or those assets of a business, of the type engaged in by Borrower and its Subsidiaries as of the date hereof (or any business reasonably related or ancillary thereto or a reasonable extension thereof, as determined in good faith by the board of directors); (i) such transaction shall be consensual and shall have been approved by the target's board of directors; and (j) if the target is not merged with and into Borrower then, simultaneously with the closing of the Permitted Acquisition, the target must, if requested by Bank, become a "Borrower" under this Agreement and the other Loan Documents and become subject to all rights and obligations of this Agreement and the other Loan Documents, and must, if requested by Bank, execute and deliver to Bank a joinder agreement acceptable to Bank as well as such other documents and agreements as required by Bank in connection with the target becoming a Borrower and granting a Lien in favor of Bank on the Collateral.

“**Permitted Indebtedness**” is:

- a. Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;
- b. Indebtedness existing on the Effective Date which is shown on the Perfection Certificate;
- c. Subordinated Debt;
- d. unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- e. Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- f. Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder;
- g. unsecured Indebtedness incurred on corporate credit cards with institutions other than Bank in the ordinary course of business in an aggregate outstanding amount not to exceed Five Hundred Thousand Dollars (\$500,000) at any time;

h. other unsecured Indebtedness not otherwise permitted by Section 7.4 not exceeding Five Hundred Thousand Dollars (\$500,000) in the aggregate outstanding at any time; and

i. extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (h) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“Permitted Investments” are:

a. Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate;

b. Investments consisting of cash and Cash Equivalents and any Investments permitted by borrower’s investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Bank;

c. Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

d. Investments consisting of deposit accounts (but only to the extent that Borrower is permitted to maintain such accounts pursuant to Section 6.8 of this Agreement) in which Bank has a first priority perfected security interest;

e. Investments accepted in connection with Transfers permitted by Section 7.1;

f. Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transaction permitted by Section 7.3 of this Agreement, which is otherwise a Permitted Investment;

g. Investments (i) by Borrower in other Borrowers, (ii) by Borrower in Subsidiaries who are not Borrowers in an aggregate amount not to exceed Three Million Dollars (\$3,000,000) in any fiscal year, and (iii) by Subsidiaries who are not Borrowers in other Subsidiaries who are not Borrowers or in Borrower;

h. 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 Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Board;

i. 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;

j. 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 that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;

k. joint ventures or strategic alliances in the ordinary course of Borrower’s business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash investments by Borrower do not exceed Three Million Dollars (\$3,000,000) in the aggregate in any fiscal year;

l. Permitted Acquisitions;

m. intercompany advances or loans not exceeding Five Hundred Thousand Dollars (\$500,000) in the aggregate outstanding at any time, repaid within one hundred eighty (180) days, in connection with the settlement of transfer pricing arrangements in the ordinary course of business;

n. Investments consisting of “transfer pricing”, “cost sharing” and “cost plus” arrangements in the ordinary course of business by Borrower in its Subsidiaries for operating expenses, provided that (i) no Event of Default has occurred and is continuing or would result therefrom, (ii) the amount charged to Borrower is not more than twenty-five percent (25%) above such Subsidiary’s cost, and (iii) the other terms of such arrangements are upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non-affiliated Person; and

o. other Investments not otherwise permitted by Section 7.7 in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate in any twelve (12) month period.

“Permitted Liens” are:

a. Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement or the other Loan Documents;

b. Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower’s Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

c. purchase money Liens or capital leases (i) on Equipment or software acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Five Hundred Thousand Dollars (\$500,000) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

d. Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

e. Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

f. leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

g. non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;

h. Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7; and

i. Liens in favor of other financial institutions arising in connection with Borrower’s deposit and/or securities accounts held at such institutions, provided that (i) Bank has a first priority perfected

security interest in the amounts held in such deposit and/or securities accounts if required under Section 6.8 and (ii) such accounts are permitted to be maintained pursuant to Section 6.8 of this Agreement; and

j. Deposits to secure the performance of bids, trade contracts (other than for borrowed money), contracts for the purchase of property, leases, statutory obligations, ERISA, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business and not representing an obligation for borrowed money;

k. Liens arising from the filing of precautionary Code financing statements with respect to operating leases or other leases not prohibited by this Agreement provided that such Liens and the financing statements are restricted to the specific personal property that is being leased under the applicable lease; and

l. Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (k), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

“**Person**” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Prime Rate**” is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the “Prime Rate” shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Prime Rate Advance**” means an Advance that bears interest based at the Prime Rate.

“**Prime Rate Margin**” is one-quarter of one percent (0.25%).

“**Prior Loan Agreement**” is defined in the recitals to this Agreement.

“**Publisher Payables**” is, at any time, the aggregate amount of all accounts payable by Borrower to publishers.

