

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2018

OR

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

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

Commission file number: 001-32442

**inuvo**

**Inuvo, Inc.**

(Exact name of registrant as specified in its charter)

**Nevada**

(State or other jurisdiction of  
incorporation or organization)

**87-0450450**

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

**500 President Clinton Ave., Suite 300 Little Rock, AR**

(Address of principal executive offices)

**72201**

(Zip Code)

**(501) 205-8508**

Registrant's telephone number, including area code

**not applicable**

(Former name, former address and former fiscal year, if changed since last report)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company.

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

If an emerging growth company, indicate by checkmark if the registrant has not elected to use the extended transition period for complying with any new or revised financial accounting standards pursuant to Section 7(a)(2)(B) of the Securities Act:

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

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

**Title of Class**

Common Stock

**November 2, 2018**

32,435,446

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

This report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “will,” “should,” “intend,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” or “continue,” or the negative of such terms or other comparable terminology. This report includes, among others, statements regarding our:

- risks associated with our pending Merger;
- material dependence on our relationships with Yahoo!, Google and other demand partners and risks associated with declining revenue from Yahoo!;
- dependence on our financing arrangements with Western Alliance Bank; which is collateralized by our assets;
- dependence on relationships with supply partners and the introduction of new products and services, which require significant investment;
- the seasonality of our business and restricted cash flow during seasonal low periods;
- dependence on our ability to effectively market and attract traffic to our sites;
- risks associated with our failure to adhere to the covenants and restrictions in our grant agreement with the state of Arkansas;
- need to keep pace with technology changes;
- fluctuations of quarterly financial results and the trading price of our common stock;
- vulnerability to interruptions of services;
- dependence on key personnel;
- vulnerability to regulatory and legal uncertainties and our ability to comply with applicable laws and regulations;
- need to protect our intellectual property;
- vulnerability to publishers who could fabricate clicks;
- vulnerability to a downturn and to uncertainty in global economic conditions; and
- the dilutive impact to our stockholders from outstanding restricted stock grants and options.

These forward-looking statements were based on various factors and were derived utilizing numerous assumptions and other factors that could cause our actual results to differ materially from those in the forward-looking statements. Most of these factors are difficult to predict accurately and are generally beyond our control. You should consider the areas of risk described in connection with any forward-looking statements that may be made herein. Readers are cautioned not to place undue reliance on these forward-looking statements and readers should carefully review this report in its entirety, including the risks described in Part II, Item 1A. Risk Factors appearing in this report, together with those appearing in Item 1A. Risk Factors, in our Annual Report on Form 10-K for the year ended December 31, 2017 as filed with the SEC on February 8, 2018 and our subsequent filings with the Securities and Exchange Commission.

Except for our ongoing obligations to disclose material information under the Federal securities laws, we undertake no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events. These forward-looking statements speak only as of the date of this report, and you should not rely on these statements without also considering the risks and uncertainties associated with these statements and our business.

## OTHER PERTINENT INFORMATION

Unless specifically set forth to the contrary, when used in this report the terms "Inuvo," the "Company," "we," "us," "our" and similar terms refer to Inuvo, Inc., a Nevada corporation, and its subsidiaries. When used in this report, "third quarter 2018" means for the three months ended September 30, 2018, "third quarter 2017" means for the three months ended September 30, 2017, "2017" means the fiscal year ended December 31, 2017 and "2018" means the fiscal year ending December 31, 2018. In February 2017, the Company acquired the assets and certain liabilities of a technology company, NetSeer, Inc. This acquisition will be referred to throughout the filing as the "2017 asset acquisition." The information which appears on our corporate web site at [www.inuvo.com](http://www.inuvo.com) is not part of this report.

**PART I - FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

**INUVO, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**September 30, 2018 (Unaudited) and December 31, 2017**

<b>Assets</b>	<b>2018</b>	<b>2017</b>
<b>Assets</b>		
Current assets		
Cash	\$ 4,190,274	\$ 4,084,686
Accounts receivable, net of allowance for doubtful accounts of \$43,727 and \$83,789, respectively.	5,614,031	10,759,250
Prepaid expenses and other current assets	307,256	400,191
Total current assets	10,111,561	15,244,127
Property and equipment, net	2,260,967	2,306,279
Other assets		
Goodwill	9,853,342	9,853,342
Intangible assets, net of accumulated amortization	9,779,307	10,808,018
Other assets	35,171	36,070
Total other assets	19,667,820	20,697,430
Total assets	<u>\$ 32,040,348</u>	<u>\$ 38,247,836</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities		
Accounts payable	\$ 9,021,255	\$ 13,614,053
Accrued expenses and other current liabilities	2,456,831	2,887,816
Revolving credit line	4,825,000	4,900,000
Total current liabilities	16,303,086	21,401,869
Long-term liabilities		
Deferred tax liability	2,331,900	2,331,900
Other long-term liabilities	250,959	426,725
Total long-term liabilities	2,582,859	2,758,625
Stockholders' equity		
Preferred stock, \$.001 par value:		
Authorized shares 500,000, none issued and outstanding	—	—
Common stock, \$.001 par value:		
Authorized shares 40,000,000; issued shares 32,810,202 and 28,994,981, respectively; outstanding shares 32,433,675 and 28,618,454, respectively	32,811	28,996
Additional paid-in capital	138,779,584	136,033,967
Accumulated deficit	(124,261,433)	(120,579,062)
Treasury stock, at cost - 376,527 shares	(1,396,559)	(1,396,559)
Total stockholders' equity	<u>13,154,403</u>	<u>14,087,342</u>
Total liabilities and stockholders' equity	<u>\$ 32,040,348</u>	<u>\$ 38,247,836</u>

See accompanying notes to the consolidated financial statements.

**INUVO, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**For the Three and Nine Months Ended 2018 and 2017**  
**(Unaudited)**

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2018	2017	2018	2017
Net revenue	\$ 16,806,170	\$ 20,311,502	\$ 56,315,006	\$ 55,798,545
Cost of revenue	6,196,057	9,649,295	21,965,955	25,161,761
Gross profit	10,610,113	10,662,207	34,349,051	30,636,784
Operating expenses				
Marketing costs (traffic acquisition costs or TAC)	8,285,465	7,161,905	25,025,922	21,122,489
Compensation	1,806,111	2,363,901	6,749,280	7,053,308
Selling, general and administrative	1,859,020	2,025,254	5,968,233	6,308,552
Total operating expenses	11,950,596	11,551,060	37,743,435	34,484,349
Operating loss	(1,340,483)	(888,853)	(3,394,384)	(3,847,565)
Interest expense, net	(101,167)	(97,318)	(296,612)	(212,922)
Loss from continuing operations before taxes	(1,441,650)	(986,171)	(3,690,996)	(4,060,487)
Income tax benefit	—	—	8,625	—
Net loss from continuing operations	(1,441,650)	(986,171)	(3,682,371)	(4,060,487)
Net loss from discontinued operations	—	—	—	(1,109)
Net loss	<u>(1,441,650)</u>	<u>(986,171)</u>	<u>(3,682,371)</u>	<u>(4,061,596)</u>
Per common share data				
Basic and diluted:				
Net loss from continuing operations	\$ (0.04)	\$ (0.03)	\$ (0.12)	\$ (0.14)
Net loss from discontinued operations	—	—	—	—
Net loss	<u>\$ (0.04)</u>	<u>\$ (0.03)</u>	<u>\$ (0.12)</u>	<u>\$ (0.14)</u>
Weighted average shares				
Basic	32,316,988	28,553,055	30,540,796	28,030,902
Diluted	32,316,988	28,553,055	30,540,796	28,030,902

See accompanying notes to the consolidated financial statements.

**INUVO, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)

	For the Nine Months Ended September 30,	
	2018	2017
Operating activities:		
Net loss	\$ (3,682,371)	\$ (4,061,596)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,371,958	2,239,498
Stock based compensation	827,595	923,072
Amortization of financing fees	19,200	19,200
(Recovery) Provision of doubtful accounts	(40,062)	138,789
Adjustment of European liabilities related to discontinued operations	—	1,109
Change in operating assets and liabilities:		
Accounts receivable	5,183,579	(237,078)
Prepaid expenses and other current assets	74,634	81,485
Accounts payable	(4,592,798)	(1,099,692)
Accrued expenses and other liabilities	(445,857)	(967,553)
Net cash used in operating activities	(284,122)	(2,962,766)
Investing activities:		
Purchases of equipment and capitalized development costs	(1,300,179)	(1,062,811)
Net cash received from 2017 asset acquisition	—	235,763
Net cash used in investing activities	(1,300,179)	(827,048)
Financing activities:		
Net proceeds from sale of common stock	2,000,583	—
Net (payments) proceeds on revolving credit line	(75,000)	5,000,000
Net taxes paid on RSU grants exercised	(77,044)	(97,376)
Payments on capital leases	(158,650)	(97,300)
Treasury stock repurchase	—	(44,772)
Payoff of 2017 asset acquisition debt acquired	—	(2,015,577)
Net cash provided by financing activities	1,689,889	2,744,975
Net change – cash	105,588	(1,044,839)
<b>Cash, beginning of year</b>	4,084,686	3,946,804
<b>Cash, end of period</b>	\$ 4,190,274	\$ 2,901,965
Supplemental information:		
Interest paid	\$ 287,374	\$ 180,796
Non cash investing and financing activities:		
2017 asset acquisition stock issuance (See Note 13)	\$ —	\$ 4,459,244
Purchase of property and equipment under capital lease	\$ —	\$ 523,518
Write-down of domain names and corresponding contingent liability	\$ —	\$ 222,477

See accompanying notes to the consolidated financial statements.

**Inuvo, Inc.**  
**Notes to Consolidated Financial Statements**  
**(Unaudited)**

**Note 1 – Organization and Business**

**Company Overview**

We develop technology that connects advertisers with consumers through interactions with content across devices. Inuvo provides the means to interact with tens of thousands of advertisers ("Demand") and tens of thousands of online publishers ("Supply"). We interact with Demand/Supply constituents directly and indirectly. We serve ads that associate with images, content, video and slideshows. We generate revenue from buyers of advertising inventory which include media partners, advertisers, agencies, agency trading desks, demand-side platforms and ad networks, collectively "Demand." Our solution incorporates a proprietary form of artificial intelligence ("AI") branded the IntentKey. This sophisticated machine learning technology uses interactions with Internet content as a source of information from which to determine Intent. The AI solution includes a continually updated database of over 500 million machine profiles which we utilize to deliver highly targeted online audiences to our Demand customers. We earn revenue when consumers view and/or click on our ads. Our business scales as we add Demand and Supply relationships.

We count among our many contractual relationships, three clients who collectively manage over 50% of all US digital advertising budgets. Included within our Supply portfolio is a collection of owned websites such as alot.com and earnspendlive.com, where we create content in health, finance, travel, careers, auto, education and living categories. These sites provide the means to test advertising technologies, while also delivering high quality consumers to advertisers through interaction with proprietary content in the form of images, videos, slideshows and the written word.

There are many barriers to entry to our business including the ability to process billions of transactions daily. Our intellectual property is protected by 15 issued and eight pending patents.

*Liquidity*

On October 11, 2018, we entered into the Amended and Restated Business Financing Agreement (the "Amended and Restated Financing Agreement") with Western Alliance Bank. The Amended and Restated Financing Agreement, which is secured by all of our assets, superseded in its entirety the prior Business Financing Agreement, as amended, that we entered into on March 1, 2012 with Bridge Bank, N.A. which is now owned by Western Alliance Bank. The Amended and Restated Financing Agreement does not have a term and either party may terminate upon notice to the other party. As a result of the amended terms of our lending relationship with Western Alliance Bank, we have additional access to credit (See Note 5 in the Notes to Consolidated Financial Statements).

In May 2018, we completed our underwritten public offering of 2,860,000 shares of our common stock at a public offering price of \$0.70 per share and an additional 429,000 shares to cover overallocments in connection with the offering. The net proceeds after deducting the underwriting discounts and commissions and estimated offering expenses payable was approximately \$2.1 million.

During the third quarter of 2017, we filed an S-3 registration statement with the Securities and Exchange Commission ("SEC") to replace the existing, expiring S-3 "shelf" registration statement, which permits us to offer and sell up to \$15 million of our securities from time to time in one or more offerings. In May 2018, we took down from this shelf registration statement approximately \$2.3 million in the underwritten public offering.

For the three months ended September 30, 2018, our revenues declined 17.3% from the same quarter in the prior year. The lower revenue in this year's quarter is principally responsible for our \$1.4 million net loss in the third quarter of 2018. Since our credit facility is dependent upon receivables, we do not know when, if ever, that our revenues will return to historic levels or if we will be able to replace those lost revenues with revenues from other demand partners. The combination of lower credit availability and negative cash flows generated from operating activities raises concern about our ability to continue without interruption. As described in note 15 to the notes to consolidated financial statements appearing earlier in this report, on November 2, 2018, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with ConversionPoint Technologies, Inc. ("CPT") and certain related parties which provides that at the closing of this pending transaction (the "Merger"), which is subject to a number of conditions precedent, the Company will become a wholly-owned subsidiary of CPT. There are no assurances the Merger will be consummated. In addition, on November 2, 2018, we borrowed \$1 million from an affiliate of CPT which we are using for working capital, and on November 2, 2018, four directors of the Company lent us \$62,500 each, for an aggregate of \$250,000, to cover certain costs associated with the pending Merger. Subject to the terms of

the Merger Agreement and the credit facility with the additional borrowing, we believe we will have sufficient cash and credit to operate until the Merger closes. There are no assurances we will be successful in our efforts to generate revenues, report profitable operations or close the Merger in which case we would need to find additional sources of credit and make substantial reductions to operating expense.

