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 April 9, 2020 (the “Effective Date”), by and among SILICON VALLEY BANK, a California corporation (“Bank”), WEAVE COMMUNICATIONS, INC., a Delaware corporation (“US Borrower”), and WEAVE COMMUNICATIONS CANADA, INC., a corporation organized under the laws of the Province of British Columbia (“Canadian Borrower” and together with US Borrower, each individually and collectively, jointly and severally, “Borrower”), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. This Agreement amends and restates in its entirety that certain Amended and Restated Loan and Security Agreement, dated as of December 22, 2017, by and between Bank and US Borrower (as amended, restated, supplemented, or otherwise modified from time to time, the “Original Agreement”). The parties agree as follows:  
1.ACCOUNTING AND OTHER TERMS  
Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following 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.  
2.LOAN AND TERMS OF PAYMENT  
2.1Promise 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.  
2.2Revolving Line.  
(a)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.  
(b)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.  
2.3Growth Capital Advance.  
(a)Availability. Subject to and upon the terms and conditions of this Agreement, on the Effective Date or as soon thereafter as all conditions precedent to the making thereof have been met, Bank shall make a growth capital advance to Borrower in the principal  
  
  
amount of Four Million Dollars ($4,000,000) (the “Initial Growth Capital Advance”), which shall refinance all Obligations owing from Borrower to Bank under the Original Agreement as of the Effective Date (excluding Obligations under the Revolving Line), with any excess to be used for working capital. Thereafter, until September 30, 2021, Borrower may request and Bank shall make additional growth capital advances in an aggregate amount not to exceed Three Million Dollars ($3,000,000) (each, a “Supplemental Growth Capital Advance”, and together with the Initial Growth Capital Advance, each, a “Growth Capital Advance” and collectively, the “Growth Capital Advances”). Each Supplemental Growth Capital Advance shall be in an amount equal to at least Five Hundred Thousand Dollars ($500,000). The aggregate outstanding amount of the Growth Capital Advances shall not, at any time, exceed the Growth Capital Line.  
(b)Interest Payments. Commencing on May 1, 2020, and continuing on the Payment Date of each month thereafter, Borrower shall make monthly payments of interest, in arrears, on the principal amount of the Growth Capital Advances at the rate set forth in Section 2.5(a)(ii).  
(c)Repayment. The Growth Capital Advances shall be “interest-only” through the end of the Interest-Only Period with interest payable on the first (1st) day of each month. Any portion of the Growth Capital Advances outstanding at the end of the Interest-Only Period shall be payable in thirty (30) equal payments of principal plus all accrued interest beginning on October 1, 2021, and continuing on the first (1st) day of each month thereafter. All unpaid principal and interest on the Growth Capital Advances shall be due on the Growth Capital Maturity Date. Once repaid, the Growth Capital Advances may not be reborrowed.  
(d)Permitted Prepayment. Borrower shall have the option to prepay all, but not less than all, of the Growth Capital Advances advanced by Bank under this Agreement, provided Borrower (i) delivers written notice to Bank of its election to prepay the Growth Capital Advances at least ten (10) days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the Growth Capital Advances, (B) the Prepayment Fee, and (C) all other sums, if any, that shall have become due and payable with respect to the Growth Capital Advances, including Bank Expenses, if any, and interest at the Default Rate with respect to any past due amounts.  
(e)Mandatory Prepayment Upon an Acceleration. If the Growth Capital Advances are accelerated by Bank following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of (i) all outstanding principal plus accrued and unpaid interest with respect to the Growth Capital Advances, (ii) the Prepayment Fee, and (iii) all other sums, if any, that shall have become due and payable with respect to the Growth Capital Advances, including Bank Expenses, if any, and interest at the Default Rate with respect to any past due amounts.  
2.4Overadvances. If, at any time, the outstanding principal amount of any Advances exceeds the lesser of either 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, Xxxxxxxx agrees to pay  
2  
  
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 (5.0%).  
2.5Payment of Interest on the Credit Extensions.  
(a)Interest Rates.  
(i)Advances. Subject to Section 2.5(b), the principal amount outstanding under the Revolving Line shall accrue interest a floating per annum rate equal to the greater of (i) one half of one percentage point (0.50%) above the Prime Rate, or (ii) five and one quarter percentage points (5.25%), which interest shall, in each case, be payable monthly in accordance with Section 2.5(d) below.  
(ii)Growth Capital Advances. Subject to Section 2.5(b), the principal amount outstanding under the Growth Capital Advances shall accrue interest at a floating per annum rate equal to the greater of (i) three quarters of one percentage point (0.75%) above the Prime Rate, or (ii) five and one half percentage points (5.50%), which interest shall, in each case, be payable monthly in accordance with Section 2.5(d) below.  
(b)Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percentage points (5%) above the rate that is otherwise applicable thereto (the “Default Rate”). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.5(b) 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.  
(c)Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.  
(d)Payment; Interest Computation. Interest is payable monthly on the Payment Date of each month and shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Pacific time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.  
(e)Yearly Rate of Interest.  
(i)For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to  
3  
  
be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.  
(ii)Borrower acknowledges and confirms that:  
(1)clause (i) above satisfies the requirements of Section 4 of the Interest Act (Canada) to the extent it applies to the expression or statement of any interest payable under any Loan Document; and  
(2)Borrower is able to calculate the yearly rate or percentage of interest payable under any Loan Document based upon the methodology set out in clause (i) above.  
(iii)Xxxxxxxx agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to the Loan Documents, that the interest payable thereunder and the calculation thereof has not been adequately disclosed to any Credit Party, whether pursuant to Section 4 of the Interest Act (Canada) or any other applicable law or legal principle.  
(iv)Notwithstanding anything to the contrary contained in this Agreement, if the amount of interest payable under any Loan Document is reduced by virtue of the application of Section 4 of the Interest Act (Canada), then Borrower shall immediately and retroactively be obligated to pay to Bank, promptly on demand by Bank (or, if an Event of Default pursuant to Section 8 shall have occurred and be continuing, automatically and without further action by Bank), an amount equal to the amount of such reduction.  
(f)Criminal Interest. If any provision of this Agreement would oblige Borrower to make any payment of interest or other amount payable to Bank in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by Bank of “interest” at a “criminal rate” (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by Bank of “interest” at a “criminal rate”, such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:  
(i)first, by reducing the amount or rate of interest required to be paid to Bank under Section 2.5; and  
(ii)thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to Bank which would constitute interest for purposes of section 347 of the Criminal Code (Canada).”  
4  
  
2.6Fees. Borrower shall pay to Bank:  
(a)Revolving Line Commitment Fee. A fully-earned, non-refundable commitment fee of Thirty-Seven Thousand Five Hundred Dollars ($37,500), on the Effective Date;  
(b)Prepayment Fee. The Prepayment Fee, when due hereunder; provided, however, that Bank shall waive the Prepayment Fee if the Obligations are refinanced by Bank;  
(c)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).  
(d)Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Xxxxxxxx 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 2.6 pursuant to the terms of Section 2.7(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 2.6.  
2.7Payments; Application of Payments; Debit of Accounts.  
(a)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.  
(b)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.  
(c)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.  
2.8Withholding. 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  
5  
  
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 2.8 shall survive the termination of this Agreement.  
3.CONDITIONS OF LOANS  
3.1Conditions Precedent to Initial Credit Extension. Bank’s obligation to make the initial Credit Extension 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:  
(a)duly executed original signatures to the Loan Documents;  
(b)the Operating Documents and long-form good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower’s and such Subsidiaries’ jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;  
(c)a secretary’s certificate of US Borrower with respect to US Xxxxxxxx’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;  
(d)an officer’s certificate of Canadian Borrower with respect to its articles of incorporation and notice of articles, shareholders’ agreement (or equivalent), incumbency and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents;  
(e)certified copies, dated as of a recent date, of financing statement, UCC, PPSA and Bank Act searches, as Bank may request, accompanied by written evidence (including any PPSA/UCC termination statements and PPSA confirmations/estoppels/terminations) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;  
6  
  
(f)a legal opinion of Xxxxxxxx’s Canadian counsel, in form and substance acceptable to Bank, dated as of the Effective Date together with the duly executed original signature thereto;  
(g)the Perfection Certificate of Xxxxxxxx, together with the duly executed original signature thereto;  
(h)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;  
(i)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 Xxxxxxxx’s Accounts); and  
(j)payment of the fees and Bank Expenses then due as specified in Section 2.6 hereof.  
3.2Conditions 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:  
(a)timely receipt of (i) the Credit Extension request and any materials and documents required by Section 3.4 and (ii) with respect to the request for a Growth Capital Advance, an executed Payment/Advance Form and any materials and documents required by Section 3.4;  
(b)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/or of the Payment/Advance Form, as applicable, 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  
(c)Bank determines to its satisfaction that there has not been a Material Adverse Change.  
7  
  
3.3Covenant to Deliver. Xxxxxxxx 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.  
3.4Procedures for Borrowing.  
(a)Advances. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by electronic mail by 12:00 p.m. Pacific time on the Funding Date of the Advance. Such notice 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 shall be in a written format acceptable to Bank that is 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. In connection with any such notification, 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. Bank shall credit proceeds of an Advance to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Advances are necessary to meet Obligations which have become due.  
(b)Growth Capital Advances. Subject to the prior satisfaction of all other applicable conditions to the making of a Growth Capital Advance set forth in this Agreement, to obtain a Growth Capital Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by electronic mail by 12:00 noon Pacific time on the Funding Date of the Growth Capital Advance. Such notice 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 shall be in a written format acceptable to Bank that is 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 a Growth Capital Advance. In connection with such notification, Xxxxxxxx must promptly deliver to Bank by electronic mail or through Bank’s online banking program a completed Payment/Advance Form executed by an Authorized Signer together with such other reports and information, as Bank may request in its sole discretion. Bank shall credit proceeds of each Growth Capital Advance to the Designated Deposit Account. Bank may make the Growth Capital Advances under this Agreement based on instructions from an Authorized Signer or without instructions if any Growth Capital Advance is necessary to meet Obligations which have become due.  
8  
  