“**Registered Organization**” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“**Regulatory Change**” means, with respect to Bank, any change on or after the date of this Agreement in United States federal, state, or foreign laws or regulations, including Regulation D, or the adoption or making on or after such date of any interpretations, directives, or requests applying to a class of lenders including Bank, of or under any United States federal or state, or any foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

“**Requirement of Law**” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserve Requirement” means, for any Interest Period, the average maximum rate at which reserves (including any marginal, supplemental, or emergency reserves) are required to be maintained during such Interest Period under Regulation D against “Eurocurrency liabilities” (as such term is used in Regulation D) by member banks of the Federal Reserve System. Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by Bank by reason of any Regulatory Change against (a) any category of liabilities which includes deposits by reference to which the LIBOR Rate is to be determined as provided in the definition of LIBOR or (b) any category of extensions of credit or other assets which include Advances.

“Reserves” means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its good faith business judgment, reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in its good faith business judgment, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Bank's reasonable belief that any collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

“Responsible Officer” is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“Restricted License” is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank's right to sell any Collateral.

“Revolving Line” is an aggregate principal amount equal to Sixty Million Dollars (\$60,000,000).

“Revolving Line Maturity Date” is the date two (2) years after the Effective Date.

“SEC” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“Securities Account” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“Settlement Date” is defined in Section 2.1.3.

“Specified Affiliate” is any Person (a) more than ten percent (10.0%) of whose aggregate issued and outstanding equity or ownership securities or interests, voting, non-voting or both, are owned or held directly or indirectly, beneficially or of record, by Borrower, and/or (ii) whose equity or ownership securities or interests representing more than ten percent (10.0%) of such Person's total outstanding combined voting power are owned or held directly or indirectly, beneficially or of record, by Borrower.

“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Borrower's now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

“Subsidiary” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the

management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“**Transfer**” is defined in Section 7.1.

“**Unused Revolving Line Facility Fee**” is defined in Section 2.4(b).

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

MAGNITE, INC.

By /s/ David Day

Name: David Day

Title: CFO

MAGNITE, INC.

By /s/ David Day

Name: David Day

Title: CFO

MAGNITE, INC.

By /s/ David Day

Name: David Day

Title: CFO

MAGNITE, INC.

By /s/ David Day

Name: David Day

Title: CFO

BANK:

SILICON VALLEY BANK

By /s/ Andy Riggs

Name: Andy Riggs

Title: Vice President

EXHIBIT A - COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters 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; and

all Borrower's Books relating to the foregoing, and 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.

Notwithstanding the foregoing, the Collateral does not include any of the following: (a) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (b) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any Domestic Subsidiary that is a disregarded entity for United States federal income tax purposes substantially all of the assets of which consist of equity securities in one or more Foreign Subsidiaries, (c) rights held under a license that are not assignable by their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law); (d) any interest of Borrower as a lessee under an Equipment lease if Borrower is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease; provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by Borrower or Bank, and (e) Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

EXHIBIT B
COMPLIANCE STATEMENT

[NOTE TO DRAFT-SECTION 6.9(b) WAS MODIFIED AS SET FORTH BELOW TO CORRECT CERTAIN DRAFTING ERRORS]

TO: SILICON VALLEY BANK Date: _____
FROM: MAGNITE, INC., ET AL.

Under the terms and conditions of the Second Amended and Restated Loan and Security Agreement between Borrower and Bank (the “**Agreement**”), Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below. Attached are the required documents evidencing such compliance, setting forth calculations prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under “Complies” column.

<u>Reporting Covenants</u>	<u>Required</u>	<u>Complies</u>
Compliance Statement; A/R & A/P Agings	Quarterly within 5 days of filing 10-Q or 10-K	Yes No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
Borrowing Base Statement	Monthly within 7 Business Days if any Advances are outstanding; Quarterly within 5 days of filing 10-Q or 10-K at all other times	Yes No
Board approved projections	Earlier of 30 days after Board approval or 60 days after FYE, and as amended/updated	Yes No

<u>Financial Covenant</u>	<u>Required</u>	<u>Actual</u>	<u>Complies</u>
Maintain as indicated:			
Minimum Liquidity Ratio (at all times, tested quarterly)	1.25:1.00	_____:1.00	Yes No
Maximum Cash Burn (tested quarterly):			
3 Months Ended September 30, 2020	(\$22,508,000)	\$_____	Yes No
6 Months Ending December 31, 2020	(\$29,305,000)	\$_____	Yes No
9 Months Ending March 31, 2021	(\$36,124,000)	\$_____	Yes No
12 Months Ending June 30, 2021	(\$39,196,000)	\$_____	Yes No
12 Months Ending September 30, 2021	(\$19,188,000)	\$_____	Yes No
12 Months Ending December 31, 2021	(\$13,641,000)	\$_____	Yes No
12 Months Ending March 31, 2022	(\$6,822,000)	\$_____	Yes No
12 Months Ending June 30, 2022	(\$3,750,000)	\$_____	Yes No

The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and accurate as of the date of this Compliance Statement.