#### *Customer concentration*

We generated the majority of our revenue from two Demand side customers, Yahoo! and Google as noted below:

	<b>For the Three Months Ended September 30,</b>		<b>For the Nine Months Ended September 30,</b>	
	<b>2018</b>	<b>2017</b>	<b>2018</b>	<b>2017</b>
Yahoo!	75.6%	62.1 %	72.9 %	68.5 %
Google	8.5%	8.9 %	9.0 %	10.8 %
<b>Total</b>	<b>84.1%</b>	<b>71.0 %</b>	<b>81.9 %</b>	<b>79.3 %</b>

As of September 30, 2018, Yahoo! and Google accounted for 70.0% of our gross accounts receivable balance. As of December 31, 2017, two Demand side customers, Yahoo! and OpenX, accounted for 71.3% of our gross accounts receivable balance.

We still source the majority of our Demand revenue through these relationships where we have access to advertiser budgets indirectly. While this strategy creates a concentration risk, we believe that it also provides upside opportunities including: access to hundreds of thousands of advertisers across geographies; the ability to scale our business across verticals; an avoidance of the sales costs associated with a large direct to advertisers' sales force; access to innovation; overall media budget market insights; attractive payment terms; and low risk on receivables.

## **Note 2 – Summary of Significant Accounting Policies**

### *Basis of presentation*

The consolidated financial statements presented are for Inuvo, Inc. and its consolidated subsidiaries. The accompanying unaudited consolidated financial statements have been prepared based upon SEC rules that permit reduced disclosure for interim periods. Certain information and footnote disclosures have been condensed or omitted in accordance with those rules and regulations. The accompanying consolidated balance sheet as of December 31, 2017, was derived from audited financial statements, but does not include all disclosures required by accounting principles generally accepted in the United States ("GAAP"). In our opinion, these consolidated financial statements reflect all adjustments that are necessary for a fair presentation of results of operations and financial condition for the interim periods shown including normal recurring accruals and other items. The results for the interim periods are not necessarily indicative of results for the full year. For a more complete discussion of significant accounting policies and certain other information, this report should be read in conjunction with the consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on February 8, 2018.

### *Use of estimates*

The preparation of financial statements, in accordance with GAAP, requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, net revenues and expenses and disclosure of contingent assets and liabilities. The estimates and assumptions used in the accompanying consolidated financial statements are based upon management's regular evaluation of the relevant facts and circumstances as of the date of the consolidated financial statements. We regularly evaluate estimates and assumptions related to allowances for doubtful accounts, accrued sales reserve, goodwill and purchased intangible asset valuations, lives of intangible assets, deferred income tax asset valuation allowances and stock compensation. Actual results may differ from the estimates and assumptions used in preparing the accompanying consolidated financial statements, and such differences could be material.

### *Revenue Recognition*

In May 2014, the FASB issued Accounting Standards Update No. 2014-09 (Topic 606) "Revenue from contracts with Customers." Topic 606 supersedes the revenue recognition requirements in Topic 605 "Revenue Recognition" (Topic 605) and requires entities to recognize revenue when control of the promised goods or services is transferred to customers at an amount



that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The Company adopted this guidance on January 1, 2018 using the modified retrospective approach. The adoption of Topic 606 from Topic 605 had no cumulative impact on retained earnings and no impact on revenue reported as of September 30, 2018.

Effective January 1, 2018, we recognize revenue following the five-step process outlined in Topic 606. We identify and have on file contracts with all customers. Our contracts with our major search partners pay upon delivery of a click. Additionally, our contracts with advertisers pay upon the serving of impressions. Our performance obligation is met when we deliver a click to a search partner or serve an impression to a digital publisher. We satisfy the performance obligation and recognize revenue when a click occurs from advertisements served to our digital properties or to those of our publishing partners in the period in which the click occurs. We serve as the principal in our contracts because we control the service to be performed by our publishing partners. The Company is ultimately responsible for fulfilling the promise to its customers and has latitude in pricing and publisher selection. There is no transaction price allocated to unsatisfied performance obligation and there were no contract assets or liabilities as of the date of adoption and as of September 30, 2018.

The following table presents our revenue disaggregated by channel:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2018	2017	2018	2017
Mobile	\$ 12,532,579	\$ 12,899,583	\$ 39,800,781	\$ 33,241,487
Desktop	4,014,356	7,202,772	15,671,684	21,790,230
Other	259,235	209,147	842,541	766,828
Total	<u>\$ 16,806,170</u>	<u>\$ 20,311,502</u>	<u>\$ 56,315,006</u>	<u>\$ 55,798,545</u>

#### *Recent accounting pronouncements*

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. This standard will require all leases with durations greater than twelve months to be recognized on the balance sheet and is effective for interim and annual reporting periods beginning after December 15, 2018, although early adoption is permitted. We believe adoption of this standard will have an impact on our consolidated balance sheets. Although we have not completed our assessment, we do not expect the adoption to change the recognition, measurement or presentation of lease expenses within the results of operations.

#### **Note 3– Property and Equipment**

The net carrying value of property and equipment was as follows as of:

	September 30, 2018	December 31, 2017
Furniture and fixtures	\$ 293,152	\$ 288,536
Equipment	1,525,057	1,509,464
Capitalized internal use and purchased software	8,809,333	7,582,181
Leasehold improvements	421,016	455,850
Subtotal	11,048,558	9,836,031
Less: accumulated depreciation and amortization	(8,787,591)	(7,529,752)
Total	<u>\$ 2,260,967</u>	<u>\$ 2,306,279</u>

During the three and nine months ended September 30, 2018, depreciation expense was \$457,272 and \$1,343,247, respectively. During the three and nine months ended September 30, 2017, depreciation expense was \$406,014 and \$1,077,143, respectively.

#### Note 4 – Other Intangible Assets and Goodwill

The following is a schedule of intangible assets as of September 30, 2018:

	Term	Carrying Value	Accumulated Amortization	Net Carrying Value	Year-to-date Amortization
Customer list, Google Technology	20 years	\$ 8,820,000	\$ (2,903,250)	\$ 5,916,750	\$ 330,750
Customer list, all other	5 years	3,600,000	(1,200,000)	2,400,000	540,000
Customer relationships	10 years	1,610,000	(1,059,943)	550,057	120,753
Trade names, web properties (1)	20 years	570,000	(47,500)	522,500	21,375
Brand	-	390,000	—	390,000	—
Non-competition agreements	1 year	121,000	(121,000)	—	10,083
Intangible assets classified as long-term	1 year	69,000	(69,000)	—	5,750
		<u>\$ 15,180,000</u>	<u>\$ (5,400,693)</u>	<u>\$ 9,779,307</u>	<u>\$ 1,028,711</u>
Goodwill, total	-	\$ 9,853,342	\$ —	\$ 9,853,342	\$ —

(1) The trade names related to our web properties have an indefinite life, and as such are not amortized.

Amortization expense over the next five years and thereafter is as follows:

2018	\$ 337,626
2019	1,350,504
2020	1,350,504
2021	1,350,504
2022	556,294
Thereafter	4,443,875
Total	<u>\$ 9,389,307</u>

#### Note 5 - Revolving Credit Line

The following table summarizes our revolving credit line balances as of:

	September 30, 2018	December 31, 2017
Revolving credit line - 6.25 percent at September 30, 2018 (prime plus 1.0 percent), due October 20, 2018	\$ 4,825,000	\$ 4,900,000
Total	<u>\$ 4,825,000</u>	<u>\$ 4,900,000</u>

On October 11, 2018, we entered into the Amended and Restated Business Financing Agreement with Western Alliance Bank and superseded the Business Financing Agreement, as amended, we entered into on March 1, 2012 with Bridge Bank, N.A. which is now owned by Western Alliance Bank. The Amended and Restated Financing Agreement may be terminated by either party upon notice to the other party. As a result of the Amended and Restated Financing Agreement we have access to additional credit. The material terms of the Amended and Restated Financing Agreement include financing eligible invoiced receivables at an advance rate of 85% and an interest rate of prime plus 1% and a sub-limit of up to \$2.5 million of uninvoiced eligible receivables at an advance rate of 75% and an interest rate of prime plus 2%. The sub-limit provision expires at the end of January 2019. The Amended and Restated Financing Agreement includes certain fees; a facility fee of \$11,765 due at closing; an annual facility fee of 0.25% of the account balance due beginning on April 20, 2019; a monthly maintenance fee of 0.125% of the ending daily account balance; a \$30,000 fee in lieu of a warrant; and \$75,000 due upon termination of the agreement or repayment of our obligations under the agreement. The Amended and Restated Financing Agreement is secured by all of our assets.

On September 19, 2018, we entered into the Eleventh Business Financing Modification Agreement with Western Alliance Bank that modified the existing agreement by extending the maturity date to October 20, 2018.

On March 1, 2012, we entered into a Business Financing Agreement with Bridge Bank, which is now owned by Western Alliance Bank. On April 18, 2018, we entered into the Tenth Business Financing Modification Agreement with Western Alliance Bank the parent company of Bridge Bank, N.A., our original lender, that modified the existing agreement. The modified terms require a monthly quick ratio of not less than .60 to 1.00 from February 1, 2018 through November 30, 2018; and a monthly quick ratio of not less than .70 to 1.00 on and after December 31, 2018; and the quarterly consolidated Adjusted EBITDA shall not negatively deviate from financial projections by more than \$18,000 for the quarter ending March 31, 2018, \$57,000 for the quarter ending June 30, 2018, \$191,000 for the quarter ended September 30, 2018 and \$496,000 for the quarter ended December 31, 2018, or with respect to any quarter in 2019 and beyond, by more than 25% from projections. In addition, the finance charge for outstanding advances is equal to Prime Rate plus one basis point. The agreement provided us with a revolving credit line of up to \$10 million which we use to help satisfy our working capital needs. We have provided Western Alliance Bank with a first priority perfected security interest in all of our accounts and personal property as collateral for the credit facility. Available funds under the revolving credit line are 85% of eligible accounts receivable balances up to a limit of \$10 million. Eligible accounts receivable is generally defined as those from United States based customers that are not more than 90 days from the date of invoice less certain contra accounts.

We had no availability under the revolving credit line as of September 30, 2018 and the outstanding balance due on the revolving line of credit was \$4.8 million. We were not in compliance with the agreement's financial covenants as of September 30, 2018 and received a waiver from the bank of compliance with the financial covenants.

#### Note 6 – Accrued Expenses and Other Current Liabilities

The accrued expenses and other current liabilities consist of the following as of:

	September 30, 2018	December 31, 2017
Accrued marketing costs (TAC)	\$ 1,654,053	\$ 1,107,404
Accrued expenses and other	315,524	624,688
Capital leases, current portion	204,430	209,940
Accrued payroll and commission liabilities	184,405	867,634
Accrued sales allowance	50,000	50,000
Arkansas grant reserve	25,000	2,245
Accrued taxes	23,419	25,905
Total	<u>\$ 2,456,831</u>	<u>\$ 2,887,816</u>

#### Note 7 – Other Long-Term Liabilities

Other long-term liabilities consist of the following as of:

	September 30, 2018	December 31, 2017
Capital leases, less current portion	\$ 128,329	\$ 281,470
Deferred rent	108,868	131,493
Accrued taxes, less current portion	13,762	13,762
Total	<u>\$ 250,959</u>	<u>\$ 426,725</u>

#### Note 8 – Income Taxes

We have a deferred tax liability of \$2,331,900 as of September 30, 2018 and December 31, 2017, related to intangible assets acquired in March 2012 and February 2017.

We also have a net deferred tax asset of \$32,503,735. We believe it is more likely than not that essentially none of our deferred tax assets will be realized, and we have recorded a valuation allowance for the net deferred tax assets that may not be realized as of September 30, 2018 and December 31, 2017.

## Note 9 - Stock-Based Compensation

We maintain a stock-based compensation program intended to attract, retain and provide incentives for talented employees and directors and align stockholder and employee interests. Currently, we grant options and restricted stock units ("RSUs") from the 2010 Equity Compensation Plan ("2010 ECP") and 2017 Equity Compensation Plan ("2017 ECP"). Option and RSUs vesting periods are generally up to three years and/or achieving certain financial targets.

### Compensation Expense

For the three and nine months ended September 30, 2018, we recorded stock-based compensation expense for all equity incentive plans of \$159,799 and \$827,595, respectively. For the three and nine months ended September 30, 2017, we recorded stock-based compensation expense for all equity incentive plans of \$336,913 and \$923,072, respectively. Total compensation cost not yet recognized at September 30, 2018 was \$1,138,696 to be recognized over a weighted-average recognition period of 1.7 years.

The following table summarizes the stock grants outstanding under our 2005 Long-Term Incentive Plan ("2005 LTIP"), the 2010 ECP and the 2017 ECP as of September 30, 2018:

	<b>Options Outstanding</b>	<b>RSUs Outstanding</b>	<b>Options and RSUs Exercised</b>	<b>Available Shares</b>	<b>Total</b>
2017 ECP	—	733,500	41,664	1,374,836	2,150,000
2010 ECP	250,498	910,449	3,380,919	290,152	4,832,018
2005 LTIP (*)	13,748	—	950,085	—	963,833
Total	264,246	1,643,949	4,372,668	1,664,988	7,945,851

(\*) Expired June 2015

The following table summarizes the activities of stock option awards under the 2005 LTIP and the 2010 ECP as of September 30, 2018:

	<b>Shares Subject to Options Outstanding</b>			
	<b>Number of Shares</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Remaining Contractual Term (in years)</b>	<b>Aggregate Intrinsic Value</b>
Balance as of December 31, 2017	264,246	\$ 2.84	2.7	\$ 2,019
Stock options exercised	—	\$ —	—	—
Balance as of September 30, 2018	264,246	\$ 2.84	2.7	\$ 2,019
Stock options exercisable as of September 30, 2018	264,246	\$ 2.84	2.7	\$ 2,019

The following table summarizes the activities for our unvested RSUs for the nine months ended September 30, 2018:

	<b>Unvested RSUs</b>	
	<b>Number of Shares</b>	<b>Weighted Average Grant Date Fair Value</b>
Unvested as of December 31, 2017	1,071,538	\$ 1.84
Granted	1,664,266	\$ 0.76
Vested	641,843	\$ 2.26
Forfeited	450,012	\$ 1.05
Unvested as of September 30, 2018	1,643,949	\$ 0.80

## Note 10 – Discontinued Operations

Certain of our subsidiaries previously operated in the European Union ("EU"). Though our operations ceased in 2009, statutory requirements required a continued presence in the EU for varying terms until November 2015. Profits and losses generated from the remaining assets and liabilities are accounted for as discontinued operations.