4.CREATION OF SECURITY INTEREST  
4.1Grant 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, Xxxxxxxx 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 (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) 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 provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its business judgment), to secure all of the Obligations relating to such Letters of Credit.  
4.2Priority 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) so long as Bank has filed its UCC and PPSA financing statements (as applicable) against Borrower. If Xxxxxxxx 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.  
4.3Authorization 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  
9  
  
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.  
5.REPRESENTATIONS AND WARRANTIES  
Borrower represents and warrants as follows:  
5.1Due Organization, Authorization; Power and Authority. Borrower is duly existing and in good standing 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, Xxxxxxxx has delivered to Bank completed certificates each signed by Xxxxxxxx and Guarantor (if any), respectively, entitled “Perfection Certificate” (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 Xxxxxxxx’s mailing address (if different than its chief executive office) and its registered office address (if different than it 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 (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 Operating 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 such Governmental Approvals which have already been obtained and are in full force and effect), 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.  
10  
  
This Agreement and the other Loan Documents have been duly executed and delivered by each Borrower and constitute legal, valid and binding obligations of each Borrower, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. Specifically but without limitation, Section 2.5(e)(i) satisfies the requirements of Section 4 of the Interest Act (Canada) to the extent it applies to the expression or statement of any interest payable under any Loan Document, and each Borrower is able to calculate the yearly rate or percentage of interest payable under any Loan Document based upon the methodology set out in such Section 2.5(e)(i).  
5.2Collateral. Xxxxxxxx has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to xxxxx x Xxxx 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(c). 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. 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) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. 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 Xxxxxxxx’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, Borrower is not a party to, nor is it bound by, any Restricted License.  
5.3Eligible Customer Accounts. For any customer Account that generates MRR, all statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing such customer 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 customer Account that generates MRR shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any  
11  
  
actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are customer Accounts that generate MRR. To the best of Xxxxxxxx’s knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all customer Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms. Borrower is the owner of and has the legal right to sell, transfer, assign and encumber each customer Account, and, there are no defenses, offsets, counterclaims or agreements for which the Account Debtor may claim any deduction or discount.  
5.4Litigation. 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, Fifty Thousand Dollars ($50,000).  
5.5Financial 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 Xxxxxxxx’s consolidated results of operations. 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 or otherwise submitted to Bank.  
5.6Solvency. 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.  
5.7Regulatory 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.  
5.8Subsidiaries; Investments. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.  
5.9Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Xxxxxxxx has timely paid all foreign, federal, provincial, 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  
12  
  
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 Xxxxxxxx. Except as set forth in the Perfection Certificate, 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, the Pension Benefit Guarantee Fund established under the Pension Benefits Act (Ontario) (or equivalent provincial legislation in another Province in Canada) or their respective successors or any other governmental agency.  
5.10Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital, to refinance certain existing Indebtedness owing to Bank under the Original Agreement and to fund its general business requirements and not for personal, family, household or agricultural purposes.  
5.11Full 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).  
5.12Definition 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.  
6.AFFIRMATIVE COVENANTS  
Borrower shall do all of the following:  
13  
  
6.1Government Compliance.  
(a)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. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject.  
(b)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 the Collateral. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.  
6.2Financial Statements, Reports, Certificates. Provide Bank with the following by submitting to the Financial Statement Repository or otherwise submitting to Bank:  
(a)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, details of Borrower’s recurring revenue, including, without limitation, total MRR and the Annualized Churn Rate, (i) with each request for an Advance and (ii) within thirty (30) days after the end of each month;  
(b)within thirty (30) days after the end of each month, (i) monthly accounts receivable agings, aged by invoice date, (ii) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, (iii) monthly reconciliations of accounts receivable agings (aged by invoice date), and (iv) a Deferred Revenue report;  
(c)within thirty (30) days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower’s consolidated operations for such month in a form acceptable to Bank (the “Monthly Financial Statements”);  
(d)within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Statement, confirming that as of the end of such month, 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 and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;  
(e)within thirty (30) days after the end of each month, a report in a form acceptable to Bank, detailing Borrower’s total MRR, Annualized Churn Rate, Existing Customer Accounts, CAC and LTV;  
(f)within thirty (30) days after the last day of each fiscal year of Xxxxxxxx, and contemporaneously with any updates or amendments thereto, (i) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the then-  
14  
  
current fiscal year of Borrower, and (ii) annual financial projections for the then-current 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;  
(g)within one hundred eighty (180) days following the end of Xxxxxxxx’s fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank;  
(h)in the event that Borrower becomes subject to the reporting requirements under a Canadian securities exchange or 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 applicable exchange or the SEC, any Governmental Authority succeeding to any or all of the functions of the applicable exchange or the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. 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; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents;  
(i)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;  
(j)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 to Borrower or any of its Subsidiaries of, individually or in the aggregate, Fifty Thousand Dollars ($50,000) or more;  
(k)promptly, from time to time, such other information regarding Borrower or compliance with the terms of any Loan Documents as reasonably requested by Bank; and  
(l)prompt written notice of any changes to the beneficial ownership information set out in Section 14 of the Perfection Certificate delivered to Bank on or about the Effective Date. 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.  
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  
15  
  
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 Xxxxxxxx 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 or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.  
6.3Accounts Receivable.  
(a)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 Xxxxxxxx’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.  
(b)Disputes. Borrower shall promptly notify Bank of all disputes or claims relating to Accounts. 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.  
(c)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 transferred on a daily basis to the Designated Deposit Account. Borrower hereby authorizes Bank to transfer to the Cash Collateral Account any amounts that Bank reasonably  
16  
  
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).  
(d)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 as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.  
(e)Returns. Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to Borrower, Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount, and (iii) provide a copy of such credit memorandum to Bank, upon request from Bank. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default, Borrower shall hold the returned Inventory in trust for Bank, and immediately notify Bank of the return of the Inventory.  
(f)Verifications; Confirmations; Credit Quality; Notifications. Bank may, from time to time, (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.  
(g)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.  
6.4Remittance 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 Fifty Thousand Dollars ($50,000) or less (for all such transactions in any fiscal year). Except as otherwise provided in this Agreement, Xxxxxxxx agrees that it will not commingle proceeds of Collateral with any of Borrower’s other funds or property, but 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.  
17  
  
6.5Taxes; 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, provincial, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested or otherwise permitted 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.  
6.6Access to Collateral; Books and Records. At reasonable times, on one (1) Business Day’s 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. The foregoing inspections and audits shall be conducted at such 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 a Borrower and Bank schedule an audit more than eight (8) days in advance, and such 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.  
6.7Insurance.  
(a)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.  
(b)Ensure that proceeds payable under any property policy are, at Bank’s option, payable to Bank on account of the Obligations.  
(c)At Bank’s request, Xxxxxxxx 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 thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any  
18  
  
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.  
6.8Accounts.  
(a)Maintain its and all of its Subsidiaries’ operating and other deposit accounts and excess cash with Bank and Bank’s Affiliates. Any Guarantor shall maintain all depository, operating and securities/investment accounts with Bank and Bank’s Affiliates.  
(b)In addition, Borrower shall obtain any business credit card, Letters of Credit, and cash management services exclusively from Bank.  
(c)In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank’s Affiliates. For each Collateral Account 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 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.  
6.9Adjusted Quick Ratio. Maintain at all times, tested as of the last day of each month, a ratio of (a) Quick Assets to (b) the sum of (i) Current Liabilities minus (ii) the current portion of Deferred Revenue, of at least 1.15 to 1.0.  
6.10Protection of Intellectual Property Rights.  
(a)(i) Protect, defend and maintain the validity and enforceability of its Intellectual Property; (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; 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.  
(b)Provide written notice to Bank within thirty (30) 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 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.  
19  
  
6.11Litigation 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 Xxxxxxxx’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.  
6.12Online Banking.  
(a)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).  
(b)Comply with the terms of the “Banking Terms and Conditions” and ensure that all persons utilizing the 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 the online banking platform and to further assume that any submissions or requests made via the online banking platform have been duly authorized by an Administrator.  
6.13Formation or Acquisition of Subsidiaries. Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower or any Guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date (including, without limitation, pursuant to a Division), Borrower and such Guarantor shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to become a co-borrower hereunder or a Guaranty to become a Guarantor 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 Subsidiary), substantially as described on Exhibit A hereto; (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Bank; and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, including one or more opinions of counsel 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.  
6.14Further 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  
20  
  
the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.  
7.NEGATIVE COVENANTS  
Borrower shall not do any of the following without Bank’s prior written consent:  
7.1Dispositions. 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 the ordinary course of its business for the payment of ordinary course business expenses 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 and licenses that could not result in a legal transfer of title of the licensed property but 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.  
7.2Changes in Business, Management, 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; (c) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within five (5) days after his or her departure from Borrower; or (d) permit or suffer any Change in Control.  
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 Ten Thousand Dollars ($10,000) in Borrower’s assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Ten Thousand Dollars ($10,000) 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 deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Ten Thousand Dollars ($10,000) 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 will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank.  
7.3Mergers, Amalgamations, or Acquisitions. Merge, amalgamate, or consolidate, or permit any of its Subsidiaries to merge, amalgamate, or consolidate, with any other Person, or  
21  
  