The following are the exceptions with respect to the statements above: (If no exceptions exist, state “No exceptions to note.”)

Schedule 1 to Compliance Statement

#2572901v4
233773760 v5

Financial Covenants of Borrower

In the event of a conflict between this Schedule and the Loan Agreement, the terms of the Loan Agreement shall govern.

Dated: _____

I. Minimum Liquidity Ratio (Section 6.9(a))

Required: 1.25 to 1.00

Actual:

- A. Aggregate value of the unrestricted and unencumbered cash and Cash Equivalents of Borrower maintained with Bank \$__
- B. Aggregate value of Borrower's accounts receivable \$__
- C. Publisher Payables \$__
- D. Liquidity (the sum of line A, plus line B, minus line C) \$__
- E. Aggregate value of Obligations to Bank \$__
- F. Liquidity Ratio (line D divided by line E) ____:1.00

Is line F equal to or greater than 1.25 to 1.00?

No, not in compliance Yes, in compliance

II. Maximum Cash Burn (Section 6.9(b))

Required:

Measuring Period	Maximum Cash Burn
Three months ended September 30, 2020	(\$22,508,000)
Six months ending December 31, 2020	(\$29,305,000)
Nine months ending March 31, 2021	(\$36,124,000)
Twelve months ending June 30, 2021	(\$39,196,000)
Twelve months ending September 30, 2021	(\$19,188,000)
Twelve months ending December 31, 2021	(\$13,641,000)
Twelve months ending March 31, 2022	(\$6,822,000)
Twelve months ending June 30, 2022	(\$3,750,000)

Actual:

A.	Net Income for the applicable measuring period	\$__
B.	To the extent included in the determination of Net Income	
	1. The provision for income taxes	\$__
	2. Depreciation expense	\$__
	3. Amortization expense	\$__
	4. Net Interest Expense	\$__
	5. Impairment Charges	\$__
	6. Non-cash stock compensation	\$__
	7. Other non-cash expenses (less any non-cash gains)	\$__
	8. Other non-recurring expenses approved in writing by Bank	\$__
	9. Interest income	\$__
	10. The sum of lines 1 through 8, minus line 9	\$__
C.	Adjusted EBITDA (line A plus line B.10)	\$__
D.	Capitalized Expenditures	\$__
E.	Cash Burn (line C minus line D)	\$__

Is line E equal to or less than the required amount set forth above (on an absolute basis)?

No, not in compliance Yes, in compliance

EXHIBIT C
FORM OF NOTICE OF BORROWING

MAGNITE, INC., ET AL.

Date: _____

To: Silicon Valley Bank

3003 Tasman Drive
Santa Clara, CA 95054
Attention: IMX Production
Email: imxproduction@svb.com
vregan@svb.com

Re: Second Amended and Restated Loan and Security Agreement dated as of September [__], 2020 (as amended, modified, supplemented or restated from time to time, the "*Loan Agreement*"), by and among Magnite, Inc. and certain of its subsidiaries (individually and collectively, jointly and severally, "*Borrower*"), and Silicon Valley Bank (the "*Bank*")

Ladies and Gentlemen:

The undersigned refers to the Loan Agreement, the terms defined therein and used herein as so defined, and hereby gives you notice irrevocably, pursuant to Section 3.4(a) of the Loan Agreement, of the borrowing of an Advance.

1. The Funding Date, which shall be a Business Day, of the requested borrowing is _____.
2. The Currency of the requested borrowing is U.S. Dollars.
3. The aggregate amount of the requested Advance is \$_____.
4. The requested Advance shall consist of \$_____ of Prime Rate Advances and \$_____ of LIBOR Advances.
5. The duration of the Interest Period for the LIBOR Advances included in the requested Advance shall be _____ months.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Advance before and after giving effect thereto, and to the application of the proceeds therefrom, as applicable:

(a) all representations and warranties of Borrower contained in the Loan Agreement are true, accurate and complete in all material respects as of the date hereof; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(b) no Event of Default has occurred and is continuing, or would result from such proposed Advance; and

(c) the requested Advance will not cause the aggregate principal amount of the outstanding Advances to exceed, as of the designated Funding Date, the Availability Amount.

#2572901v4
233773760 v5

Borrower Magnite, Inc., on behalf of itself and all Borrowers

By: _____

Name: _____

Title: _____

For internal Bank use only

LIBOR Pricing Date	LIBOR	LIBOR Variance	Maturity Date
		____%	

EXHIBIT D

FORM OF NOTICE OF CONVERSION/CONTINUATION

MAGNITE, INC., ET AL.