In the third quarter of 2016, our petition with the UK (United Kingdom) Companies House to strike off and dissolve our remaining subsidiary in the EU was approved. As a result, for the nine months ended September 30, 2017, we recorded a net loss of \$1,109 due to a charge from a service provider.

#### Note 11 - Earnings per Share

During the three and nine month periods ended September 30, 2018 and September 30, 2017, we generated a net loss from continuing operations and as a result, all of our shares are anti-dilutive.

#### Note 12 - Leases

We lease certain office space and equipment. As leases expire, it can be expected that they will be renewed or replaced in the normal course of business. Rent expense from continuing operations was \$101,767 and \$309,596 for the three and nine months ended September 30, 2018, respectively, and \$109,701 and \$346,717 for the three and nine months ended September 30, 2017, respectively.

Minimum future lease payments under non-cancelable operating leases as of September 30, 2018 are:

2018	\$	118,870
2019		477,319
2020		405,606
2021		242,558
2022		163,284
Total	\$	<u>1,407,637</u>

In April 2015, we entered into a five-year agreement to lease office space in Little Rock, Arkansas commencing October 1, 2015, to serve as our headquarters. The lease is for 12,245 square feet and cost approximately \$171,000 during its first year. Thereafter, the lease payment increases by 2%.

As part of the 2017 asset acquisition, Inuvo assumed the office space lease and a lease obligation in Sunnyvale, CA. The lease was for 15,717 square feet and cost approximately \$95,000 for the remaining term of the lease which expired in July 2017.

In June 2017, we entered into an agreement to lease 4,801 square feet of office space in San Jose, CA commencing on July 17, 2017. The lease has a term of five years and cost approximately \$216,000 during its first year. After the first year, the lease payments increase by 3% per annum.

In June 2017, we entered into an agreement with Dell Financial Services to lease computer equipment for our data centers. The lease has a term of three years and will cost approximately \$173,000 over the life of the lease.

Capital lease obligations and future minimum lease payments under non-cancelable capital leases as of September 30, 2018 are:

	<b>Lease Payments</b>
2018	\$ 59,527
2019	\$ 213,685
2020	\$ 82,404
Total payments under capital lease obligations	\$ 355,616
Less amount representing interest	(22,857)
Present value of capital lease obligations	332,759
Current portion of capital lease obligations	(204,430)
Capital lease obligations, net of current portion	<u>\$ 128,329</u>

Assets acquired under capital lease obligations are included in property and equipment in the accompanying consolidated balance sheets. Cost and related accumulated depreciation as of:

	<b>September 30, 2018</b>	<b>December 31, 2017</b>
Equipment	\$ 707,264	\$ 707,264
Less accumulated depreciation	(393,806)	(242,169)
Equipment, net	<u>\$ 313,458</u>	<u>\$ 465,095</u>

Depreciation expense on assets under capital lease obligations was \$47,277 and \$151,637 for the three and nine months ended September 30, 2018, respectively, and \$107,531 and \$66,245 for the three and nine months ended September 30, 2017, respectively, and is included in the consolidated statements of operations.

In February 2017, we acquired assets and certain liabilities including the capital lease for computer equipment with a remaining value at that time of \$88,575.

In June 2017, we entered into an agreement with Dell Financial Services to lease computer equipment for our data centers. The lease has a term of three years and will cost approximately \$516,000 over the life of the lease.

### **Note 13 - 2017 Asset Acquisition**

On February 6, 2017, we entered into an Asset Purchase Agreement to acquire substantially all of the assets and certain liabilities and personnel obligations, in exchange for 3,529,000 shares of our common stock. Of this amount, 529,350 shares were deposited into escrow with our counsel under the terms of an escrow agreement pending possible post-closing adjustments in the purchase price related to working capital and audited financial statement adjustments, as well as in connection with possible indemnification claims post-closing. In August 2017, these shares were released from escrow and delivered to the sellers in accordance with the terms of the Asset Purchase Agreement. The operating results of this acquisition have been included in the consolidated statements of operations since the acquisition date. As a result of the business acquisition, the Company recognized goodwill in the amount of \$4,013,034. The factors contributing to the recognition of the amount of goodwill are based on strategic benefits that are expected to be realized from the asset acquisition. The Company incurred approximately \$350,000 in acquisition related costs, which are recorded in selling, general and administrative expenses in the accompanying consolidated statements of operations.

<b>Total consideration paid in common stock (with marketability discount applied)</b>	\$ 4,459,244
<b>Fair value of assets acquired:</b>	
Accounts receivable, net	(2,292,485)
Prepaid expenses and other current assets	(236,163)
Property and equipment, net	(119,101)
Goodwill	(4,013,034)
Intangible assets	(4,360,000)
<b>Fair value of liabilities assumed:</b>	
Accounts payable	\$ 3,579,787
Accrued expenses and other current liabilities	1,152,789
Other long-term liabilities	49,149
Debt	2,015,577
Cash received in acquisition	<u>\$ 235,763</u>

In accordance with ASC guidance related to business combinations, net consideration was first allocated to the fair value of assets acquired, including specifically identifiable intangible assets and liabilities assumed, with the excess being recorded as goodwill. Goodwill related to this acquisition is not deductible for tax purposes and is not amortized, but instead is subject to periodic impairment tests.

The purchase includes the assumption of gross customer accounts receivable totaling \$2,292,485. The Company has collected most of these receivables and has recorded them at their fair value, the gross contractual amount. Specifically, identifiable intangible assets consist of \$4,360,000 and are amortized on a straight-line basis over the estimated useful life. Additionally, revenue totaling approximately \$10.0 million from the 2017 asset acquisition is included in the consolidated statement of operations as of as of September 30, 2017.

#### **Note 14 - Related Party Transactions**

For the three and nine months ended September 30, 2018, the Company received a total of \$10,500 and \$31,500, respectively, and for the three and nine months ended September 30, 2017, \$27,576 and \$91,718, respectively, from First Orion Corp., which is partially owned by two directors and shareholders of Inuvo, for providing IT services.

#### **Note 15 - Subsequent Events**

Effective October 11, 2018, the Company entered into a new agreement with Western Alliance Bank for a working capital credit line (see Note 5).

On November 2, 2018 the Company entered into an Indemnification Agreement with each of the current directors and executive officers of the Company (collectively, the "Indemnities"). The Indemnification Agreements clarify and supplement indemnification provisions already contained in the Company's Bylaws and generally provide that the Company shall indemnify the Indemnities to the fullest extent permitted by applicable law, subject to certain exceptions, against expenses, judgments, fines and other amounts actually and reasonably incurred in connection with their service as a director or officer and also provide for rights to advancement of expenses and contribution.

On November 2, 2018, the Company entered into the Merger Agreement with CPT, ConversionPoint Holdings, Inc., a wholly-owned subsidiary of CPT ("Parent"), CPT Merger Sub, Inc., a wholly-owned subsidiary of Parent ("CPT Merger Sub"), and CPT Cigar Merger Sub, Inc., a wholly-owned subsidiary of Parent ("Inuvo Merger Sub"). The Merger Agreement provides that, upon the terms and subject to the conditions set forth therein, the Company will merge with and into Inuvo Merger Sub with the Company as the surviving corporation in the Inuvo Merger (the "Inuvo Merger"), and CPT merging with and into CPT Merger Sub with CPT as the surviving corporation in the CPT Merger (the "CPT Merger" and collectively with the Inuvo Merger, the "Merger"). Upon consummation of the Merger, CPT and Inuvo will be wholly-owned subsidiaries of Parent. The Merger Agreement was unanimously approved by the Board of Directors of each of the Company, CPT, Parent, CPT Merger Sub, and Inuvo Merger Sub.

Upon the terms and subject to the conditions set forth in the Merger Agreement, at the effective time of the Merger the Company's shareholders will be entitled to receive \$0.45 in cash and 0.18877 shares of Parent common stock for each share of common stock of the Company, and CPT's stockholders will be entitled to receive 0.9840 shares of Parent common stock for each share of common stock of CPT. Each outstanding option to acquire a share of the Company's common stock will be converted into an option to acquire 0.2370 shares of Parent's common stock. In addition, unvested restricted stock units will vest in full immediately prior to consummation of the Merger and will be entitled to receive the merger consideration. No fractional shares of Parent common stock will be issued in the Merger and Parent stockholders and CPT stockholders will receive cash in lieu of any fractional interests.

The Merger Agreement contains customary representations and warranties from each party to the agreement, and each party has agreed to customary covenants, including, among others, covenants relating to (1) the conduct of the CPT's and the Company's businesses during the interim period between the execution of the Merger Agreement and the closing of the Merger, (2) the Company's obligations to facilitate its shareholders' consideration of, and voting upon, the Merger Agreement and the Inuvo Merger, (3) CPT's obligations to facilitate its stockholders' consideration of, and voting upon, the Merger Agreement and the CPT Merger, (4) the recommendation by the Board of Directors of the Company in favor of approval of the Merger Agreement and the Inuvo Merger by the Company's shareholders, and (5) the Company's non-solicitation obligations relating to alternative business combination transactions.

The completion of the Merger is subject to (1) the approval of CPT's stockholders and the Company's shareholders, (2) regulatory approvals, (3) the closing of financing to the Parent of \$36,000,000 (the "Financing"), (4) the approval of the listing of shares of Parent's common stock on NASDAQ and conditional approval for listing on the TSX, (5) the delivery of customary opinions from counsel to the CPT and the Company to the effect that the Merger will qualify as a tax-free exchange for federal income tax purposes (6) Parent entering into separation agreements with Mr. Howe, the Company Chief Executive Officer, Mr. Ruiz, the Company's Chief Financial Officer and Secretary, and Mr. Pizaris, the Company's General Counsel, and (7) other customary closing conditions. Immediately following the Merger, Richard K. Howe will serve as non-executive chairman of the board of directors of the Parent and an additional individual appointed by Inuvo shall serve on the seven member board of directors of the Parent.

The Merger Agreement contains customary termination rights for both the Company and CPT and further provides that (1) a termination payment of approximately \$2.8 million will be payable by the Company to CPT in certain circumstances; and (2) a termination payment of approximately \$2.8 million will be payable by CPT to the Company in certain circumstances, including if the Parent fails to consummate the Financing by May 31, 2019.

On November 2, 2018, the Company and ConversionPoint Investments, LLC., an affiliate of CPT (the "Noteholder") entered into a Securities Purchase Agreement for up to \$2 million pursuant to which the Company issued and sold a \$1,000,000 principal amount 10% senior unsecured subordinated convertible promissory note ("the Subordinated Promissory Note") to the Noteholder which we are using for working capital.

The Subordinated Promissory Note, which bears interest at the rate of 10% per annum, and the principal and accrued interest is due on November 2, 2019. The maturity date of the Subordinated Promissory Note is subject to acceleration in the event (i) the Closing (as that term is defined in the Merger Agreement) occur pursuant to the Merger Agreement, in which event the maturity date is accelerated to the fifth day after the Closing Date (as that term is defined in the Merger Agreement) and (ii) immediately upon an Event of Default (as that term is defined in the Subordinated Promissory Note). The Company has the right to prepay the amounts due under the Subordinated Promissory Note at any time, upon 15 days prior written notice to the Noteholder, subject to the term of the note and Noteholder consent. The Company's obligations under the Subordinated Promissory Note are unsecured and subordinate to its obligations to Western Alliance Bank, the Company's secured lender.

In the event Merger Agreement is terminated, and providing that the shares issuable upon the possible conversion of the Subordinated Promissory Note have been approved for listing on the NYSE American, the Noteholder may, upon 15 days written notice to the Company, elect to convert all or any portion of the principal and accrued and unpaid interest due under the Subordinated Promissory Note into shares of the Company's common stock at a conversion price of \$0.44 per share, or \$0.35 per share if the Merger Agreement is terminated for any reason other than in connection with a Superior Proposal (as defined in the Merger Agreement). The conversion prices are subject to proportional adjustment in the event of stock split or adjustments. The Subordinated Promissory Note also contains a provision limiting the Company's ability to issue any shares of our common stock upon any voluntary conversion by the Noteholder which, when aggregated with all shares of its common stock issued pursuant to a conversion of the Subordinated Promissory Note, would exceed 19.99% of our issued and outstanding shares of common stock immediately preceding the issuance of the note without first obtaining stockholder approval in accordance with the rules of the NYSE American.



On November 2, 2018 the Company also entered into a Registration Rights Agreement (the "Registration Rights Agreement") with the Noteholder covering the shares of its common stock which may be issued upon a conversion of the Subordinated Promissory Note.

On November 2, 2018, each of Messrs. Richard K. Howe, the Company's Chief Executive Officer and member of our board of directors, and Charles D. Morgan, G. Kent Burnett and Gordon Cameron, members of the Company's board of directors, lent the Company \$62,500, for an aggregate of \$250,000, under the terms of 10% Promissory Notes. The Company is using the proceeds from these notes to pay certain costs associated with the pending Merger. The notes are unsecured, bear interest at 10% per annum and the principal and accrued interest is due on November 2, 2019, subject to acceleration upon an Event of Default or Change of Control (as both terms are defined in the note).