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). A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.  
7.4Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.  
7.5Encumbrance. 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, 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 in each case as is otherwise permitted in Section 7.1 hereof and the definition of “Permitted Liens” herein.  
7.6Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.8(c) hereof.  
7.7Distributions; 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; and (iii) repurchase the stock of former 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 Fifty Thousand Dollars ($50,000) per fiscal year; 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.  
7.8Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) 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, (b) transactions that are described in clauses (f), (g), and (h) of the definition of Permitted Investments, and (c) equity financings and unsecured debt financings from Borrower’s investors so long as all such Indebtedness is Subordinated Debt.  
7.9Subordinated 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.  
22  
  
7.10Compliance. 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 (a) meet the minimum funding requirements of ERISA, (b) prevent a Reportable Event or Prohibited Transaction as defined in ERISA, or (c) comply with the Federal Labor Standards Act and the Canada Labour Code, the failure of any of the conditions in clauses (a) through (c) which could reasonably be expected to have a material adverse effect on Borrower’s business, or violate any other law or regulation, if the violation could reasonably be expected to have a materials adverse effect on Borrower’s business or permit any 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, the Pension Benefit Guarantee Fund established under the Pension Benefits Act (Ontario) (or equivalent provincial legislation in another Province in Canada) or their respective successors or any other governmental agency.  
8.EVENTS OF DEFAULT  
Any one of the following shall constitute an event of default (an “Event of Default”) under this Agreement:  
8.1Payment 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 or the Growth Capital 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);  
8.2Covenant Default.  
(a)Borrower fails or neglects to perform any obligation in Sections 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.12, 6.13, or 6.14 or violates any covenant in Section 7; or  
(b)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  
23  
  
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;  
8.3Material Adverse Change. A Material Adverse Change occurs;  
8.4Attachment; Levy; Restraint on Business.  
(a)(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 xxxx 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  
(b)(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;  
8.5Insolvency. (a) Borrower or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within thirty (30) 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);  
8.6Other 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 Fifty Thousand Dollars ($50,000); 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;  
8.7Judgments; 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 Fifty Thousand Dollars ($50,000) (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);  
8.8Misrepresentations. 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  
24  
  
Document, and such representation, warranty, or other statement is incorrect in any material respect when made;  
8.9Subordinated 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 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;  
8.10Governmental Approvals. Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an 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 affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.  
9.BANK’S RIGHTS AND REMEDIES  
9.1Rights 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:  
(a)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);  
(b)stop advancing money or extending credit for Xxxxxxxx’s benefit under this Agreement or under any other agreement between Borrower and Bank;  
(c)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 or Canadian 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 another 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;  
25  
  
(d)terminate any FX Contracts;  
(e)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;  
(f)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;  
(g)apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;  
(h)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, Xxxxxxxx’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;  
(i)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;  
(j)demand and receive possession of Xxxxxxxx’s Books;  
(k)obtain from any court of competent jurisdiction an order for the sale or foreclosure of any or all of the Collateral;  
(l)appoint in writing a receiver or receiver and manager (a “Receiver”) for all or any part of the Collateral who shall be vested with all of the Bank’s rights and remedies under this Agreement, at law or in equity. Any such Receiver, with respect to responsibility for its acts, shall, to the extent permitted by applicable law, be deemed the agent of Borrower and not the Bank;  
26  
  
(m)obtain from any court of competent jurisdiction an order for the appointment of a Receiver of Borrower or of any or all of the Collateral;  
(n)realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, on such terms and conditions as the Bank may deem advisable and at such prices as it may deem best; and  
(o)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).  
9.2Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance 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), in each case for amounts and on terms Bank determines are reasonable; (d) make, settle, and adjust all claims under Xxxxxxxx’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 Xxxxxxxx’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 have been satisfied in full and the Loan Documents have been terminated. Bank’s foregoing appointment as Xxxxxxxx’s attorney in fact, and all of Bank’s rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and the Loan Documents have been terminated.  
9.3Protective 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.  
9.4Application of Payments and Proceeds. Bank shall have the right to apply 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  
27  
  
Obligations, in each case in the order set forth in this Agreement pursuant to the terms applicable at such time. 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.  
9.5Bank’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.  
9.6No 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.  
9.7Demand 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.  
9.8Co-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  
28  
  
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.  
10.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: WEAVE COMMUNICATIONS, INC., on behalf of Borrower  
0000 Xxxx Xxxxxx Xxxxxxxxx, Xxxxx 000  
Xxxx, XX 00000  
Attn: Xxxxxxx Xxxxxx, CEO  
Fax: [PERSONAL INFORMATION OMITTED]  
Email: [PERSONAL INFORMATION OMITTED]  
If to Bank: SILICON VALLEY BANK  
0000 00xx Xxxxxx, Xxxxx 0000  
Xxxxxx, XX 00000  
Attn: Xxxxxx Xxxxxxx XX, Vice President  
Email: [PERSONAL INFORMATION OMITTED]  
29  
  
11.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 Santa Clara County, 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 Xxxxxxxx’s actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.  
NO DOCUMENT SHALL BE DEEMED DELIVERED TO BANK UNTIL RECEIVED AND ACCEPTED BY BANK AT ITS OFFICES IN THE STATE OF CALIFORNIA. UNDER NO CIRCUMSTANCES SHALL THIS AGREEMENT TAKE EFFECT UNTIL EXECUTED AND ACCEPTED BY XXXX AT SAID OFFICES.  
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  
30  
  
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.  
12.GENERAL PROVISIONS  
12.1Termination Prior to Revolving Line Maturity Date or Growth Capital 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. 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 or the Growth Capital 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.  
12.2Successors 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 (other than the Warrant, as to which assignment, transfer and other such actions are governed by the terms thereof).  
31  
  
12.3Indemnification. Xxxxxxxx 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.  
12.4Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.  
12.5Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.  
12.6Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.  
12.7Amendments 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.  
12.8Counterparts. 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.  
12.9Confidentiality. In handling any confidential information, 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  
32  
  
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.  
12.10Attorneys’ 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.  
12.11Electronic 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.  
12.12Right 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 unmatured 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 XXXXXXXX, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.  
12.13Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.  
33  
  
12.14Construction 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.  
12.15Relationship. 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.  
12.16Third 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.  
12.17Effect of Amendment and Restatement. Except as otherwise set forth herein, this Agreement is intended to and does completely amend and restate, without novation, the Original Agreement. All security interests granted under the Original Agreement are hereby confirmed and ratified and shall continue to secure all Obligations under this Agreement.  
12.18Waiver. Bank hereby waives the Events of Default (as such term is defined in the Original Agreement) arising under the Original Agreement caused by Borrower’s failure to (i) timely pay all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower, pursuant to Section 5.9 of the Original Agreement, (ii) obtain Bank’s written consent prior to incurring Indebtedness, other than Permitted Indebtedness, pursuant to Section 7.4 of the Original Agreement, and (iii) obtain Bank’s written consent prior to incurring Liens, other than Permitted Liens, pursuant to Section 7.5 of the Original Agreement, and agrees not to file any legal action or institute or enforce any rights and remedies it may have against Borrower with respect thereto. Hereinafter, Borrower shall be in compliance with all provisions of this Agreement. Bank’s agreement to waive such defaults (a) in no way shall be deemed an agreement by Bank to waive Borrower’s compliance with this Agreement as of any future date, and (b) shall not limit or impair the Bank’s right to demand strict performance of this Agreement.  
13.DEFINITIONS  
13.1Definitions. 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.  
34  
  
“Account Debtor” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.  
“Administrator” is an individual that is named:  
(a) 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 the “Banking Terms and Conditions”) on behalf of Borrower; and  
(b) 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.  
“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 Borrowing Base minus (b) the outstanding principal balance of any Advances.  
The following definitions are utilized in calculating and determining the Availability Amount: “Advance Rate” is the product of three (3) multiplied by the Retention Percentage. The Advance Rate shall be calculated by Bank based on information provided by Borrower and acceptable to Bank, in its sole discretion.  
“Annualized Churn Rate” is, as of any date of determination, the percentage obtained by dividing (i) MRR attributable to Lost Customer Accounts, measured on an average trailing three (3) month basis by (ii) total MRR for such month, multiplied by twelve (12).  
“Borrowing Base” means MRR multiplied by the Advance Rate.  
“Eligible Customer Accounts” means Accounts invoiced by Borrower generated from expected receipt of MRR that (i) meet all of Borrower’s representations and warranties described in Section 5.3 and (ii) are or may be due and owing from Account Debtors deemed acceptable to Bank in its sole but reasonable discretion; provided that Bank reserves the right at any time and from time to time to exclude and/or remove any Account from the definition of Eligible Customer Accounts, in its sole, reasonable discretion.  
35  
  