Date:

To: Silicon Valley Bank

3003 Tasman Drive
Santa Clara, CA 95054
Attention: IMX Production
Email: imxproduction@svb.com
vregan@svb.com

Re: Second Amended and Restated Loan and Security Agreement dated as of September [___], 2020 (as amended, modified, supplemented or restated from time to time, the "Loan Agreement"), by and among Magnite, Inc. and certain of its subsidiaries (individually and collectively, jointly and severally, "Borrower"), and Silicon Valley Bank (the "Bank")

Ladies and Gentlemen:

The undersigned refers to the Loan Agreement, the terms defined therein being used herein as therein defined, and hereby gives you notice irrevocably, pursuant to Section 3.5 of the Loan Agreement, of the [conversion] [continuation] of the Advances specified herein, that:

1. The date of the [conversion] [continuation] is _____, 20__.
2. The aggregate amount of the proposed Advances to be [converted] is \$_____ or [continued] is \$_____.
3. The Advances are to be [converted into] [continued as] [LIBOR] [Prime Rate] Advances.
4. The duration of the Interest Period for the LIBOR Advances included in the [conversion] [continuation] shall be _____ months.

The undersigned, on behalf of Borrower, hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed [conversion] [continuation], before and after giving effect thereto and to the application of the proceeds therefrom:

(a) all representations and warranties of Borrower stated in the Loan Agreement are true, accurate and complete in all material respects as of the date hereof; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(b) no Event of Default has occurred and is continuing, or would result from such proposed [conversion] [continuation]; and

(c) the requested [conversion] [continuation] will not cause the aggregate principal amount of the outstanding Advances to exceed, as of the designated Funding Date, (i) the lesser of (A) the Revolving Line or (B) the Borrowing Base minus (ii) any applicable Reserve.

Borrower **Magnite, Inc.**, on behalf of itself and all Borrowers

By: _____

Name: _____

Title: _____

For internal Bank use only

LIBOR Pricing Date	LIBOR	LIBOR Variance	Maturity Date
		____%	

Exhibit 21.1

List of Subsidiaries

Magnite CTV, Inc.
Magnite Australia PTY Limited
Rubicon Project Servicios De Internet Ltda
Magnite SARL
The Rubicon Project GmbH
Magnite S.R.L.
Magnite K.K.
The Rubicon Project Netherlands B.V.
The Rubicon Project Singapore Pte Ltd.
Magnite Limited
Magnite Canada, Inc.
RTK GmbH
RTK.io Inc.
Magnite Apex, Inc.
5 Moon Media LLC
Magnite Bell, Inc.
Rubicon Project Unlatch, Inc.
Magnite Hopper, Inc.
Rubicon Project Daylight, Inc.
Project Daylight, LLC
The Rubicon Project Canada ULC
Magnite CTV Ltd.
Magnite Holdings Pty Ltd
Magnite CTV Pty Ltd
Telaria (Singapore) Pte Ltd
Telaria SDN. BHD.
Magnite CTV (NZ) Limited
Telaria Brazil Publicidade Ltda.
Telaria SAS
SlimCut Media Canada Inc.
ScanScout, Inc.
Tremor Video Canada, Inc.
Transpera, Inc.

**Certification of Principal Executive Officer
pursuant to
Exchange Act Rules 13a-14(a) and 15d-14(a),
as adopted pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Michael Barrett, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Rubicon Project, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Signature:

/s/ Michael Barrett

Michael Barrett
President and Chief Executive Officer
(Principal Executive Officer)

Date November 9, 2020

**Certification of Principal Financial Officer
pursuant to
Exchange Act Rules 13a-14(a) and 15d-14(a),
as adopted pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002**

I, David Day, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Rubicon Project, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Signature:

/s/ David Day

David Day
Chief Financial Officer
(Principal Financial Officer)

Date November 9, 2020

**CERTIFICATIONS 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**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350), Michael Barrett, President and Chief Executive Officer (Principal Executive Officer) of The Rubicon Project, Inc. (the "Company"), and David Day, Chief Financial Officer (Principal Financial Officer) of the Company, each hereby certifies that, to the best of his knowledge:

1. Our Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, to which this certification is attached as Exhibit 32 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date November 9, 2020

/s/ Michael Barrett

Michael Barrett
President and Chief Executive
Officer
(Principal Executive Officer)

/s/ David Day

David Day
Chief Financial Officer
(Principal Financial Officer)

The foregoing certifications are being furnished pursuant to 13 U.S.C. Section 1350. They are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the Company, regardless of any general incorporation language in such filing.