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

### **Company Overview**

We develop technology that connects advertisers with consumers through interactions with content across devices. Inuvo provides the means to interact with tens of thousands of advertisers ("Demand") and tens of thousands of online publishers ("Supply"). We interact with Demand/Supply constituents directly and indirectly. We serve ads that associate with images, content, video and slideshows. We generate revenue from buyers of advertising inventory which include media partners, advertisers, agencies, agency trading desks, demand-side platforms and ad networks, collectively "Demand". Our solution incorporates a proprietary form of artificial intelligence ("AI") branded the IntentKey. This sophisticated machine learning technology uses interactions with Internet content as a source of information from which to determine Intent. The AI solution includes a continually updated database of over 500 million machine profiles which we utilize to deliver highly targeted online audiences to our Demand customers. We earn revenue when consumers view and/or click on our ads. Our business scales as we add Demand and Supply relationships.

We count among our many contractual relationships, three clients who collectively manage over 50% of all US digital advertising budgets. Included within our Supply portfolio is a collection of owned websites such as alot.com and earnspendlive.com, where we create content in health, finance, travel, careers, auto, education and living categories. These sites provide the means to test advertising technologies, while also delivering high quality consumers to advertisers through interaction with proprietary content in the form of images, videos, slideshows and the written word.

There are many barriers to entry to our business including the ability to process billions of transactions daily. Our intellectual property is protected by 15 issued and eight pending patents.

### **Industry Trends**

The U.S. digital advertising is expected to grow 18.7% in 2018 to \$107.30 billion from \$90.39 billion in 2017, with the two companies, Facebook and Google capturing a combined 58.5% of the 2017 digital ad investment, according to eMarketer. In addition, mobile advertising spend is expected to continue to grow from \$63.5 billion in 2017 to \$78.9 billion in 2018, according to eMarketer.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amount of assets and liabilities, the disclosure of contingent assets and liabilities and the reported amounts of revenue and expenses during the reported periods. The more critical accounting estimates include estimates related to revenue recognition and accounts receivable allowances. We also have other key accounting policies, which involve the use of estimates, judgments and assumptions that are significant to understanding our results, which are described in Note 2 to our unaudited consolidated financial statements appearing earlier in this report.

## Results of Operations

	For the Three Months Ended September 30,				For the Nine Months Ended September 30,			
	2018	2017	Change	% Change	2018	2017	Change	% Change
Net Revenue	\$ 16,806,170	\$ 20,311,502	\$ (3,505,332)	(17.3) %	\$ 56,315,006	\$ 55,798,545	\$ 516,461	0.9 %
Cost of Revenue	6,196,057	9,649,295	(3,453,238)	(35.8) %	21,965,955	25,161,761	(3,195,806)	(12.7) %
Gross Profit	\$ 10,610,113	\$ 10,662,207	(52,094)	(0.5) %	\$ 34,349,051	\$ 30,636,784	\$ 3,712,267	12.1 %

### Net Revenue

Net revenue for the third quarter 2018 was \$16.8 million, 17% lower than the same quarter of 2017 and \$56.3 million for the first nine months of the year, 1% higher compared to 2017. The decline in net revenue in the current quarter was primarily due to our decision earlier this year to reduce support of our proprietary Supply Side Platform (“SSP”) and focus on the Demand side of our business where our IntentKey technology provides maximum competitive differentiation. This realignment caused a 74% reduction in revenue generated from the SSP as compared to the prior year with a rate of decline faster than we had expected. In addition, during the last half of the third quarter of 2018 we experienced lower monetization for our inventory from our largest Demand partner. We have not seen an appreciable change in monetization for our inventory subsequent to the third quarter of 2018 and we do not know whether monetization will return to former levels. Though net revenue was 12% higher in the first six months of the current year over 2017, the lower third quarter revenue of the current year reduced the year to date increase to 1%.

### Cost of Revenue

Cost of revenue is primarily generated by payments to website publishers and app developers that host advertisements we serve and to ad exchanges that provide access to supply inventory where we serve advertisements. The decrease in the cost of revenue in the third quarter of 2018 compared to the same time period in 2017 and for the nine months ended September 30, 2018 compared to the same time period in 2017 is due primarily to lower revenue and to the lower demand for clicks mentioned above in *Net Revenue*.

### Operating Expenses

	For the Three Months Ended September 30,				For the Nine Months Ended September 30,			
	2018	2017	Change	% Change	2018	2017	Change	% Change
Marketing costs	\$ 8,285,465	\$ 7,161,905	\$ 1,123,560	15.7 %	\$ 25,025,922	\$ 21,122,489	\$ 3,903,433	18.5 %
Compensation	1,806,111	2,363,901	(557,790)	(23.6) %	6,749,280	7,053,308	\$ (304,028)	(4.3) %
Selling, general and administrative	1,859,020	2,025,254	(166,234)	(8.2) %	5,968,233	6,308,552	\$ (340,319)	(5.4) %
Operating expenses	\$ 11,950,596	\$ 11,551,060	\$ 399,536	3.5 %	\$ 37,743,435	\$ 34,484,349	\$ 3,259,086	9.5 %

Overall, our operating expenses for the three and nine months ended September 30, 2018, increased 3.5% and 9.5%, respectively, compared to the same periods in 2017.

Marketing costs include those expenses required to attract an audience to our owned web properties. The increase in marketing costs in the three and nine months ended September 30, 2018 compared to the same periods in the prior year was partially due to adjusting traffic acquisition campaigns to the lower monetization as described above in *Net Revenue* that the market place experienced in the third quarter.

Compensation expense decreased for the three and nine month periods ended September 30, 2018 as compared to the same periods in 2017 due primarily to lower headcount. The average headcount, both full-time and part-time, at September 30, 2018 was 68 compared to 90 for the same quarter last year. We expect a stable compensation expense in the coming quarters as we have shifted our focus to the Demand side of the business.

Selling, general and administrative expenses were \$1.9 million for the three month period ended September 30, 2018 and \$6.0 million for the nine month period ended September 30, 2018, slightly lower from the prior year periods. We expect quarterly selling, general and administrative expense to continue to be relatively flat.

### *Interest expense, net*

Interest expense, net, which represents interest expense on the bank credit facility and capital lease obligations, increased approximately \$4,000 to \$101,000 in the quarter ended September 30, 2018 compared to the same period in 2017 and \$84,000 to \$297,000 for the nine months ended September 30, 2018 compared to the same period in 2017 primarily due to higher interest rates on the credit line this year compared to last year.

### *Income from discontinued operations*

In the third quarter of 2016, our petition with the UK (United Kingdom) Companies House to strike off and dissolve our remaining subsidiary in the EU was approved. As a result, for the nine months ended September 30, 2017, we recorded a net loss of \$1,109 due to a charge from a service provider.

## **Liquidity and Capital Resources**

On October 11, 2018, we entered into the Amended and Restated Business Financing Agreement with Western Alliance Bank. The Amended and Restated Financing Agreement, which is secured by all of our assets, amended and superseded in its entirety the Business Financing Agreement, as amended, that we entered into on March 1, 2012 with Bridge Bank, N.A. which is now owned by Western Alliance Bank. The Amended and Restated Financing Agreement does not have a term and either party may terminate upon notice to the other party. As a result of the amended terms of our lending relationship with Western Alliance Bank, we have additional access to credit. See note 5 of the consolidated financial statements appearing earlier in this report.

In May 2018, we completed our underwritten public offering of 2,860,000 shares of our common stock at a public offering price of \$0.70 per share and an additional 429,000 shares to cover over allotments in connection with the offering. The net proceeds after deducting the underwriting discounts and commissions and estimated offering expenses payable was approximately \$2.1 million.

During the third quarter of 2017, we filed an S-3 registration statement with the Securities and Exchange Commission ("SEC") to replace the existing, expiring S-3 "shelf" registration statement, which permits us to offer and sell up to \$15 million of our securities from time to time in one or more offerings. In May 2018, we took down from this shelf registration statement approximately \$2.3 million in the underwritten public offering.

For the three months ended September 30, 2018, our revenues declined 17.3% from the same quarter in the prior year. The lower revenue in this year's quarter is principally responsible for our \$1.4 million net loss in the third quarter of 2018. Since our credit facility is dependent upon receivables, the lower revenue reduces our credit availability. We do not know when, if ever, that our revenues will return to historic levels or if we will be able to replace those lost revenues with revenues from other demand partners. The combination of lower credit availability and negative cash flows generated from operating activities raises concern about our ability to continue without interruption. As described in note 15 to the notes to consolidated financial statements appearing earlier in this report, on November 2, 2018, we entered into the Merger Agreement and an affiliate of ConversionPoint Technologies lent us \$1 million for working capital, and our Chief Executive Officer and members of our board of directors have lent us an aggregate of \$250,000 to cover certain costs associated with the pending Merger. Subject to the terms of the Merger Agreement and the credit facility, with the additional borrowing, we believe we will have sufficient cash and credit to operate until the Merger closes. However, there are no assurances that the Merger will be consummated. While the merger is pending, our ability to raise additional working capital is limited by the terms of the Merger Agreement. There are no assurances we will be successful in our efforts to generate revenues, report profitable operations or close the Merger in which case we would need to find additional sources of credit and make substantial reduction to operating expense.

### *Cash Flows - Operating*

Net cash used in operating activities was \$284,122 during the nine months ended September 30, 2018. We reported a net loss of \$3,682,371, which included non-cash expenses; depreciation and amortization expense of \$2,371,958 and stock-based compensation expense of \$827,595. The change in operating assets and liabilities during the nine months ended September 30, 2018 was a provision of cash of \$219,558 primarily due to a decrease in the accounts receivable balance by \$5,183,579, partially offset by a decrease in the accounts payable balance by \$4,592,798. Our terms are such that we generally collect receivables prior to paying trade payables. Media sales, which are part of the business acquired in 2017, typically have slower payment terms than the terms of related payables.

During the comparable period in 2017, cash used in operating activities was \$2,962,766 from a net loss of \$4,061,596, which included several non-cash expenses; depreciation and amortization of \$2,239,498 and stock-based compensation of \$923,072. The cash used was further increased by a change in the accounts payable balance by \$1,099,692 and a change in the accounts receivable balances of \$237,078 largely due to the working capital needs of the business acquired in 2017.

#### *Cash Flows - Investing*

Net cash used in investing activities was \$1,300,179 and \$827,048 for the nine months ended September 30, 2018 and September 30, 2017, respectively, and primarily consisted of capitalized internal development costs.

#### *Cash Flows - Financing*

Net cash provided financing activities was \$1,689,889 during 2018 primarily from proceeds of the sale of 3,289,000 shares of common stock, net of repayments on our revolving line of credit and capital leases.

In 2017, net cash provided by financing activities was \$2,744,975 which largely consisted of proceeds from the revolving credit facility used to pay off the debt acquired in the 2017 asset acquisition, net of debt repayment.

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

As of September 30, 2018, we do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors. The term "off-balance sheet arrangement" generally means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with us is a party, under which we have any obligation arising under a guarantee contract, derivative instrument or variable interest or a retained or contingent interest in assets transferred to such entity or similar arrangement that serves as credit, liquidity or market risk support for such assets.

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

Not applicable to a smaller reporting company.

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

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

We maintain "disclosure controls and procedures" as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934. Disclosure controls and procedures are controls and procedures designed to reasonably assure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934, such as this report, is recorded, processed, summarized and reported within the time periods prescribed by SEC rules and regulations, and to reasonably assure that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

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

As required by Rule 13a-15 under the Securities Exchange Act of 1934, as of September 30, 2018, the end of the period covered by this report, our management concluded their evaluation of the effectiveness of the design and operation of our disclosure controls and procedures. As of the evaluation date, our Chief Executive Officer and Chief Financial Officer concluded that we maintain disclosure controls and procedures that are effective in providing reasonable assurance that information required to be disclosed in our reports under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods prescribed by SEC rules and regulations, and that such information is accumulated and communicated to our management to allow timely decisions regarding required disclosure.

**Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting during the period ended September 30, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II

### ITEM 1. LEGAL PROCEEDINGS.

None.

### ITEM 1A. RISK FACTORS.

We desire to take advantage of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. Accordingly, we incorporate by reference the risk factors disclosed in Part I, Item 1A of our Form 10-K for the year ended December 31, 2017, filed with the Securities and Exchange Commission on February 8, 2018 subject to the new or modified risk factors appearing below that should be read in conjunction with the risk factors disclosed in such Form 10-K.

***The Merger is subject to closing conditions that, if not satisfied or waived in a timely manner or at all, will result in the Merger not being completed or delayed. A failure to complete or delay in completing the Merger may have an adverse effect on our businesses due to uncertainty or operating restrictions while the Merger are pending or cause the market price of our common stock to decline.*** The Merger will not be completed unless all of the conditions to the Merger have been satisfied or, if permissible, waived. We cannot predict what the effect on the market price of our common stock would be if the Merger is not completed, but depending on market conditions at the time, it could result in a decline in market price. A substantial delay in completing the Merger due to the need to satisfy the conditions to closing the Merger, or the imposition of any unfavorable terms, conditions, or restrictions in obtaining a waiver from such conditions or otherwise, could have a material adverse effect on the anticipated benefits of, or increase the costs associated with the Merger. In addition, we are subject to certain restrictions on the operation of our business while the Merger are pending, which could impair our ability to operate our businesses and prevent us from pursuing attractive business opportunities that may arise prior to the completion of the Merger. Any of these situations could also result in a decline in the market price of our common stock. Also, the uncertainty regarding whether the Merger will be completed (including uncertainty regarding whether the conditions to closing will be met) could impact our relationships with our employees, suppliers and partners. These restrictions and uncertainties could have an adverse impact on our business, financial condition, or results of operations and could result in a decline in the market price of our common stock or an increase in the volatility of the market prices.

***We rely on two customers for a significant portion of our revenues.*** We are reliant upon Yahoo! and Google for most of our revenue. During the third quarter of 2018, Yahoo! accounted for 75.6% and Google accounted for 8.5% of our revenues, respectively, and during the same period in 2017, 62.1% and 8.9%, respectively. The amount of revenue we receive from these customers is dependent on a number of factors outside of our control, including the amount they charge for advertisements, the depth of advertisements available from them, and their ability to display relevant ads in response to end-user queries. Our revenue in the third quarter 2018 was 17.3% lower than the same quarter of 2017 due to demand and pricing changes by our largest customer, Yahoo!. The result was approximately a 40% decrease in RPCs. We have not seen an appreciable change in RPCs and we do not know whether RPCs will return to their former levels.