“Existing Customer Accounts” are, on any date of determination, all Eligible Customer Accounts of Borrower generated from expected receipt of MRR which arise in the ordinary course of Xxxxxxxx’s business.  
“Lost Customer Accounts” are, as of any date of determination, as applicable, the total gross number of Existing Customer Accounts that were lost, cancelled or not renewed in the period ended as of such date of determination.  
“MRR” is the trailing one (1) month recognized revenue of Borrower received from software license subscription fees (including for the avoidance of doubt monthly overage xxxxxxxx and reserved instances), in each case determined in accordance with GAAP and specifically excluding revenue or accounts receivable based on (i) sales of inventory, goods, or equipment, (ii) transaction revenue not received in the ordinary course of business, (iii) sales of services not in the ordinary course of business (except that this clause is not intended to exclude Borrower’s revenue from the sale of premium services and/or support), (iv) revenue received due to one-time, non-recurring transactions, installation and/or set-up fees, and (v) add-on purchases by Borrower’s existing customers not resulting in a continuing stream of revenue.  
“Retention Percentage” is, as of any date of determination, one hundred percent (100.0%) minus the Annualized Churn Rate.  
“Bank” is defined in the preamble hereof.  
“Bank Entities” is defined in Section 12.9 hereof.  
“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.  
“Board” is Xxxxxxxx’s board of directors.  
“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 Xxxxxxxx’s assets or liabilities, the Collateral, business  
36  
  
operations or financial condition, and all computer programs or storage or any equipment containing such information.  
“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.  
“Canadian Borrower” is defined in the recitals hereof.  
“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by (i) the United States or any agency or any State thereof or (ii) Canada or any agency or Province 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 Xxxxx’x Investors Service, Inc. or DBRS; (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.  
“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 twenty-five percent (25%) or more of the ordinary voting power for the election of directors of Xxxxxxxx (determined on a fully diluted basis) other than by the sale of Borrower’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 members of the board  
37  
  
of directors or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) 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 hereof.  
“Code” is (a) with respect to any assets located in the United States, 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 the State of 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, and (b) with respect to any assets located in Canada, the PPSA; 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 PPSA or equivalent legislation in effect in a provincial jurisdiction other than British Columbia, the term “Code” shall mean the PPSA or equivalent legislation as enacted and in effect in such other province 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 certificate in the form attached hereto as Exhibit B.  
38  
  
“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.  
“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, the Growth Capital Advance, any Overadvance, Letter of Credit or any other extension of credit by Bank for Borrower’s benefit.  
“Currency” is coined money and such other banknotes or other paper money as are authorized by law and circulate as a medium of exchange.  
“Current Liabilities” are all obligations and liabilities of Borrower to Bank, plus, without duplication, the aggregate amount of Borrower’s Total Liabilities that mature within one (1) year.  
“Default Rate” is defined in Section 2.5(b) hereof.  
“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 [BANK ACCOUNT INFORMATION OMITTED] maintained by Borrower with Bank.  
39  
  
“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.  
“Effective Date” is defined in the preamble hereof.  
“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 hereof.  
“Exchange Act” is the Securities Exchange Act of 1934, as amended.  
“Financial Statement Repository” is each of (a) Bank’s e-mail address specified in Section 10 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.  
“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 Contract” is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.  
“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  
40  
  
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 which could include Canadian accounting standards for private enterprises.  
“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, federal, province, 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.  
“Growth Capital Advance(s)” is defined in Section 2.3(a) hereof.  
“Growth Capital Line” is an aggregate principal amount equal to Seven Thousand Dollars ($7,000,000).  
“Growth Capital Maturity Date” is March 1, 2024.  
“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.  
“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.  
“Indemnified Person” is defined in Section 12.3 hereof.  
“Initial Audit” is Bank’s initial inspection after the Effective Date of Borrower’s Accounts, the Collateral, and Borrower’s Books, with results satisfactory to Bank in its sole and absolute discretion.  
“Initial Growth Capital Advance” is defined in Section 2.3(a).  
41  
  
“Insolvency Proceeding” is any proceeding by or against any Person under the United States Bankruptcy Code, the Companies Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada), 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-Only Period” is the period of time from the Effective Date through September 30, 2021.  
“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.  
“Judgment Currency” is defined in Section 12.3 hereof.  
“Key Person” is each of Xxxxxxxx’s (a) President, who is Xxxxxxx Xxxxxx, as of the Effective Date, and (b) Secretary, who is Xxxxx Xxxxxx, as of the Effective Date.  
“Letter of Credit” is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.  
42  
  
“Lien” is a claim, mortgage, deed of trust, xxxx, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.  
“Loan Documents” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Warrant, 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.  
“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 condition (financial or otherwise) of Borrower; (c) a material impairment of the prospect of repayment of any portion of the Obligations; or (d) Bank determines, based upon information available to it and in its reasonable judgment, that there is a reasonable likelihood that Borrower shall fail to comply with one or more of the financial covenants in Section 6 during the next succeeding financial reporting period.  
“Monthly Financial Statements” is defined in Section 6.2(c) hereof.  
“Obligations” are Borrower’s obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Prepayment Fee and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents (other than the Warrant), 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 Xxxxxxxx’s duties under the Loan Documents (other than the Warrant).  
“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.  
“Original Agreement” is defined in the Recitals hereof.  
“Overadvance” is defined in Section 2.4 hereof.  
“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/Advance Form” is that certain form attached hereto as Exhibit C.  
43  
  
“Payment Date” is (a) with respect to the Growth Capital Advance, the first (1st) calendar day of each month and (b) with respect to Advances, the last calendar day of each month.  
“Perfection Certificate” is defined in Section 5.1 hereof.  
“Permitted Indebtedness” is:  
(a) Xxxxxxxx’s Indebtedness to Bank under this Agreement and the other Loan Documents;  
(b) Indebtedness existing on the Effective Date and 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 Xxxxx permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder; and  
(g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) 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 and shown on the Perfection Certificate;  
(b) Investments consisting of Cash Equivalents;  
(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Xxxxxxxx’s business;  
(d) Investments consisting of deposit accounts in which Bank has a perfected security  
interest;  
(e) Investments accepted in connection with Transfers permitted by Section 7.1;  
44  
  
(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 Xxxxxxxx in Subsidiaries not to exceed Fifty Thousand Dollars ($50,000) in the aggregate in any fiscal year and (ii) by Subsidiaries in other Subsidiaries not to exceed Fifty Thousand Dollars ($50,000) in the aggregate in any fiscal year 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 Borrower’s Board of Directors;  
(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; and  
(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.  
“Permitted Liens” are:  
(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;  
(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its 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 (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Fifteen Million Dollars ($15,000,000) 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, securing liabilities in the aggregate amount not to exceed Fifty Thousand Dollars ($50,000) and which are not delinquent or remain payable without penalty or which are being  
45  
  
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 XXXXX);  
(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Xxxxx described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;  
(g) leases or subleases of real property granted in the ordinary course of Xxxxxxxx’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;  
(h) non-exclusive license 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; and  
(i) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7.  
“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.  
“PPSA” means the Personal Property Security Act (British Columbia) as amended and as may be further amended and in effect from time to time.  
“Prepayment Fee” means a fee due upon prepayment (whether voluntary or otherwise) of the Growth Capital Advances equal to (i) two percent (2.00%) of the outstanding principal balance of the Growth Capital Advances if such prepayment occurs prior to the first (1st) anniversary of the Effective Date, (ii) one percent (1.00%) of the outstanding principal balance of the Growth Capital Advances if such prepayment occurs on or after the first (1st) anniversary of the Effective Date, but prior to the second (2nd) anniversary of the Effective Date, or (iii) zero percent (0.00%) of the outstanding principal balance of the Growth Capital Advances if such prepayment occurs on the second (2nd) anniversary of the Effective Date or at any time thereafter.  
46  
  
“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.  
“Quick Assets” is, on any date, Borrower’s unrestricted and unencumbered cash maintained with Bank, plus net billed payment processor accounts receivable.  
“Receiver” is defined in Section 9.1(l).  
“Registered Organization” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.  
“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.  
“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  
47  
  
(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 Ten Million Dollars ($10,000,000).  
“Revolving Line Maturity Date” is October 9, 2021.  
“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.  
“Specified Affiliate” is any Person (a) more than ten percent (10%) 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 Xxxxxxxx, and/or (ii) whose equity or ownership securities or interests representing more than ten percent (10%) of such Person’s total outstanding combined voting power are owned or held directly or indirectly, beneficially or of record, by Xxxxxxxx.  
“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Xxxxxxxx’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 or Guarantor.  
“Supplemental Growth Capital Advance” is defined in Section 2.3(a).  
“Total Liabilities” is on any day, obligations that should, under GAAP, be classified as liabilities on Borrower’s consolidated balance sheet, including all Indebtedness.  
“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 hereof.  
“US Borrower” is defined in the recitals hereof.  
48  
  
“Warrant” means, collectively, those certain Warrants to Purchase Stock between Bank and Borrower dated on or about (i) September 18, 2014, (ii) October 13, 2015, (iii) March 14, 2016, and (iv) any date theretofore or thereafter, as amended, modified, supplemented and/or restated from time to time.  
[Balance of Page Intentionally Left Blank]  
  
49  
  
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.  
BORROWER:  
WEAVE COMMUNICATIONS, INC.  
By: /s/ Xxxx Xxxxxx   
Name: Xxxx Xxxxxx   
Title: Chief Financial Officer   
WEAVE COMMUNICATIONS CANADA, INC.  
By: /s/ Xxxx Xxxxxx   
Name: Xxxx Xxxxxx   
Title: Chief Financial Officer   
BANK:  
SILICON VALLEY BANK  
By: /s/ Xxxxxx Xxxxxxx   
Name: Xxxxxx Xxxxxxx   
Title: Vice President II  
   
  
[Signature Page to Second Amended and Restated Loan and Security Agreement]  
  
EXHIBIT A  
Collateral Description  
  
  
  
  
EXHIBIT B  
Compliance Statement  
  
  
  
  
Schedule 1 to Compliance Statement  
Financial Covenant of Borrower  
  
  
  
  
EXHIBIT C  
Loan Payment/Advance Request Form  
  
  
  
  
FIRST AMENDMENT TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
THIS FIRST AMENDMENT to Second Amended and Restated Loan and Security Agreement (this “Amendment”) is entered into as of January 25, 2021, by and among SILICON VALLEY BANK, a California corporation (“Bank”), WEAVE COMMUNICATIONS, INC., a Delaware corporation (“US Borrower”), and WEAVE COMMUNICATIONS CANADA, INC., a corporation organized under the laws of the Province of British Columbia (“Canadian Borrower” and together with US Borrower, each individually and collectively, jointly and severally, “Borrower”).  
Recitals  
A. Bank and Xxxxxxxx have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of April 9, 2020 (as the same may from time to time be further amended, modified, supplemented or restated, the “Loan Agreement”).  
B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.  
C. Bank has agreed to amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.  
Agreement  
Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:  
1.Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.  
2.Amendments to Loan Agreement.  
2.1Section 6.3 (Accounts Receivable). Sections 6.3(c) and 6.3(d) of the Loan Agreement hereby are amended and restated in their entirety to read as follows:  
“(c) Collection of Accounts. Borrower shall direct Account Debtors to deliver or transmit all proceeds of Accounts into the Designated Deposit 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 Designated Deposit Account. Borrower hereby authorizes Bank to transfer to the Designated Deposit 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).  
  