We would likely experience a significant decline in revenue and our business operations could be significantly harmed if these customers do not approve our new websites and applications, or if we violate their guidelines or they change their guidelines. In addition, if any of these preceding circumstances were to occur, we may not be able to find a suitable alternate paid search results provider or otherwise replace the lost revenues. The loss of any of these customers or a material change in the revenue or gross profit they generate would have a material adverse impact on our business, results of operations and financial condition in future periods.

***Failure to comply with the covenants and restrictions in our credit facility could impact our ability to access capital as needed.*** We have a credit facility with Western Alliance Bank under which we had \$4.8 million in debt outstanding and no availability as of September 30, 2018. The facility expired in September 2018 and was extended to October 2018. We signed a new facility agreement with Western Alliance Bank on October 11, 2018. The new agreement has no financial covenants. The credit facility contains a number of requirements, among other things:

- pay fees to the lender associated with the credit facility;
- maintain our corporate existence in good standing;
- grant the lender a security interest in our assets;
- provide financial information to the lender; and
- refrain from any transfer of any of our business or property, subject to customary exceptions.

We have historically had difficulties meeting the financial covenants set forth in our credit agreement. During the third quarter of 2018 we failed to comply with the minimum revenue and adjusted EBITDA requirement. Our lender has given us waivers in

the past, including in connection with our failure to meet the covenants during the third quarter of 2018, and reset our financial covenants several times. A breach in our covenants could result in a default under the credit facility, and in such event Western Alliance Bank could elect to declare all borrowings outstanding, if any, to be due and payable. If this occurs and we have outstanding obligations and are not able to repay, Western Alliance Bank could require us to apply all of our available cash to repay the debt amounts and could then proceed against the underlying collateral. Should this occur, we cannot assure you that our assets would be sufficient to repay our debt in full, we would be able to borrow sufficient funds to refinance the debt, or that we would be able to obtain a waiver to cure any such default. In such an event, our ability to conduct our business as it is currently conducted would be in jeopardy.

***Failure to comply with the covenants and restrictions in our grant agreement with the State of Arkansas could result in the repayment of a portion of the grant, which we may not be able to repay or finance on favorable terms.*** In January 2013, we entered into an agreement with the State of Arkansas whereby we were granted \$1,750,000 for the relocation of the Company to Arkansas and for the purchase of equipment. The grant was contingent upon us having at least 50 full-time equivalent permanent positions within four years, maintaining at least 50 full-time equivalent permanent positions for the following six years and paying those positions an average total compensation of \$90,000 per year.

If we fail to meet the requirements of the grant after the initial four-year period, we may be required to repay a portion of the grant, up to but not to exceed the full amount of the grant. Should this occur, we cannot assure you that our assets would be sufficient to repay our grant in full, we would be able to borrow sufficient funds to refinance the grant, or that we would be able to obtain a waiver to cure any such default. In such an event, our ability to conduct our business as it is currently conducted would be in jeopardy. As of September 30, 2018, we had 39 full-time, permanent positions in Arkansas.

***Our business is seasonal and our financial results and cash availability may vary significantly from period to period.*** Historically, the last half of the year has stronger demand and therefore greater revenue than the first half of the year. We experience lower RPCs due to a decline in demand for inventory on website and app space and the recalibrating of advertiser's marketing budgets after the holiday selling season. If we are not able to appropriately adjust to seasonal or other factors, it could have a material adverse effect on our financial results. A material percentage of our operating expense is fixed and does not vary significantly with revenue. When revenue is seasonally lower cash availability is constrained. The bank credit facility and cash generated by operations may be insufficient to continue normal operations. We may elect to sell securities to the public or to selected investors, or borrow under the current or any replacement line of credit or other debt instruments which may cause dilution.

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

None

## **ITEM 3. DEFAULTS UPON SENIOR SECURITIES.**

None.

## **ITEM 4. MINE SAFETY AND DISCLOSURES.**

Not applicable.

## **ITEM 5. OTHER INFORMATION.**

On November 2, 2018 the Company entered into an Indemnification Agreement with each of the current directors and executive officers of the Company (collectively, the "Indemnitees"). The Indemnification Agreements clarify and supplement indemnification provisions already contained in the Company's Bylaws and generally provide that the Company shall indemnify the Indemnitees to the fullest extent permitted by applicable law, subject to certain exceptions, against expenses, judgments, fines and other amounts actually and reasonably incurred in connection with their service as a director or officer and also provide for rights to advancement of expenses and contribution. The form of Indemnification Agreement is filed as Exhibit 10.5 to this report.

**ITEM 6. EXHIBITS.**

No.	Exhibit Description	Form	Date Filed	Number	Filed or Furnished Herewith
1.1	<a href="#">Underwriting Agreement dated May 11, 2018</a>	8-K	5/11/18	1.1	
2.1	<a href="#">Agreement and Plan of Merger by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., and CPT Cigar Merger Sub, Inc., dated November 2, 2018.*</a>	8-K	11/5/18	2.1	
2.2	<a href="#">Securities Purchase Agreement, by and between Inuvo, Inc. and CPT Investments, LLC, dated November 1, 2018.</a>	8-K	11/5/18	2.2	
2.3	<a href="#">10% Senior Unsecured Subordinated Convertible Promissory Note, executed by the Company in favor of CPT Investments, LLC, dated November 1, 2018.</a>	8-K	11/5/18	2.3	
2.4	<a href="#">Registration Rights Agreement, by and between Inuvo, Inc. and CPT Investments, LLC, dated November 1, 2018.</a>	8-K	11/5/18	2.4	
2.5	<a href="#">Form of 10% Promissory Note, executed by Inuvo, Inc. in favor of certain affiliates of Inuvo, Inc., dated November 1, 2018.</a>	8-K	11/5/18	2.5	
3(i).1	<a href="#">Articles of Incorporation, as amended</a>	10-KSB	3/1/04	4	
3(i).2	<a href="#">Amended to Articles of Incorporation filed March 14, 2005</a>	10-KSB	3/31/06	3.2	
3(i).3	<a href="#">Articles of Merger between Inuvo, Inc. and Kowabunga! Inc.</a>	8-K	7/24/09	3.4	
3(i).4	<a href="#">Certificate of Change Filed Pursuant to NRS 78.209</a>	8-K	12/10/10	3.1.4	
3(i).5	<a href="#">Certificate of Merger as filed with the Secretary of State of Nevada on February 29, 2012</a>	10-K	3/29/12	3(i).5	
3(i).6	<a href="#">Articles of Amendment to Amended Articles of Incorporation as filed on February 29, 2012</a>	10-K	3/29/12	3(i).6	
3(ii).1	<a href="#">Amended and Restated By-Laws</a>	10-K	3/31/10	3(ii).4	
3(ii).2	<a href="#">Bylaw amendment adopted February 29, 2012</a>	8-K	3/6/12	3(ii).1	
10.1	<a href="#">Amendment # 16 dated Yahoo! Publisher Network Contract dated August 28, 2018</a>				Filed***
10.2	INTENTIONALLY OMITTED				
10.3	<a href="#">Form of Amendment #11 dated September 19, 2018 to the Business Financing Agreement with Western Alliance Bank</a>				Filed
10.4	<a href="#">Form of Amended and Restated Business Financing Agreement dated October 11, 2018 with Western Alliance Bank</a>				Filed
10.5	<a href="#">Form of Indemnification Agreement</a>				Filed
31.1	<a href="#">Rule 13a-14(a)/15d-14(a) certification of Chief Executive Officer</a>				Filed
31.2	<a href="#">Rule 13a-14(a)/15d-14(a) certification of Chief Financial Officer</a>				Filed
32.1	<a href="#">Section 1350 certification of Chief Executive Officer</a>				Filed
32.2	<a href="#">Section 1350 certification of Chief Financial Officer</a>				
99.1	<a href="#">Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and G. Kent Burnett, dated November 2, 2018.</a>	8-K	11/5/18	99.1	
99.2	<a href="#">Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and Don Walker "Trey" Barrett III, dated November 2, 2018.</a>	8-K	11/5/18	99.2	
99.3	<a href="#">Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and Gordon J. Cameron, dated November 2, 2018.</a>	8-K	11/5/18	99.3	



99.4	<a href="#"><u>Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and Richard K. Howe, dated November 2, 2018.</u></a>	8-K	11/5/18	99.4
99.5	<a href="#"><u>Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and Charles D. Morgan, dated November 2, 2018.</u></a>	8-K	11/5/18	99.5
99.6	<a href="#"><u>Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and John B. Pizaris, dated November 2, 2018.</u></a>	8-K	11/5/18	99.6
99.7	<a href="#"><u>Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and Wallace D. Ruiz, dated November 2, 2018.</u></a>	8-K	11/5/18	99.7
99.8	<a href="#"><u>Support Agreement, by and among ConversionPoint Technologies, Inc., ConversionPoint Holdings, Inc., CPT Merger Sub, Inc., Inuvo, Inc., CPT Cigar Merger Sub, Inc., and Patrick Terrell, dated November 2, 2018.</u></a>	8-K	11/5/18	99.8
101.INS	XBRL Instance Document			Filed
101.SCH	XBRL Taxonomy Extension Schema Document			Filed
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document			Filed
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document			Filed
101.LAB	XBRL Taxonomy Extension Label Linkbase Document			Filed
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document			Filed

\* The Company has omitted schedules and similar attachments to the subject agreement pursuant to Item 601(b) of Regulation S-K. The Company will furnish a copy of any omitted schedule or similar attachment to the SEC upon request.

\*\*\* Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the Securities and Exchange Commission under Rule 24b-2. The omitted confidential material has been filed separately. The location of the omitted confidential information is indicated in the exhibit with asterisks (\*\*\*).

## SIGNATURES

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

### **Inuvo, Inc.**

November 7, 2018

By: /s/ Richard K. Howe  
Richard K. Howe,  
Chief Executive Officer, principal executive officer

November 7, 2018

By: /s/ Wallace D. Ruiz  
Wallace D. Ruiz,  
Chief Financial Officer, principal financial and accounting officer

**The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY "\*\*\*\*".**

**Amendment #16  
to the Yahoo Publisher Network Contract #1-19868214  
Effective Date: April 24, 2009, as amended ("Original Agreement")**

THIS AMENDMENT #16 to the Original Agreement ("Amendment #16") is by and between Inuvo, Inc. ("Publisher"), on the one hand, and Oath Holdings Inc., Yahoo! Singapore Digital Marketing Pte. Ltd., and Oath (EMEA) Limited (collectively, "Yahoo"), on the other hand, and is made effective as of the latter date of Yahoo's or Publisher's signature below (the "Amendment #16 Effective Date"). All capitalized terms not defined herein shall have the meanings assigned to them in the Original Agreement.

In consideration of mutual covenants and conditions, the receipt and sufficiency of which are hereby acknowledged, Publisher and Yahoo hereby agree as follows:

1. The Term of the Original Agreement is extended by replacing the prior "End Date" of "November 30, 2018" with "November 30, 2020." Thereafter, the Term will automatically renew for additional 1-year periods unless either party gives notice of non-renewal at least 90-days before the expiration of the then current term. Notwithstanding the foregoing, either Party may terminate this Agreement effective November 30, 2019 (the "Early Termination Date") by delivering written notice of termination at least 90 days prior to the Early Termination Date.

2. The following is added at the end of the Section entitled "Implementations on Publisher's Offerings" on the Cover Page of the Original Agreement:

\*\*\*

3. The following is added to the end of the Section entitled "Implementation" on the Cover Page of the Original Agreement:

“. \*\*\*

4. The three charts set forth in the Section entitled "Compensation" on the Cover Page of the Original Agreement are deleted in their entirety and replaced with the following chart:

\*\*\*

For the avoidance of doubt, the last three (3) paragraphs in the Section entitled "Compensation" on the Cover Page of the Original Agreement, as added by Amendment #12, (i.e., the first of such paragraphs beginning with "\*In the event (i) \*\*\*....") remain unchanged and continue in full force and effect in accordance with their terms.

5. Attachment A (Implementation Requirements) to the Original Agreement is amended to add the following new Section as Section H:

**"H. Additional Requirements for \*\*\***

\*\*\*

6. Attachment A to the Original Agreement is amended to incorporate the mockups set forth in Exhibit A attached hereto.

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**The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY "\*\*\*\*".**

7. Section 2 of Attachment C (\*\*\*\*) to the Original Agreement is amended such that the following is added thereto:

\*\*\*

8. Section 2 of Attachment F (\*\*\*\*) to the Original Agreement is amended such that the following is added thereto:

\*\*\*  
\*\*\*

9. Attachment F to the Original Agreement is amended such that the following is added thereto:

\*\*\*

10. Section 29 of Attachment B (Terms and Conditions) to the Original Agreement is amended such that the following new definitions are added thereto:

**“Approved Placements:** \*\*\*\*, each as pre-approved by Yahoo in its sole discretion and notified to Publisher.

\*\*\*.  
\*\*\*.  
\*\*\*.  
\*\*\*.  
\*\*\*.

11. The definitions of “Links” and “Query” in Section 29 of Attachment B to the Original Agreement are amended and restated to read as follows (changes in *italics*), respectively.

**“Links:** Search Box, Hyperlinks, \*\*\*\* and Ad Code, to the extent included in the Cover Page.

**Query:** a search query initiated from the Search Box, \*\*\*\* or Hyperlink, or a request for Matched Ads initiated by the Ad Code on an Ad Page.”

12. Except as expressly set forth herein, the Original Agreement will remain in full force and effect in accordance with its terms.

13. In the event of a conflict between any of the terms and conditions of the Original Agreement and the terms and conditions of this Amendment #16, the terms and conditions of this Amendment #16 shall govern.