  
(d) 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 Designated Deposit Account that are not applied to the Obligations as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.”  
3.Limitation of Amendments.  
3.1The amendments set forth in Section 2, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.  
3.2This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.  
4.Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:  
4.1Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;  
4.2Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;  
4.3The organizational documents of Xxxxxxxx delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;  
4.4The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;  
4.5The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;  
2  
  
4.6The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and  
4.7This Amendment has been duly executed and delivered by Xxxxxxxx and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors’ rights.  
5.Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
6.Effectiveness. This Amendment shall be deemed effective upon the due execution and delivery to Bank of this Amendment by each party hereto.  
[Balance of Page Intentionally Left Blank]  
  
3  
  
In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.  
BORROWER:  
WEAVE COMMUNICATIONS, INC.  
By: /s/ Xxxx Xxxxxx   
Name: Xxxx Xxxxxx   
Title: Chief Financial Officer   
WEAVE COMMUNICATIONS CANADA, INC.  
By: /s/ Xxxx Xxxxxx   
Name: Xxxx Xxxxxx   
Title: Chief Financial Officer   
BANK:  
SILICON VALLEY BANK  
By: /s/ Xxxxxx Xxxxxxx   
Name: Xxxxxx Xxxxxxx   
Title: Vice President II   
  
[Signature Page to First Amendment to Second Amended and Restated Loan and Security Agreement]  
  
SECOND AMENDMENT TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
This SECOND AMENDMENT TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “Amendment”) is entered into as of August 4, 2021, by and among SILICON VALLEY BANK, a California corporation (“Bank”), WEAVE COMMUNICATIONS, INC., a Delaware corporation (“US Borrower”), and WEAVE COMMUNICATIONS CANADA, INC., a corporation organized under the laws of the Province of British Columbia (“Canadian Borrower” and together with US Borrower, each individually and collectively, jointly and severally, “Borrower”).  
Recitals  
A.Bank and Borrower have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of April 9, 2020, as amended by that certain First Amendment to Second Amended and Restated Loan and Security Agreement dated as of January 25, 2021 (as the same may from time to time be further amended, modified, supplemented or restated, the “Loan Agreement”).  
B.Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.  
C.Xxxxxxxx has requested that Bank amend the Loan Agreement to (i) extend additional credit to Borrower, (ii) extend the maturity date of the revolving line of credit, (iii) refinance the growth capital advances owing from Borrower to Bank, (iv) revise the financial covenants, and (v) make certain other revisions to the Loan Agreement as more specifically set forth herein.  
D.Bank has agreed to amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.  
Agreement  
Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:  
1.Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.  
2.Amendments to Loan Agreement.  
2.1Section 2.3 (Growth Capital Advances). Section 2.3 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
  
  
“2.3 Intentionally Omitted.”  
2.2Section 2.5 (Payment of Interest on the Credit Extensions). Section 2.5(a) of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“(a) Interest Rate. Subject to Section 2.5(b), the principal amount outstanding under the Revolving Line shall accrue interest a floating per annum rate equal to the greater of (i) one quarter of one percentage point (0.25%) above the Prime Rate, or (ii) three and one half percentage points (3.50%), which interest shall, in each case, be payable monthly in accordance with Section 2.5(d) below.”  
2.3Section 2.6 (Fees). Section 2.6 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“2.6 Fees and Expenses. Borrower shall pay to Bank:  
(a)Revolving Line Commitment Fee. A fully-earned, non-refundable commitment fee of One Hundred Twenty-Five Thousand Dollars ($125,000), on the Second Amendment Effective Date (the “Commitment Fee”);  
(b)Anniversary Fee. An anniversary fee equal to One Hundred Twenty- Five Thousand Dollars ($125,000) (the “Anniversary Fee”), which is due and payable on the earlier to occur of (i) each anniversary of the Effective Date, (ii) the termination of this Agreement, or (iii) the occurrence of an Event of Default, and shall be fully earned and non-refundable as of such date;  
(c)Unused Revolving Line Facility Fee. Payable quarterly in arrears on the last calendar day of each calendar quarter 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 2.5(d), which shall be fully earned and non-refundable as of such date. 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) the average for the period of the daily closing balance of the Revolving Line outstanding. Notwithstanding the foregoing, during any calendar quarter when the outstanding principal amount of Advances made by Bank to Borrower is greater than or equal to Ten Million Dollars ($10,000,000) at all times during such calendar quarter (as determined by Bank), Bank shall waive the Unused Revolving Line Facility Fee for that calendar month only.;  
2.4Section 3.2 (Conditions Precedent to all Credit Extensions). Section 3.2 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
2  
  
“3.2 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:  
(a)timely receipt of the Credit Extension request and any materials and documents required by Section 3.4;  
(b)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  
(c)Bank determines to its satisfaction that there has not been a Material Adverse Change.”  
2.5Section 3.4 (Procedures for Borrowing). Section 3.4(b) of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“(b) Intentionally Omitted.”  
2.6Section 4.4 (Attachment). The following new Section 4.4 hereby is added to the Loan Agreement to read in its entirety as follows:  
“4.4 Attachment. Borrower hereby confirms that value has been given by Bank to Borrower, that Borrower has rights in its Collateral existing at the date of this Agreement, and that Borrower and Bank have not agreed to postpone the time for attachment of the security interest to any of the Collateral.”  
2.7Section 6.8 (Accounts). Section 6.8 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“6.8 Accounts.  
(a) Maintain its and all of its Subsidiaries’ operating and other deposit accounts and excess cash with Bank and Bank’s Affiliates. Any Guarantor shall  
3  
  
maintain all depository, operating and securities/investment accounts with Bank and Bank’s Affiliates. Notwithstanding the foregoing, so long as at least ninety percent (90%) of Borrower’s cash and Cash Equivalent assets are held in the United States in accounts at Bank and Bank’s Affiliates (i) Borrower shall be permitted to maintain its deposit accounts bearing [BANK ACCOUNT INFORMATION OMITTED] located in the Province of Ontario at the Royal Bank of Canada (the “RBC Accounts”), and (ii) Weave India shall be permitted to maintain its [BANK ACCOUNT INFORMATION OMITTED] at HSBC (the “HSBC Account”). Borrower shall be permitted to obtain its payment processor accounts at 2CP, Stripe and First Data (the “Payment Processor Accounts”) so long as all amounts in each such account in excess of One Thousand Dollars ($1,000) is swept to Borrower’s accounts at Bank at least weekly.  
(b) In addition, Borrower shall obtain any business credit card, Letters of Credit, and cash management services exclusively from Bank.  
(c) In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank’s Affiliates. For each Collateral Account 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) the RBC Accounts, (ii) the HSBC Account, (iii) the Payment Processor Accounts, or (iv) 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.”  
2.8Section 6.9 (Adjusted Quick Ratio). Section 6.9 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“6.9 Financial Covenants.  
(a)Liquidity. During any calendar month during which the sum of Borrower’s unrestricted cash and Cash Equivalents at Bank falls below One Hundred Million Dollars ($100,000,000) (the “Testing Threshold”) at any time during such calendar month (each, a “Testing Month”), Borrower shall maintain, on a consolidated basis with respect to Borrower and its Subsidiaries, Liquidity equal to or greater than Twenty Million Dollars ($20,000,000) tested on the last day of the applicable Testing Month; and  
4  
  
(b)Minimum Adjusted EBITDA. During any calendar quarter during which the sum of Borrower’s unrestricted cash and Cash Equivalents at Bank falls below the Testing Threshold at any time during such calendar quarter (each, a “Testing Quarter”), Borrower shall achieve, on a consolidated basis with respect to Borrower and its Subsidiaries, Adjusted EBITDA tested on the last day of such Testing Quarter, of not less than the amounts set forth in the chart below for the corresponding measuring period:  
Period Ending  
Minimum Adjusted EBITDA (maximum Adjusted EBITDA loss)  
Measuring Period  
June 30, 2021  
($17,000,000)  
Trailing 6 months  
September 30, 2021  
($24,500,000)  
Trailing 9 months  
December 31, 2021  
($32,500,000)  
Trailing 12 months  
  
The required minimum Adjusted EBITDA covenant levels for the measuring periods ending after December 31, 2021, shall be set by Bank based on Borrower’s projections delivered to Bank in accordance with Section 6.3(f) hereof and acceptable to Bank. The new covenant levels shall be documented in an amendment to this Agreement to be entered into on or prior to March 15, 2022. Xxxxxxxx’s failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to March 15, 2022 shall be an immediate and non-curable Event of Default hereunder.”  
2.9Section 7.11 (Subsidiary Assets). New Section 7.1 hereby is added to the Loan Agreement to read in its entirety as follows:  
“7.11 Subsidiary Assets. Permit the aggregate value of all assets held at Borrower’s Subsidiaries that are not either co-Borrowers or secured Guarantors hereunder to exceed One Million Dollars ($1,000,000).”  
2.10Section 8.1 (Payment Default). Section 8.1 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“8.1 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);”  
5  
  