14. This Amendment #16 may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same instrument. An electronically transmitted signature via pdf or facsimile shall be deemed the equivalent to an original ink signature.

[Signature Page Follows]

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**The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY "\*\*\*\*".**

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to enter into this Amendment #16 effective as of the Amendment #16 Effective Date.

**INUVO, INC.**

By: /s/ Richard Howe

Name: Richard Howe

Title: CEO

Date: 8/24/18

**OATH HOLDINGS INC.**

By: /s/ Timothy Lemmon

Name: Timothy Lemmon

Title: Executive Vice President

Date: 8/28/2018 7:24:26 AM PDT

**OATH (EMEA) LIMITED**

By: /s/ Gaetano Ceraloi

Name: Gaetano Ceraloi

Title: Director

Date: 28/08/2018

**YAHOO! SINGAPORE DIGITAL MARKETING PTE. LTD.**

By: /s/ Margaret Chang

Name: Margaret Chang

Title: Senior Director

Date: 28 August 2018

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**The confidential portions of this exhibit have been filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request in accordance with Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

**REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY "\*\*\*\*".**

**Exhibit A**

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\*\*\*

## **ELEVENTH BUSINESS FINANCING MODIFICATION AGREEMENT**

This Eleventh Business Financing Modification Agreement (the "Amendment") is entered into as of September 19, 2018 by and between WESTERN ALLIANCE BANK, an Arizona corporation ("Lender") INUVO, INC., a Nevada corporation ("Parent"), BABYTOBEE, LLC, a New York limited liability company ("Babytobee"), KOWABUNGA MARKETING, INC., a Michigan corporation ("Kowabunga"), VERTRO, INC., a Delaware corporation ("Vertro"), ALOT, INC., a Delaware corporation ("A LOT"), and NETSEER, INC., a Nevada corporation formerly known as NETSEER ACQUISITION, INC. ("NetSeer" and together with Parent, Babytobee, Kowabunga Vertro and A LOT, each a "Borrower" and collectively, "Borrowers").

1. DESCRIPTION OF EXISTING INDEBTEDNESS: Among other indebtedness which may be owing by Borrowers to Lender, Borrowers are indebted to Lender pursuant to, among other documents, a Business Financing Agreement, dated March 1, 2012, by and between Borrowers and Lender, as may be amended from time to time, including by that certain First Business Financing Modification Agreement dated as of June 29, 2012, that certain Second Business Financing Modification Agreement dated as of October 11, 2012, that certain Business Financing Modification Agreement dated March 8, 2013, that certain Third Business Financing Modification Agreement dated as of March 29, 2013, that certain Fourth Business Financing Modification Agreement dated as of March 6, 2014, that certain Fifth Business Financing Modification Agreement dated as of September 20, 2014, that certain Business Financing Modification Agreement dated as of October 9, 2014, that certain Sixth Business Financing Modification Agreement dated as of September 27, 2016, that certain Seventh Business Financing Modification Agreement dated as of December 9, 2016, that certain Eighth Business Financing Modification Agreement dated as of March 27, 2017, that certain Ninth Business Financing Modification Agreement dated as of July 31, 2017, and that certain Tenth Business Financing Modification Agreement dated as of April 18, 2018 (collectively, the "Business Financing Agreement"). Capitalized terms used without definition herein shall have the meanings assigned to them in the Business Financing Agreement. Hereinafter, all indebtedness owing by Borrower to Lender shall be referred to as the "Indebtedness" and the Business Financing Agreement and any and all other documents executed by Borrower in favor of Lender shall be referred to as the "Existing Documents."

### 2. MODIFICATION(S) TO BUSINESS FINANCING AGREEMENT.

A. The following definition set forth in Section 12.1 is amended in its entirety to read as follows:

"Maturity Date" means October 20, 2018 or such earlier date as Lender shall have declared the Obligations immediately due and payable pursuant to Section 7.2.

3. PRO-RATED FACILITY FEE. In lieu of payment of the Facility Fee required to be paid on September 24, 2018 pursuant to Section 2.2(b) of the Business Financing Agreement, on the date hereof, Borrowers shall pay to Lender a pro-rated facility fee in the amount of \$2,083.

4. CONSISTENT CHANGES. The Existing Documents are each hereby amended wherever necessary to reflect the changes described above.

5. NO DEFENSES OF BORROWER/GENERAL RELEASE. Borrower agrees that, as of this date, it has no defenses against the obligations to pay any amounts under the Indebtedness. Each of Borrower and its affiliates (each, a “Releasing Party”) acknowledges that Lender would not enter into this Amendment without Releasing Party’s assurance that it has no claims against Lender or any of Lender’s officers, directors, employees or agents. Except for the obligations arising hereafter under this Amendment, each Releasing Party releases Lender, and each of Lender’s officers, directors and employees from any known or unknown claims that Releasing Party now has against Lender of any nature, including any claims that Releasing Party, its successors, counsel, and advisors may in the future discover they would have now had if they had known facts not now known to them, whether founded in contract, in tort or pursuant to any other theory of liability, including but not limited to any claims arising out of or related to the Business Financing Agreement or the transactions contemplated thereby. Releasing Party waives the provisions of California Civil Code section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The provisions, waivers and releases set forth in this section are binding upon each Releasing Party and its shareholders, agents, employees, assigns and successors in interest. The provisions, waivers and releases of this section shall inure to the benefit of Lender and its agents, employees, officers, directors, assigns and successors in interest. The provisions of this section shall survive payment in full of the Obligations, full performance of all the terms of this Amendment and the Business Financing Agreement, and/or Lender’s actions to exercise any remedy available under the Business Financing Agreement or otherwise.

6. CONTINUING VALIDITY. Borrower understands and agrees that in modifying the existing Indebtedness, Lender is relying upon Borrowers’ representations, warranties, and agreements, as set forth in the Existing Documents, and Borrower hereby represents and warrants that the representations and warranties contained in the Existing Documents are true and correct as of the date of hereof, and that no Event of Default has occurred and is continuing. Except as expressly modified pursuant to this Amendment, the terms of the Existing Documents remain unchanged and in full force and effect. Lender's agreement to modifications to the existing Indebtedness pursuant to this Amendment in no way shall obligate Lender to make any future modifications to the Indebtedness. Nothing in this Amendment shall constitute a satisfaction of the Indebtedness. It is the intention of Lender and Borrower to retain as liable parties all makers and endorsers of Existing Documents, unless the party is expressly released by Lender in writing. No maker, endorser, or guarantor will be released by virtue of this Amendment. The terms of this paragraph apply not only to this Amendment, but also to any subsequent Business Financing Modification agreements.

7. CONDITIONS PRECEDENT. The effectiveness of this Amendment is conditioned upon Borrowers’ payment of the pro-rated facility fee set forth above plus all of Lender’s out of pocket expenses incurred in connection herewith on the date hereof.

8. NOTICE OF FINAL AGREEMENT. BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THIS WRITTEN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

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9. COUNTERSIGNATURE. This Ninth Business Financing Modification Agreement shall become effective only when executed by Lender and Borrower.

**BORROWER:**

INUVO, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BABYTOBEE, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KOWABUNGA MARKETING, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VERTRO, INC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ALOT, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NETSEER, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

WESTERN ALLIANCE BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AMENDED AND RESTATED  
BUSINESS FINANCING AGREEMENT**

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<b>Borrower:</b>	<b>INUVO, INC. and the other Borrowers referred to below</b> 500 President Clinton Avenue, Suite 300 Little Rock, AR 72201	<b>Lender:</b>	<b>Western Alliance Bank, an Arizona corporation</b> 55 Almaden Boulevard, Suite 100 San Jose, CA 95113
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This AMENDED AND RESTATED BUSINESS FINANCING AGREEMENT, dated as of October 11, 2018 (the "**Closing Date**"), is made and entered into by and among WESTERN ALLIANCE BANK, AN ARIZONA CORPORATION ("**Lender**"), INUVO, INC., a Nevada corporation ("**Parent**"), BABYTOBEE, LLC, a New York limited liability company ("**Babytobee**"), KOWABUNGA MARKETING, INC., a Michigan corporation ("**Kowabunga**"), VERTRO, INC., a Delaware corporation ("**Vertro**"), A LOT, INC., a Delaware corporation ("**A LOT**"), and NETSEER, INC., a Nevada corporation ("**NetSeer**" and together with Parent, Babytobee, Kowabunga, Vertro and A LOT, individually and collectively, jointly and severally, "**Borrower**"), on the following terms and conditions:

**RECITALS**

**A.** Lender and Borrower have entered into that certain Business Financing Agreement dated as of March 1, 2012 (as amended, the "**Prior Agreement**").

**B.** Borrower has requested, and Lender has agreed, to amend and restate the Prior Agreement in its entirety. Lender and Borrower hereby agree that the Prior Agreement is amended and restated in its entirety as follows:

**1. FINANCED RECEIVABLES.**

**1.1 Funding Requests.** Borrower may request that Lender finance Receivables by delivering to Lender a Funding Request for the Receivables for which a request for financing is made. Lender shall be entitled to rely on all the information provided by Borrower to Lender on or with the Funding Request. Lender may honor Funding Requests, instructions or repayments given by an Authorized Person. On the Closing Date, Borrower shall deliver to Lender a Funding Request for Receivables in an amount sufficient to repay all outstanding Obligations under the Prior Agreement.

**1.2 Acceptance of Receivables.** Upon acceptance by Lender of any Receivable described in a Funding Request, Lender shall make an Advance to Borrower in an amount up to the applicable Advance Rate multiplied by the Receivable Amount of such Receivable; provided that the aggregate amount of Advances made with respect to Eligible Unbilled Receivables shall not exceed the Eligible Unbilled Receivable Sublimit at any time. Upon Lender's acceptance of the Receivable and payment to Borrower of the Advance, the Receivable shall become a "**Financed Receivable.**" It shall be a condition to each Advance that (a) all of the representations and warranties set forth in Section 5 are true and correct on the date of such Advance as though made at and as of each such date and (b) no Default has occurred and is continuing, or would result from such Advance. Lender has no obligation to finance any Receivable and may exercise its sole discretion in determining whether any Receivable is an Eligible Receivable before financing such Receivable. In no event shall Lender be obligated to make any Advance that results in an Overadvance or while any Overadvance is outstanding.

**1.3 Rights in Respect of Financed Receivables.** Effective upon Lender's payment of an Advance, Lender shall have the exclusive right to receive all Collections on the Financed Receivable. Lender shall have, with respect to any goods related to the Financed Receivable, all the rights and remedies of an unpaid seller under the UCC and other applicable law, including the rights of replevin, claim and delivery, reclamation and stoppage in transit.

**1.4 Reserve.** The Reserve is a book balance maintained on the records of Lender and shall not be a segregated fund and is not the property of Borrower.

**1.5 Due Diligence.** Lender may, after no less than three (3) days prior notice (unless an Event of Default exists, in which case no notice will be required) audit Borrower's Receivables and any and all records pertaining to the Collateral, at Lender's sole discretion and at Borrower's expense. Lender may at any time and from time to time contact Account Debtors and other Persons obligated or knowledgeable in respect of Receivables to confirm the Receivable Amount of such Receivables, to determine whether Receivables constitute Eligible Receivables, and for any other purpose in connection with this Agreement. If any of the Collateral or Borrower's books or records pertaining to the Collateral are in the possession of a third party, Borrower authorizes that third party to permit Lender or its agents to have access to perform inspections or audits thereof and to respond to Lender's requests for information concerning such Collateral and records.

1.6 **Notification and Verification.** Lender may (i) verify invoices and (ii) notify Account Debtors of Lender's security interest in the Receivables, at its sole discretion from time to time.

## 2. COLLECTIONS, CHARGES AND REMITTANCES.

2.1 **Collections.** Subject to Lender's timely receipt of accurate application instructions from Borrower with respect to the source and application of Collections, Lender will apply the Collections with respect to Financed Receivables deposited into the Collection Account to the outstanding Account Balance, within three (3) business days of the date received. If no Default has occurred and is continuing, Lender agrees to credit the Refundable Reserve with the amount of Collections it receives with respect to Receivables other than Financed Receivables; provided that upon the occurrence and during the continuance of any Default, Lender may apply all Collections to the Obligations in such order and manner as Lender may determine. Lender has no duty to do any act other than to turnover such amounts as required above. If an item of Collections is not honored or Lender does not receive good funds for any reason, any amount previously transferred to Borrower's Account or applied to the Account Balance shall be reversed as of the date transferred or applied, as applicable, and, if applied to the Account Balance, the Finance Charges will accrue as if the Collections had not been so applied. Lender shall have, with respect to any goods related to the Receivables, all the rights and remedies of an unpaid seller under the UCC and other applicable law, including the rights of replevin, claim and delivery, reclamation and stoppage in transit.

2.2 **Financed Receivables Activity Report.** Within thirty (30) days after the end of each Monthly Period, Lender shall send to Borrower a report covering the transactions for that Monthly Period, including the amount of all Financed Receivables, all Collections, Adjustments, Finance Charges, and other fees and charges. The accounting shall be deemed correct and conclusive unless Borrower makes written objection to Lender within forty-five (45) days after Lender sends the accounting to Borrower.

2.3 **Reconciliations.** Unless a Default has occurred and is continuing, Lender shall refund to Borrower after each Month End, the Refundable Reserve, if positive, calculated for such Month End, subject to Lender's rights under Section 3.3 and Lender's rights of offset and recoupment. If the Refundable Reserve is negative, Borrower shall immediately pay such amount in the same manner as set forth in Section 3.3 for Overadvances.