2.11Section 12.1 (Termination Prior to Revolving Line Maturity Date or Growth Capital Maturity Date; Survival). Section 12.1 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“12.1 Termination Prior to Revolving Line 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. 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.”  
2.12Section 13 (Definitions). The following defined terms and their respective definitions set forth in Section 13.1 of the Loan Agreement hereby are added or amended and restated in their entirety, as applicable, to read as follows:  
“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 (excluding any amortization expense related to Borrower’s phone hardware), plus (d) income tax expense, plus (e) non-cash stock based compensation and other one-time non-cash items approved in advance, in writing by Bank in its sole discretion, plus or minus (f) any change in Borrower’s Deferred Revenue.  
“Advance Rate” is the product of four (4) multiplied by the Retention Percentage. The Advance Rate shall be calculated by Bank based on information provided by Borrower and acceptable to Bank, in its sole discretion.  
“Anniversary Fee” is defined in Section 2.6(b) hereof.  
“Commitment Fee” is defined in Section 2.6(a) hereof.  
“Credit Extension” is any Advance, any Overadvance, Letter of Credit or any other extension of credit by Bank for Xxxxxxxx’s benefit.  
“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 and its Subsidiaries, 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).  
6  
  
“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 Deposit Accounts or Securities Accounts maintained with Bank or its Affiliates, and (b) the Availability Amount.  
“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.  
“Obligations” are Borrower’s obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Commitment Fee, the Anniversary Fee, the Unused Revolving Line Facility Fee and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents (other than the Warrant), 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 Xxxxxxxx’s duties under the Loan Documents (other than the Warrant).  
“Payment Date” is the last calendar day of each month.  
“Revolving Line” is an aggregate principal amount equal to Fifty Million Dollars ($50,000,000).  
“Revolving Line Maturity Date” is August 4, 2023.  
“Second Amendment Effective Date” means August 4, 2021.  
“Testing Month” is defined in Section 6.9(a) hereof.  
“Testing Quarter” is defined in Section 6.9(b) hereof.  
“Testing Threshold” is defined in Section 6.9(a) hereof.  
“Unused Revolving Line Facility Fee” is defined in Section 2.6(c) hereof.  
“Weave India” means Borrower’s wholly owned Subsidiary Weave Communications India Private Limited, a company organized under the laws of The Republic of India.  
2.13Section 13.1 (Definitions). Subsections (c) and (g) of the defined term “Permitted Liens” hereby are amended and restated in their entirety to read as follows:  
“(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Twenty- Five Million Dollars ($25,000,000) in the aggregate amount outstanding, or (ii) existing  
7  
  
on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;  
(g) Investments by Borrower in Subsidiaries in an annual amount not to exceed (i) the amount necessary to fund payroll, operating expenses, and transfer pricing requirements incurred in the ordinary course of such Subsidiary’s business and consistent with past practices (including, for the avoidance of doubt, pursuant to “cost plus” or other transfer pricing arrangements approved in advance, in writing, by Bank), less (ii) any cash revenue received by such Subsidiary during such calendar year;”  
2.14Section 13.1 (Definitions). The following defined terms and their respective definitions set forth in Section 13.1 of the Loan Agreement hereby are deleted in their entirety:  
“Growth Capital Advance(s)”, “Growth Capital Line”, “Growth Capital Maturity Date”, “Initial Growth Capital Advance”, “Payment/Advance Form”, “Prepayment Fee”, “Supplemental Growth Capital Advance”  
2.15Exhibit B to the Loan Agreement hereby is replaced with Exhibit B attached hereto.  
2.16Exhibit C to the Loan Agreement hereby is deleted.  
3.Limitation of Amendments.  
3.1The amendments set forth in Section 2, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.  
3.2This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.  
4.Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:  
4.1Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;  
8  
  
4.2Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;  
4.3The organizational documents of Xxxxxxxx delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;  
4.4The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;  
4.5The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;  
4.6The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and  
4.7This Amendment has been duly executed and delivered by Xxxxxxxx and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors’ rights.  
5.Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
6.Effectiveness. This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of (i) this Amendment by each party hereto, and (ii) an updated corporate borrowing certificate from each Borrower in the form attached hereto, (b) Borrower’s repayment in full of all Growth Capital Advances owing from Borrower to Bank as defined in the Loan Agreement prior to the date hereof, and (c) Borrower’s payment of (i) the Commitment Fee in the amount of One Hundred Twenty-Five Thousand Dollars, and (ii) all Bank Expenses incurred on or prior to the Second Amendment Effective Date, each of which may be debited from Borrower’s accounts at Bank.  
9  
  
[Balance of Page Intentionally Left Blank]  
  
10  
  
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.  
BORROWER:  
WEAVE COMMUNICATIONS, INC.  
By: /s/ Xxxx Xxxxxx   
Name: Xxxx Xxxxxx   
Title: Chief Financial Officer   
WEAVE COMMUNICATIONS CANADA, INC.  
By: /s/ Xxxx Xxxxxx   
Name: Xxxx Xxxxxx   
Title: Chief Financial Officer   
BANK:  
SILICON VALLEY BANK  
By: /s/ Xxxxx Xxxxxxxx   
Name: Xxxxx Xxxxxxxx   
Title: Vice President  
[Signature Page to Second Amendment to Second Amended and Restated Loan and Security Agreement]  
  
EXHIBIT B  
Compliance Statement  
  
  
  
Schedule 1 to Compliance Statement  
Financial Covenant of Borrower  
  
  
  
THIRD AMENDMENT TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
This THIRD AMENDMENT TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “Amendment”) is entered into as of March 15, 2022, by and among SILICON VALLEY BANK, a California corporation (“Bank”), WEAVE COMMUNICATIONS, INC., a Delaware corporation (“US Borrower”), and WEAVE COMMUNICATIONS CANADA, INC., a corporation organized under the laws of the Province of British Columbia (“Canadian Borrower” and together with US Borrower, each individually and collectively, jointly and severally, “Borrower”).  
Recitals  
Bank and Xxxxxxxx have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of April 9, 2020, as amended by that certain First Amendment to Second Amended and Restated Loan and Security Agreement dated as of January 25, 2021, and as further amended by that certain Second Amendment to Second Amended and Restated Loan and Security Agreement dated as of August 4, 2021 (as the same may from time to time be further amended, modified, supplemented or restated, the “Loan Agreement”).  
Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.  
Xxxxxxxx has requested that Bank amend the Loan Agreement to (i) revise the Minimum Adjusted EBITDA financial covenants, (ii) updated certain reporting requirements, and (iii) make certain other revisions to the Loan Agreement as more specifically set forth herein.  
Bank has agreed to amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.  
Agreement  
Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:  
Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.  
Amendments to Loan Agreement.  
Section 6.2(Financial Statements, Reports, Certificates). Sub-sections (a) through (e) of the Loan agreement are amended and restated in their entirety to read as follows:  
“(a) 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, details of Borrower’s recurring revenue, including, without  
  
  
limitation, total MRR and the Annualized Churn Rate, (i) with each request for an Advance, (ii) quarterly within forty-five (45) days of each quarter end, and (iii) monthly, within 30 days of the end of each calendar month at all times when the sum of Borrower’s unrestricted cash and Cash Equivalents held at Bank is below the Testing Threshold;  
(b) reserved;  
(c) as soon as available, but no later than (i) forty-five (45) days after the last day of the first three calendar quarters of each fiscal year, and (ii) ninety (90) days after the last day of the last fiscal quarter of each fiscal year, a company-prepared consolidated and consolidating (if applicable) balance sheet, cash flow statement, and income statement covering Borrower’s and each of its Subsidiary’s operations for such calendar quarter in a form acceptable to Bank (the “Quarterly Financial Statements”);  
(d) (i) together with the Quarterly Financial Statements, and (ii) within thirty (30) days after the last day of each month (other than the month which is also a fiscal quarter end), a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such quarter or month, as applicable, 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 and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such month or quarter, as applicable, there were no held checks;  
(e) within forty-five (45) days after the end of each quarter, a report in a form acceptable to Bank, detailing Borrower’s total MRR, Annualized Churn Rate, Existing Customer Accounts, CAC and LTV;”  
Section 6.9 (Financial Covenants). Section 6.9(b) of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“(b) Minimum Adjusted EBITDA. During any calendar quarter during which the sum of Borrower’s unrestricted cash and Cash Equivalents at Bank falls below the Testing Threshold at any time during such calendar quarter (each, a “Testing Quarter”), Borrower shall achieve, on a consolidated basis with respect to Borrower and its Subsidiaries, Adjusted EBITDA tested on the last day of such Testing Quarter, of not less than the amounts set forth in the chart below for the corresponding measuring period:  
2  
  
Period Ending  
Minimum Adjusted EBITDA  
(maximum Adjusted EBITDA loss)  
Measuring Period  
March 31, 2022 ($38,000,000) Trailing 12 months  
June 30, 2022 ($40,500,000) Trailing 12 months  
September 30, 2022 ($38,000,000) Trailing 12 months  
December 31, 2022 ($32,500,000) Trailing 12 months  
  
The required minimum Adjusted EBITDA covenant levels for the measuring periods ending after December 31, 2022, shall be set by Bank based on Borrower’s projections delivered to Bank in accordance with Section 6.3(f) hereof and acceptable to Bank. The new covenant levels shall be documented in an amendment to this Agreement to be entered into on or prior to March 15, 2023. Xxxxxxxx’s failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to March 15, 2023 shall be an immediate and non-curable Event of Default hereunder.”  
Section 13 (Definitions). The following defined terms and their respective definitions set forth in Section 13.1 of the Loan Agreement hereby are added or amended and restated in their entirety, as applicable, to read as follows:  
“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 (excluding any amortization expense related to Borrower’s phone hardware), plus (d) income tax expense, plus (e) non-cash stock based compensation, plus (f) other one-time non-cash items approved in advance, in writing by Bank in its sole discretion, plus or minus (f) any change in Borrower’s Deferred Revenue, minus (g) capitalized software expenses.  
Exhibit B to the Loan Agreement hereby is replaced with Exhibit B attached hereto.  
Limitation of Amendments.  
The amendments set forth in Section 2, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.  
3  
  
This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.  
Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:  
Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;  
Xxxxxxxx has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;  
The organizational documents of Xxxxxxxx delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and  
This Amendment has been duly executed and delivered by Xxxxxxxx and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors’ rights.  
Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
4  
  
Effectiveness. This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by each party hereto, and (b) Borrower’s payment of all Bank Expenses incurred on or prior to the date hereof, each of which may be debited from Borrower’s accounts at Bank.  
[Balance of Page Intentionally Left Blank]  
5  
  
In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.  
BORROWER:  
  
WEAVE COMMUNICATIONS, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
WEAVE COMMUNICATIONS CANADA, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
BANK:  
  
SILICON VALLEY BANK  
  
  
By: /s/ Xxxxx Xxxxxxxx   
  
Name: Xxxxx Xxxxxxxx   
  
Title: Vice President   
  
  
  
  
  
  
  
  
   
[Signature Page to Third Amendment to Second Amended and Restated Loan and Security Agreement]  
297808962.3  
354271-000588  
  
EXHIBIT B  
Compliance Statement  
  
  
  
Schedule 1 to Compliance Statement  
Financial Covenant of Borrower  
  
   
FOURTH AMENDMENT TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
This FOURTH AMENDMENT TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “Amendment”) is entered into as of June 1, 2022, by and among SILICON VALLEY BANK, a California corporation (“Bank”), WEAVE COMMUNICATIONS, INC., a Delaware corporation (“US Borrower”), and WEAVE COMMUNICATIONS CANADA, INC., a corporation organized under the laws of the Province of British Columbia (“Canadian Borrower” and together with US Borrower, each individually and collectively, jointly and severally, “Borrower”).  
Recitals  
Bank and Borrower have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of April 9, 2020, as amended by that certain First Amendment to Second Amended and Restated Loan and Security Agreement dated as of January 25, 2021, that certain Second Amendment to Second Amended and Restated Loan and Security Agreement dated as of August 4, 2021 and that certain Third Amendment to Second Amended and Restated Loan and Security Agreement dated as of March 15, 2022 (as the same may from time to time be further amended, modified, supplemented or restated, the “Loan Agreement”).  
Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.  
Xxxxxxxx has requested that Bank amend the Loan Agreement to (i) revise the Annualized Churn Rate calculation and related definitions, and (ii) make certain other revisions to the Loan Agreement as more specifically set forth herein.  
Bank has agreed to amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.  
Agreement  
Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:  
Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.  
Amendments to Loan Agreement.  
Section 13 (Definitions). The following defined terms and their respective definitions set forth in Section 13.1 of the Loan Agreement hereby are added or amended and restated in their entirety, as applicable, to read as follows:  
  
  
“Annualized Churn Rate” is, as of any date of determination, the percentage obtained by multiplying (a) the Churn Rate (measured on an average trailing three (3) month basis) by (b) twelve (12).  
“Churn Rate” is, as of any date of determination, the percentage obtained by dividing (a) the number of Lost Customer Accounts that were lost during the trailing thirty (30) day period immediately preceding the applicable measuring date, by (b) the number of Existing Customer Accounts as of the first day of the applicable trailing thirty (30) day measuring period.  
Limitation of Amendments.  
The amendments set forth in Section 2, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.  
This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.  
Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:  
Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;  
Xxxxxxxx has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;  
The organizational documents of Xxxxxxxx delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any  
 2  
  
contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and  
This Amendment has been duly executed and delivered by Xxxxxxxx and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors’ rights.  
Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
Effectiveness. This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by each party hereto, and (b) Borrower’s payment of all Bank Expenses incurred on or prior to the date hereof, each of which may be debited from Borrower’s accounts at Bank.  
[Balance of Page Intentionally Left Blank]  
 3  
  
In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.  
BORROWER:  
  
WEAVE COMMUNICATIONS, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
WEAVE COMMUNICATIONS CANADA, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
BANK:  
  
SILICON VALLEY BANK  
  
  
By: /s/ Xxxxx Xxxxxxxx   
  
Name: Xxxxx Xxxxxxxx   
  
Title: Director   
  
[Signature Page to Fourth Amendment to Second Amended and Restated Loan and Security Agreement]  
  
FIFTH AMENDMENT TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
This FIFTH AMENDMENT TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “Amendment”) is entered into as of April 13, 2023, by and among SILICON VALLEY BANK, a division of First-Citizens Bank & Trust Company (successor by purchase to the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bridge Bank, N.A. (as successor to Silicon Valley Bank)) (“Bank”), WEAVE COMMUNICATIONS, INC., a Delaware corporation (“US Borrower”), and WEAVE COMMUNICATIONS CANADA, INC., a corporation organized under the laws of the Province of British Columbia (“Canadian Borrower” and together with US Borrower, each individually and collectively, jointly and severally, “Borrower”).  
Recitals  
Bank and Borrower have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of April 9, 2020 (as the same may from time to time be further amended, modified, supplemented or restated, including, without limitation, by that certain First Amendment to Second Amended and Restated Loan and Security Agreement dated as of January 25, 2021, that certain Second Amendment to Second Amended and Restated Loan and Security Agreement dated as of August 4, 2021, that certain Third Amendment to Second Amended and Restated Loan and Security Agreement dated as of March 15, 2022, and that certain Fourth Amendment to Second Amended and Restated Loan and Security Agreement dated as of June 1, 2022, collectively, the “Loan Agreement”).  
Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.  
Xxxxxxxx has requested that Bank amend the Loan Agreement to make certain revisions to the Loan Agreement as more specifically set forth herein.  
Bank has agreed to amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.  
Agreement  
Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:  
Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.  
Amendments to Loan Agreement.  
Section 2.6 (Fees and Expenses). Section 2.6(b) of the Loan Agreement hereby is amended and restated in its entirety and replaced with the following:  
  
  
“(b) Anniversary Fee. An anniversary fee equal to One Hundred Twenty-Five Thousand Dollars ($125,000) (the “Anniversary Fee”), which is due and payable on the earlier to occur of (i) each anniversary of the Second Amendment Effective Date, (ii) the termination of this Agreement, or (iii) the occurrence of an Event of Default, and shall be fully earned and non-refundable as of such date;”  
Section 6.9 (Financial Covenants). Section 6.9(b) of the Loan Agreement hereby is amended and restated in its entirety and replaced with the following:  
“(b) Minimum Adjusted EBITDA. During any calendar quarter during which the sum of Borrower’s unrestricted cash and Cash Equivalents at Bank falls below the Testing Threshold at any time during such calendar quarter (each, a “Testing Quarter”), Borrower shall achieve, on a consolidated basis with respect to Borrower and its Subsidiaries, Adjusted EBITDA tested on the last day of such Testing Quarter, of not less than the amounts set forth in the chart below for the corresponding measuring period:  
Period Ending  
Minimum Adjusted EBITDA  
(maximum Adjusted EBITDA loss)  
Measuring Period  
March 31, 2023 ($28,000,000) Trailing 12 months  
June 30, 2023 ($24,000,000) Trailing 12 months  
September 30, 2023 ($20,000,000) Trailing 12 months  
December 31, 2023 ($20,000,000) Trailing 12 months  
  
The required minimum Adjusted EBITDA covenant levels for the measuring periods ending after December 31, 2023, shall be set by Bank based on Borrower’s projections delivered to Bank in accordance with Section 6.3(f) hereof and acceptable to Bank. The new covenant levels shall be documented in an amendment to this Agreement to be entered into on or prior to March 15, 2024. Xxxxxxxx’s failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to March 15, 2024 shall be an immediate and non-curable Event of Default hereunder.”  
Section 13 (Definitions). The following defined term and its respective definition set forth in Section 13.1 of the Loan Agreement hereby is amended and restated in its entirety to read as follows:  
“Revolving Line Maturity Date” is August 4, 2025.  
 2  
  
Exhibit B (Compliance Statement), including Schedule 1, set forth in the Loan Agreement hereby is replaced with Exhibit B attached hereto.  
Waiver of Default. Borrower acknowledges it is currently in default of Section 8.2 of the Loan Agreement for failing to enter into an amendment to the Loan Agreement to reset the minimum Adjusted EBITDA covenant levels on or prior to the March 15, 2023, pursuant to and in accordance with Section 6.9(b) of the Loan Agreement (as in effect prior to the date hereof) (the “Existing Default”), and has requested that Bank waive its rights and remedies against Borrower, limited specifically to the Existing Default. Borrower hereby acknowledges and Bank hereby waives the Existing Default.  
Limitation of Amendment.  
This Amendment is effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.  
This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.  
Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:  
Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;  
Xxxxxxxx has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;  
The organizational documents of Xxxxxxxx delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do  
 3  
  
not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;  
The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and  
This Amendment has been duly executed and delivered by Xxxxxxxx and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors’ rights.  
Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
Prior Agreement. The Loan Documents are hereby ratified and reaffirmed and shall remain in full force and effect. Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all security or other collateral granted to Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations. This Amendment is not a novation and the terms and conditions of this Amendment shall be in addition to and supplemental to all terms and conditions set forth in the Loan Documents. In the event of any conflict or inconsistency between this Amendment and the terms of such documents, the terms of this Amendment shall be controlling, but such document shall not otherwise be affected or the rights therein impaired.  
Integration. This Amendment and 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 this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.  
Expenses. Borrower shall pay to Bank all of Bank Expenses due and owing as of the date hereof, which may be debited from any of Borrower’s accounts at Bank.  
Effectiveness. This Amendment shall be deemed effective upon the due execution and delivery to Bank of this Amendment by each party hereto.  
Miscellaneous.  
This Amendment shall constitute a Loan Document under the Loan Agreement; the failure to comply with the covenants contained herein shall constitute an Event of Default  
 4  
  
under the Loan Agreement; and all obligations included in this Amendment (including, without limitation, all obligations for the payment of principal, interest, fees, and other amounts and expenses) shall constitute obligations under the Loan Agreement and secured by the Collateral.  
Each provision of this Amendment is severable from every other provision in determining the enforceability of any provision.  
This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
The Loan Documents are hereby amended wherever necessary to reflect the changes described above.  
This Amendment and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.  
[Balance of Page Intentionally Left Blank]  
 5  
  