2.4 **Adjustments.** In the event of a breach of Sections 5 or 6, or in the event any Adjustment or dispute is asserted by any Account Debtor, Borrower shall promptly advise Lender and shall, subject to Lender's approval, resolve such disputes and advise Lender of any Adjustments; provided that in no case will the aggregate Adjustments made with respect to any Financed Receivable exceed two percent (2%) of its original Receivable Amount unless Borrower has obtained the prior written consent of Lender. Unless the Advance for the disputed Financed Receivable is repaid in full, Lender shall have the right, at any time, to take possession of any rejected, returned, or recovered personal property. If such possession is not taken by Lender, Borrower is to resell it for Lender's account at Borrower's expense with the proceeds made payable to Lender. While Borrower retains possession of any returned goods, Borrower shall segregate said goods and mark them as property of Lender.

2.5 **Remittances; Lockbox Account Collection Services.** Lender shall have the exclusive right to receive all Collections on all Receivables. Borrower shall (i) immediately notify, transfer and deliver to Lender all Collections Borrower receives for deposit into the Collection Account, (ii) deliver to Lender a detailed cash receipts journal on Friday of each week until the Lockbox is operational, and (iii) immediately enter into a collection services agreement acceptable to Lender (the "**Lockbox Agreement**") pursuant to which all Collections received in the Lockbox shall be deposited into the Collection Account. Borrower shall use the Lockbox address as the remit to and payment address for all of Borrower's Collections from Account Debtors, and Borrower shall instruct all Account Debtors to make payments either directly to the Lockbox for deposit by Lender directly to the Collection Account, or instruct them to deliver such payments to Lender by wire transfer, ACH, or other means as Lender may direct for deposit to the Lockbox or Collection Account. It will be considered an immediate Event of Default if this does not occur or the Lockbox is not operational as of the Closing Date.

## 3. RECOURSE AND OVERADVANCES.

3.1 **Recourse.** Advances and the other Obligations shall be with full recourse against Borrower. If any Advance is not repaid in full within ninety (90) days from the earlier of (a) invoice date, or (b) the date on which such Advance is made, Borrower shall immediately pay the outstanding amount thereof to Lender.

3.2 **Overadvances.** Upon any occurrence of an Overadvance, Borrower shall immediately pay down the Advances so that, after giving effect to such payments, no Overadvance exists.

3.3 **Borrower's Payment.** When any Overadvance or other amount owing to Lender becomes due, Lender shall inform Borrower of the manner of payment which may be any one or more of the following in Lender's sole discretion: (a) in cash immediately upon demand therefore; (b) by delivery of substitute invoices and a Funding Request acceptable to

Lender which shall thereupon become Financed Receivables; (c) by deduction from or offset against the Refundable Reserve that would otherwise be due and payable to Borrower; (d) by deduction from or offset against the amount that otherwise would be forwarded to Borrower in respect of any further Advances that may be made by Lender; or (e) by any combination of the foregoing as Lender may from time to time choose.

#### 4. FEES AND FINANCE CHARGES.

4.1 **Finance Charges.** Lender may, but is not required to, deduct the amount of accrued Finance Charges from Collections received by Lender. On each Month End Borrower shall pay to Lender any accrued and unpaid Finance Charges as of such Month End. Lender may deduct the accrued Finance Charges in calculating the Refundable Reserve.

#### 4.2 Fees.

- (a) **Maintenance Fee.** On each Month End, Borrower shall pay to Lender the accrued unpaid Maintenance Fee for the Monthly Period ending on such Month End.
- (b) **Fee In Lieu of Warrant.** Borrower shall pay the Fee In Lieu of Warrant to Lender on the Closing Date.
- (c) **Facility Fee.** Borrower shall pay the Facility Fee to Lender on the Closing Date, on April 20, 2019 and annually thereafter on each anniversary of April 20.
- (d) **Recovery Fee.** If Borrower fails to remit any Collections to Lender as provided in Section 2.5, Borrower shall in each case pay to Lender the Recovery Fee for such Collections.
- (e) **Due Diligence Fee.** Borrower shall pay the Due Diligence Fee to Lender on the Closing Date and annually thereafter.
- (f) **Success Fee.** Borrower shall pay the Success Fee to Lender on the earlier to occur of (i) the termination of this Agreement or (ii) the repayment of all Obligations.

#### 5. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants:

##### 5.1 With respect to each Financed Receivable:

- (a) It is the owner with legal right to sell, transfer and assign it;
- (b) The correct Receivable Amount is on the Funding Request and is not disputed;
- (c) Such Financed Receivable is an Eligible Receivable;
- (d) Lender has the right to endorse and/ or require Borrower to endorse all payments received on Financed Receivables and all proceeds of Collateral; and
- (e) No representation, warranty or other statement of Borrower in any certificate or written statement given to Lender contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement contained in the certificates or statement not misleading.

5.2 Borrower is duly existing and in good standing in its jurisdiction of formation and qualified and licensed to do business in, and in good standing in, any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified.

5.3 The execution, delivery and performance of this Agreement has been duly authorized, and does not (a) conflict with Borrower's organizational documents, (b) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (c) contravene, conflict with or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of Borrower's property or assets may be bound or affected, (d) 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 (e) constitute an Event of Default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which or by which it is bound.

- 5.4 Borrower has not violated any laws, ordinances or rules, the violation of which could have a material adverse effect on Borrower's business.
- 5.5 Borrower has good title to the Collateral and all inventory is in all material respects of good and marketable quality, free from material defects.
- 5.6 Borrower's name, form of organization, chief executive office, and the place where the records concerning all Financed Receivables and Collateral are kept is set forth at the beginning of this Agreement, Borrower is located at its address for notices set forth in this Agreement.
- 5.7 If Borrower owns, holds or has any interest in, any copyrights (whether registered, or unregistered), patents or trademarks, and licenses of any of the foregoing, such interest has been specifically disclosed and identified to Lender in writing.
- 5.8 Borrower is the sole owner of the intellectual property, except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business. Each of the patents is valid and enforceable, and no part of the intellectual property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the intellectual property violates the rights of any third party.
- 5.9 Borrower is solvent and able to pay its debts (including trade debts) as they mature.
- 5.10 The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise disclosed in writing to Lender. None of the Collateral is currently being maintained at locations other than as disclosed in writing to Lender.
- 5.11 Except as disclosed in writing to Lender, there are no actions or proceedings pending or, to the knowledge of Borrower's officers, threatened in writing by or against Borrower or any Subsidiary in which an adverse decision could reasonably be expected to cause a Material Adverse Change.
- 5.12 All consolidated financial statements for Borrower and any Subsidiary delivered to Lender fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. All consolidating financial statements for Borrower and its Subsidiaries delivered to Lender fairly present in all material respects Borrower's and each of its Subsidiary's financial condition and 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 Lender.
- 5.13 Borrower does not own any stock, partnership interest, or other ownership interest in any Person except as specifically disclosed on a schedule to this Agreement.
- 5.14 Borrower and each Subsidiary have timely filed all required tax returns and reports, and Borrower and each Subsidiary have timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each Subsidiary.

**6. MISCELLANEOUS PROVISIONS.** Borrower will:

- 6.1 Maintain its corporate existence and good standing in its jurisdictions of incorporation and maintain its qualification to do business in each jurisdiction necessary to Borrower's business or operations, and not merge or consolidate with or into any other business organization, or acquire all or substantially all of the capital stock or property of a third party, unless (i) any such acquired entity becomes a "borrower" under this Agreement and (ii) Lender has previously consented to the applicable transaction in writing.
- 6.2 Comply with all laws, ordinances and regulations to which it is subject, noncompliance with which could have a material adverse effect on Borrower's business.
- 6.3 Give Lender at least thirty (30) days prior written notice of changes to its name, organization, chief executive office, location of records or otherwise add any new business locations or any new locations where Borrower intends to store Collateral, and, if requested by Lender, Borrower will cause the applicable landlord/bailee to enter into a landlord consent (or bailee agreement in the case of any bailee) in favor of Lender prior to the commencement of such new office or location.
- 6.4 Pay all its taxes including gross payroll, withholding and sales taxes when due and will deliver satisfactory evidence of payment to Lender if requested; provided, however, Borrower may in good faith protest tax assessments and withhold payment of the protested portion of taxes during the pendency of such protest if Borrower provides the

taxing authority with a bond or other surety acceptable to such authority and to Lender in its sole discretion in the amount of the taxes subject to the protest.

- 6.5 If requested, provide to Lender a written report within ten (10) days, if payment of any Financed Receivable does not occur by its due date and include the reasons for the delay.
- 6.6 If applicable, give Lender copies of all Forms 10-K, 10-Q and 8-K (or equivalents) within five (5) days of filing with the Securities and Exchange Commission, while any Financed Receivable is outstanding.
- 6.7 Immediately transfer and deliver to Lender all Collections Borrower receives.
- 6.8 Not create, incur, assume, or be liable for any indebtedness, other than Permitted Indebtedness.
- 6.9 Not convey, sell, lease, transfer or otherwise dispose of (collectively, a "**Transfer**"), all or any part of its business or property, other than: (a) Transfers of inventory in the ordinary course of business; (b) Transfers of non-exclusive licenses and similar arrangements for the use of the property of Borrower in the ordinary course of business; (c) Transfers of worn-out or obsolete equipment; or (d) the Contemplated Sale.
- 6.10 Not make any investment in or to any Person, other than Permitted Investments.
- 6.11 Not pay any dividends or make any distributions or payment with respect to Borrower's capital stock or other equity interests or redeem, retire or purchase any of Borrower's capital stock or other equity interests.
- 6.12 Not directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for 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.
- 6.13 Not make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of the applicable subordination agreement in favor of Lender, or amend any provision contained in any documentation relating to the Subordinated Debt without Lender's prior written consent.
- 6.14 Immediately notify Lender if Borrower hereafter obtains any interest in any copyrights, patents, trademarks or licenses that are significant in value or are material to the conduct of its business or the value of any Financed Receivable.
- 6.15 Provide the following financial information and statements in form and content acceptable to Lender, and such additional information as requested by Lender from time to time. Lender has the right to require Borrower to deliver financial information and statements to Lender more frequently than otherwise provided below, and to use such additional information and statements to measure any applicable financial covenants in this Agreement.
  - (a) Within ninety (90) days of the fiscal year end, the annual financial statements of Borrower, certified and dated by an authorized financial officer. These financial statements must be audited (with an opinion satisfactory to Lender) by a Certified Public Accountant acceptable to Lender. The statements shall be prepared on a consolidated basis.
  - (b) No later than thirty (30) days after the end of each month (including the last period in each fiscal year), monthly financial statements of Borrower (including, without limitation, a balance sheet and income statement), certified and dated by an authorized financial officer. The statements shall be prepared on a consolidated basis.
  - (c) If applicable, copies of the Form 10-K Annual Report, Form 10-Q Quarterly Report and Form 8-K Current Report for Borrower concurrent with the date of filing with the Securities and Exchange Commission.
  - (d) Annual board-approved financial projections and operating budgets specifying the assumptions used in creating the projections and budgets. Annual board-approved projections and operating budgets shall be in a form acceptable to Lender and shall be provided to Lender no later than sixty (60) days after the beginning of each fiscal year.
  - (e) Within thirty (30) days of the end of each month, a Compliance Certificate of Borrower, signed by an authorized financial officer and setting forth whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any default under this Agreement and, if any such default exists, specifying the nature thereof and the action Borrower is taking and proposes to take with respect thereto.

(f) Within ten (10) days after the last day of each calendar month, a detailed aging of Borrower's Receivables by invoice or a summary aging by Account Debtor, together with payable aging and such other matters as Lender may request.

(g) Weekly, by no later than Friday of each week, cash flow projections for the upcoming thirteen (13) weeks.

(h) As a condition to each Advance, a report on accounts payable aging and unvouchered accounts payable aging.

(i) Promptly upon Lender's request, such other books, records, statements, lists of property and accounts, budgets, forecasts or reports as to Borrower and as to each guarantor of Borrower's obligations to Lender as Lender may request.

6.16 Maintain all of its operating, depository and investment accounts with Lender and, without limiting the foregoing, in the case of any deposit or investment accounts not maintained with Lender, grant to Lender a first priority perfected security interest in and "**control**" (within the meaning of Section 9104 of the UCC) of such deposit account pursuant to documentation acceptable to Lender.

6.17 Provide to Lender promptly upon the execution hereof, and as a condition to the effectiveness of this Agreement, the following documents which shall be in form satisfactory to Lender: (i) Corporate (or Limited Liability Company, as applicable) Resolutions to Borrow, duly executed by Borrower, and (ii) such other agreements, instruments and documents as Lender may request.

6.18 Promptly provide to Lender such additional information and documents regarding the finances, properties, business or books and records of Borrower or any guarantor or any other obligor as Lender may request.

6.19 Not make or contract to make, without Lender's prior written consent, capital expenditures, including leasehold improvements, in any fiscal year in excess of \$50,000 or incur liability for rentals of property (including both real and personal property) in an amount which, together with capital expenditures, shall in any fiscal year exceed such sum.

6.20 Execute any further instruments and take further action as Lender requests to perfect or continue Lender's security interest in the Collateral or to affect the purposes of this Agreement.

**7. SECURITY INTEREST.** To secure the prompt payment and performance to Lender of all of the Obligations, Borrower hereby grants to Lender a continuing security interest in the Collateral. Borrower is not authorized to sell, assign, transfer or otherwise convey any Collateral without Lender's prior written consent, except for the sale of finished inventory in Borrower's usual course of business. Borrower agrees to sign any instruments and documents requested by Lender to evidence, perfect, or protect the interests of Lender in the Collateral. Borrower agrees to deliver to Lender the originals of all instruments, chattel paper and documents evidencing or related to Financed Receivables and Collateral. Borrower shall not grant or permit any lien or security in the Collateral or any interest therein other than Permitted Liens.