In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.  
BORROWER:  
  
WEAVE COMMUNICATIONS, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
WEAVE COMMUNICATIONS CANADA, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
BANK:  
  
FIRST-CITIZENS BANK & TRUST COMPANY (successor by purchase to the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bridge Bank, N.A. (as successor to Silicon Valley Bank))  
  
By: /s/ Xxxxx Xxxxxxxx   
  
Name: Xxxxx Xxxxxxxx   
  
Title: Director   
  
[Signature Page to Fifth Amendment to Second Amended and Restated Loan and Security Agreement]  
  
EXHIBIT B  
Compliance Statement  
  
  
  
Schedule 1 to Compliance Statement  
Financial Covenant of Borrower  
  
  
SIXTH AMENDMENT TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
This SIXTH AMENDMENT TO SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “Amendment”) is entered into as of March 26, 2024, by and among SILICON VALLEY BANK, a division of First-Citizens Bank & Trust Company (“Bank”), WEAVE COMMUNICATIONS, INC., a Delaware corporation (“US Borrower”), and WEAVE COMMUNICATIONS CANADA, INC., a corporation organized under the laws of the Province of British Columbia (“Canadian Borrower” and together with US Borrower, each individually and collectively, jointly and severally, “Borrower”).  
Recitals  
A.Bank and Borrower have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of April 9, 2020 (as the same may from time to time be further amended, modified, supplemented or restated, including, without limitation, by that certain First Amendment to Second Amended and Restated Loan and Security Agreement dated as of January 25, 2021, that certain Second Amendment to Second Amended and Restated Loan and Security Agreement dated as of August 4, 2021, that certain Third Amendment to Second Amended and Restated Loan and Security Agreement dated as of March 15, 2022, that certain Fourth Amendment to Second Amended and Restated Loan and Security Agreement dated as of June 1, 2022, and that certain Fifth Amendment to Second Amended and Restated Loan and Security Agreement dated as of April 13, 2023, collectively, the “Loan Agreement”).  
B.Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.  
C.Xxxxxxxx has requested that Bank amend the Loan Agreement to make certain revisions to the Loan Agreement as more specifically set forth herein.  
D.Bank has agreed to amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.  
Agreement  
Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:  
1.Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.  
  
  
2.Amendments to Loan Agreement.  
2.1 Section 6.8 (Accounts). Section 6.8(a) of the Loan Agreement hereby is amended and restated in its entirety and replaced with the following:  
“(a) Maintain account balances in Borrower’s, any of its Subsidiaries’, and any Guarantor’s operating accounts and depository accounts at or through Bank representing at least seventy-five (75.0%) of the Dollar Equivalent value of all deposit account balances of Borrower, such Subsidiary and such Guarantor at all financial institutions. Notwithstanding the foregoing, so long as at least seventy-five (75.0%) of the Dollar Equivalent value of Borrower’s cash and Cash Equivalent assets are held in the United States in accounts at Bank and Bank’s Affiliates (i) Borrower shall be permitted to maintain its deposit accounts bearing account nos. xxxx472, and xxxx611 located in the Province of Ontario at the Royal Bank of Canada (the “RBC Accounts”), and (ii) Weave India shall be permitted to maintain its account no. xxxxxxxx9001 at HSBC (the “HSBC Account”). Borrower shall be permitted to obtain its payment processor accounts at 2CP, Stripe and First Data (the “Payment Processor Accounts”) so long as all amounts in each such account in excess of One Thousand Dollars ($1,000) are swept to Borrower’s accounts at Bank at least weekly.”  
2.2 Section 6.9 (Financial Covenants). Section 6.9(b) of the Loan Agreement hereby is amended and restated in its entirety and replaced with the following:  
“(b) Minimum Adjusted EBITDA. During any calendar quarter during which the sum of Borrower’s unrestricted cash and Cash Equivalents at Bank falls below the Testing Threshold at any time during such calendar quarter (each, a “Testing Quarter”), Borrower shall achieve, on a consolidated basis with respect to Borrower and its Subsidiaries, Adjusted EBITDA tested on the last day of such Testing Quarter, of not less than the amounts set forth in the chart below for the corresponding measuring period:  
2  
  
Period Ending  
Minimum Adjusted EBITDA  
(maximum Adjusted EBITDA loss)  
Measuring Period  
March 31, 2024  
($20,000,000)  
Trailing 12 months  
June 30, 2024  
($20,000,000)  
Trailing 12 months  
September 30, 2024  
($20,000,000)  
Trailing 12 months  
December 31, 2024  
($20,000,000)  
Trailing 12 months  
  
The required minimum Adjusted EBITDA covenant levels for the measuring periods ending after December 31, 2024, shall be set by Bank based on Borrower’s projections delivered to Bank in accordance with Section 6.3(f) hereof and acceptable to Bank. The new covenant levels shall be documented in an amendment to this Agreement to be entered into on or prior to March 15, 2025. Xxxxxxxx’s failure to enter into such amendment to this Agreement to reset such covenant levels on or prior to March 15, 2025 shall be an immediate and non-curable Event of Default hereunder.”  
2.3 Exhibit B (Compliance Statement), including Schedule 1, set forth in the Loan Agreement hereby is replaced with Exhibit B attached hereto.  
3.Limitation of Amendment.  
3.1 This Amendment is effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.  
3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.  
4.Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:  
3  
  
4.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;  
4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;  
4.3 The organizational documents of Xxxxxxxx delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;  
4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;  
4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;  
4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and  
4.7 This Amendment has been duly executed and delivered by Xxxxxxxx and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors’ rights.  
5.Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
4  
  
6.Ratification of Perfection Certificate. Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in a certain Perfection Certificate dated on or prior to the Effective Date and acknowledges, confirms and agrees that the disclosures and information Borrower provided to Bank in such Perfection Certificate have not changed, as of the date hereof.  
7.Extension/Waiver. Bank hereby acknowledges that effective as of the date hereof, Bank and Borrower are resetting the covenant set forth in Section 6.9 of the Loan Agreement and, for the avoidance of doubt, to the extent that such covenant was not timely reset in accordance with the terms of the Loan Agreement and such failure would have resulted in a default under the Loan Agreement as in effect prior to the date hereof, any such default is hereby deemed waived by Bank.  
8.Prior Agreement. The Loan Documents are hereby ratified and reaffirmed and shall remain in full force and effect. Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all security or other collateral granted to Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations. This Amendment is not a novation and the terms and conditions of this Amendment shall be in addition to and supplemental to all terms and conditions set forth in the Loan Documents. In the event of any conflict or inconsistency between this Amendment and the terms of such documents, the terms of this Amendment shall be controlling, but such document shall not otherwise be affected or the rights therein impaired.  
9.Integration. This Amendment and 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 this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.  
10.Expenses. Borrower shall pay to Bank all of Bank Expenses due and owing as of the date hereof, which may be debited from any of Borrower’s accounts at Bank.  
11.Effectiveness. This Amendment shall be deemed effective upon the due execution and delivery to Bank of this Amendment by each party hereto.  
12.Miscellaneous.  
12.1 This Amendment shall constitute a Loan Document under the Loan Agreement; the failure to comply with the covenants contained herein shall constitute an Event of Default under the Loan Agreement; and all obligations included in this Amendment (including, without limitation, all obligations for the payment of principal, interest, fees, and  
5  
  
other amounts and expenses) shall constitute obligations under the Loan Agreement and secured by the Collateral.  
12.2 Each provision of this Amendment is severable from every other provision in determining the enforceability of any provision.  
12.3 This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.  
12.4 The Loan Documents are hereby amended wherever necessary to reflect the changes described above.  
12.5 Section 12.11 of the Loan Agreement applies to this Agreement.  
12.6 This Amendment and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.  
[Balance of Page Intentionally Left Blank]  
6  
  
In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.  
BORROWER:  
  
WEAVE COMMUNICATIONS, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
WEAVE COMMUNICATIONS CANADA, INC.  
  
  
By: /s/ Xxxx Xxxxxx   
  
Name: Xxxx Xxxxxx   
  
Title: Chief Financial Officer   
BANK:  
  
FIRST-CITIZENS BANK & TRUST COMPANY  
  
By: /s/ Xxxxxx Xxxxxx   
  
Name: Xxxxxx Xxxxxx   
  
Title: Vice President   
  
[Signature Page to Sixth Amendment to  
Second Amended and Restated Loan and Security Agreement]  
ACTIVE\1607926664.2  
  
EXHIBIT B  
  
COMPLIANCE STATEMENT  
  
ACTIVE\1607926664.2  
  
Schedule 1 to Compliance Statement