**8. POWER OF ATTORNEY.** Borrower irrevocably appoints Lender and its successors and as true and lawful attorney in fact, and authorizes Lender (a) to, whether or not there has been an Event of Default, (i) demand, collect, receive, sue, and give releases to any Account Debtor for the monies due or which may become due upon or with respect to the Receivables and to compromise, prosecute, or defend any action, claim, case or proceeding relating to the Receivables, including the filing of a claim or the voting of such claims in any bankruptcy case, all in Lender's name or Borrower's name, as Lender may choose; (ii) prepare, file and sign Borrower's name on any notice, claim, assignment, demand, draft, or notice of or satisfaction of lien or mechanics' lien or similar document; (iii) notify all Account Debtors with respect to the Receivables to pay Lender directly; (iv) receive and open all mail addressed to Borrower for the purpose of collecting the Receivables; (v) endorse Borrower's name on any checks or other forms of payment on the Receivables; (vi) execute on behalf of Borrower any and all instruments, documents, financing statements and the like to perfect Lender's interests in the Receivables and Collateral; (vii) debit any Borrower's deposit accounts maintained with Lender for any and all Obligations due under this Agreement; and (viii) do all acts and things necessary or expedient, in furtherance of any such purposes, and (b) to, upon the occurrence and during the continuance of an Event of Default, sell, assign, transfer, pledge, compromise, or discharge the whole or any part of the Receivables. Upon the occurrence and continuation of an Event of Default, all of the power of attorney rights granted by Borrower to Lender hereunder shall be applicable with respect to all Receivables and all Collateral.

## **9. DEFAULT AND REMEDIES.**

**9.1 Events of Default.** The occurrence of any one or more of the following shall constitute an Event of Default hereunder.

(a) **Failure to Pay.** Borrower fails to make a payment when due under this Agreement.

- (b) **Lien Priority.** Lender fails to have an enforceable first lien (except for any prior liens to which Lender has consented in writing) on or security interest in the Collateral.
- (c) **False Information.** Borrower (or any guarantor) has given Lender any materially false or misleading information or representations or has failed to disclose any material fact relating to the subject matter of this Agreement.
- (d) **Death.** Any guarantor dies or becomes legally incompetent, or if any guarantor is a partnership, any general partner dies or becomes legally incompetent.
- (e) **Bankruptcy.** Borrower (or any guarantor) files a bankruptcy petition, a bankruptcy petition is filed against Borrower (or any guarantor) or Borrower (or any guarantor) makes a general assignment for the benefit of creditors.
- (f) **Receivers.** A receiver or similar official is appointed for a substantial portion of Borrower's (or any guarantor's) business, or the business is terminated.
- (g) **Judgments.** Any judgments or arbitration awards are entered against Borrower (or any guarantor), or Borrower (or any guarantor) enters into any settlement agreements with respect to any litigation or arbitration and the aggregate amount of all such judgments, awards, and agreements exceeds \$100,000.
- (h) **Material Adverse Change.** A Material Adverse Change occurs, or is reasonably likely to occur.
- (i) **Cross-default.** Any default occurs under any agreement in connection with any credit Borrower (or any guarantor) or any of Borrower's Affiliates has obtained from anyone else or which Borrower (or any guarantor) or any of Borrower's Affiliates has guaranteed (other than trade amounts payable incurred in the ordinary course of business and not more than sixty (60) days past due).
- (j) **Default under Related Documents.** Any default occurs under any guaranty, subordination agreement, security agreement, deed of trust, mortgage, or other document required by or delivered in connection with this Agreement or any such document is no longer in effect.
- (k) **Other Agreements.** Borrower (or any guarantor) or any of Borrower's Affiliates fails to meet the conditions of, or fails to perform any obligation under any other agreement Borrower (or any guarantor) or any of Borrower's Affiliates has with Lender or any Affiliate of Lender.
- (l) **Change of Control.** The holders of the capital ownership of Parent as of the Closing Date cease to own and control, directly and indirectly, at least 51% of the capital ownership of Parent, or Parent ceases to own and control, directly and indirectly, at least 100% of the capital ownership of each other Borrower.
- (m) **Other Breach Under Agreement.** Borrower fails to meet the conditions of, or fails to perform any obligation under, any term of this Agreement not specifically referred to above.

**9.2 Remedies.** Upon the occurrence of an Event of Default, (1) without implying any obligation to do so, Lender may cease making Advances or extending any other financial accommodations to Borrower; (2) all or a portion of the Obligations shall be, at the option of and upon demand by Lender, or with respect to an Event of Default described in Section 9.1(e), automatically and without notice or demand, due and payable in full; and (3) Lender shall have and may exercise all the rights and remedies under this Agreement and under applicable law, including the rights and remedies of a secured party under the UCC, all the power of attorney rights described in Section 8 with respect to all Collateral, and the right to collect, dispose of, sell, lease, use, and realize upon all Financed Receivables and all Collateral in any commercially reasonable manner.

**10. ACCRUAL OF INTEREST.** All interest and finance charges hereunder calculated at an annual rate shall be based on a year of 360 days, which results in a higher effective rate of interest than if a year of 365 or 366 days were used. Lender may charge interest, finance charges and fees based upon the projected amounts thereof as of the due dates therefor, and adjust subsequent charges to account for the actual accrued amounts. If any amount due under Section 4.2, amounts due under Section 11, and any other Obligations not otherwise bearing interest hereunder is not paid when due, such amount shall bear interest at a per annum rate equal to the applicable Finance Charge Percentage until the earlier of (i) payment in good funds or (ii) entry of a trial judgment thereof, at which time the principal amount of any money judgment remaining unsatisfied shall accrue interest at the highest rate allowed by applicable law.

**11. FEES, COSTS AND EXPENSES; INDEMNIFICATION.** Borrower will pay to Lender upon demand all fees, costs and expenses (including fees of attorneys and professionals and their costs and expenses) that Lender incurs or may from time to



time impose in connection with any of the following: (a) preparing, negotiating, administering, and enforcing this Agreement or any other agreement executed in connection herewith, including any amendments, waivers or consents in connection with any of the foregoing, (b) any litigation or dispute (whether instituted by Lender, Borrower or any other Person) in any way relating to the Financed Receivables, the Collateral, this Agreement or any other agreement executed in connection herewith or therewith, (c) enforcing any rights against Borrower or any guarantor, or any Account Debtor, (d) protecting or enforcing its interest in the Financed Receivables or the Collateral, (e) collecting the Financed Receivables and the Obligations, or (f) the representation of Lender in connection with any bankruptcy case or insolvency proceeding involving Borrower, any Financed Receivable, the Collateral, any Account Debtor, or any guarantor. Borrower shall indemnify and hold Lender harmless from and against any and all claims, actions, damages, costs, expenses, and liabilities of any nature whatsoever arising in connection with any of the foregoing.

## 12. INTEGRATION, SEVERABILITY WAIVER, AND CHOICE OF LAW FORUM AND VENUE.

12.1 This Agreement and any related security or other agreements required by this Agreement, collectively: (a) represent the sum of the understandings and agreements between Lender and Borrower concerning this credit; (b) replace any prior oral or written agreements between Lender and Borrower concerning this credit; and (c) are intended by Lender and Borrower as the final, complete and exclusive statement of the terms agreed to by them. In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail. If any provision of this Agreement is deemed invalid by reason of law, this Agreement will be construed as not containing such provision and the remainder of this Agreement shall remain in full force and effect. Lender retains all of its rights, even if it makes an Advance after a default. If Lender waives a default, it may enforce a later default. Any consent or waiver under, or amendment of, this Agreement must be in writing, and no such consent, waiver, or amendment shall imply any obligation by Lender to make any subsequent consent, waiver, or amendment.

12.2 THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA. THE PARTIES HERETO AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER RELATED DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF SANTA CLARA, CALIFORNIA, OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS JURISDICTION OVER THE SUBJECT MATTER AND PARTIES IN CONTROVERSY. EACH PARTY HERETO WAIVES ANY RIGHT TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION AND STIPULATES THAT THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF SANTA CLARA, CALIFORNIA SHALL HAVE IN PERSONAM JURISDICTION AND VENUE OVER EACH SUCH PARTY FOR THE PURPOSE OF LITIGATING ANY SUCH DISPUTE, CONTROVERSY, OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR ANY OTHER RELATED DOCUMENTS. SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST BORROWER MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ITS ADDRESS SPECIFIED FOR NOTICES PURSUANT TO SECTION 13.

13. **NOTICES; TELEPHONIC AND TELEFAX AUTHORIZATIONS** . All notices shall be given to Lender and Borrower at the addresses or faxes (or e-mail, if applicable) set forth on the signature page of this agreement and shall be deemed to have been delivered and received: (a) if mailed, three (3) calendar days after deposited in the United States mail, first class, postage pre-paid, (b) one (1) calendar day after deposit with an overnight mail or messenger service; or (c) on the same date of confirmed transmission if sent by hand delivery, telecopy, telefax or telex. Lender may honor telephone, fax, e-mail or telefax instructions for Advances or repayments given, or purported to be given, by any one of the Authorized Persons. Borrower will indemnify and hold Lender harmless from all liability, loss, and costs in connection with any act resulting from telephone or telefax instructions Lender reasonably believes are made by any Authorized Person. This paragraph will survive this Agreement's termination, and will benefit Lender and its officers, employees, and agents.

## 14. DEFINITIONS AND CONSTRUCTION.

14.1 **Definitions.** In this Agreement:

**"Account Balance"** means at any time the aggregate of the Receivable Amounts of all Financed Receivables at such time, as reflected on the records maintained by Lender.

**"Account Debtor"** has the meaning in the UCC and includes any Person liable on any Receivable, including without limitation, any guarantor of any Receivable and any issuer of a letter of credit or banker's acceptance assuring payment thereof.

**"Adjustments"** means all discounts, allowances, disputes, offsets, defenses, rights of recoupment, rights of return, warranty claims, or short payments, asserted by or on behalf of any Account Debtor with respect to any Financed Receivable.

**“Advance”** means as to any Receivable, the advance made by Lender to Borrower in respect of such Receivable pursuant to Section 1.2.

**“Advance Rate”** means (a) with respect to Eligible Receivables, eighty-five percent (85%), or (b) with respect to Eligible Unbilled Receivables, (i) from the Closing Date through January 31, 2019, seventy-five percent (75%), and (ii) from and at all times after February 1, 2019, zero percent (0%), or, in each case, such greater or lesser percentage as Lender may from time to time establish in its sole discretion upon notice to Borrower.

**“Affiliate”** means, as to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person.

**“Agreement”** means this Amended and Restated Business Financing Agreement.

**“Authorized Person”** means any one of the individuals authorized to sign on behalf of Borrower.

**“Borrower’s Account”** means Borrower’s general operating account maintained with Lender, into which all Advances will be deposited unless otherwise instructed by Borrower in writing.

**“Cash Equivalents”** means (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, (ii) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, and (iii) certificates of deposit maturing no more than one (1) year from the date of investment therein issued by Lender.

**“Cash Reserve”** means for any Financed Receivable which has been paid in full during a Monthly Period, the amount by which the amount(s) paid on such Financed Receivable exceeds the Advance made on such Financed Receivable.

**“Collateral”** means all of Borrower’s rights and interest in any and all personal property, whether now existing or hereafter acquired or created and wherever located, and all products and proceeds thereof and accessions thereto, including but not limited to the following (collectively, the **“Collateral”**): (a) all accounts (including health care insurance receivables), chattel paper (including tangible and electronic chattel paper), inventory (including all goods held for sale or lease or to be furnished under a contract for service, and including returns and repossessions), equipment (including all accessions and additions thereto), instruments (including promissory notes), investment property (including securities and securities entitlements), documents (including negotiable documents), deposit accounts, letter of credit rights, money, any commercial tort claim of Borrower which is now or hereafter identified by Borrower or Lender, general intangibles (including payment intangibles, intellectual property and software), goods (including fixtures) and all of Borrower’s books and records with respect to any of the foregoing, and the computers and equipment containing said books and records; and (b) any and all cash proceeds and/or noncash proceeds thereof, including without limitation, insurance proceeds, and all supporting obligations and the security therefore or for any right to payment. Notwithstanding the foregoing, the Collateral shall not include copyrights or other intellectual property related to books published, or to be published, by Quarto Publishing Group USA Inc. so long as such copyrights, other intellectual property and/or books are not related to Borrower’s ordinary course of business; provided that, the Collateral shall include all accounts and general intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, all of such copyrights and other intellectual property.

**“Collection Account”** means the deposit account maintained with Lender which, pursuant to the Lockbox Agreement, all Collections received in the Lockbox are to be deposited, and as to which Borrower has no right to withdraw funds.

**“Collections”** means all payments from or on behalf of an Account Debtor with respect to Receivables.

**“Compliance Certificate”** means a certificate in the form attached as **Exhibit A** to this Agreement by an Authorized Person that, among other things, the representations and warranties set forth in this Agreement are true and correct as of the date such certificate is delivered.

**“Credit Card Services”** are any products, credit services and/or financial accommodations relating to credit cards and/or other cash management services previously, now, or hereafter provided to Borrower or any of its subsidiaries by Lender or any Lender Affiliate.

**“Credit Card Services Agreements”** are any agreements, instruments or documents relating to Credit Card Services.

**“Credit Limit”** means \$8,000,000, which is intended to be the maximum amount of Advances at any time outstanding.

**“Default”** means any Event of Default or any event that with notice, lapse of time or otherwise would constitute an Event of Default.

**“Due Diligence Fee”** means a payment of an annual fee equal to \$600 due upon the Closing Date and \$600 due upon each anniversary thereof so long as any Advance is outstanding or available hereunder.

**“Eligible Receivable”** means a Receivable that satisfies all of the following:

- (a) The Receivable has been created by Borrower in the ordinary course of Borrower’s business and without any obligation on the part of Borrower to render any further performance.
- (b) There are no conditions which must be satisfied before Borrower is entitled to receive payment of the Receivable, and the Receivable does not arise from COD sales, consignments or guaranteed sales or other terms by reason of which the payment by the Account Debtor may be conditional.
- (c) The Account Debtor upon the Receivable does not claim any defense to payment of the Receivable, whether well founded or otherwise.
- (d) The Receivable is not the obligation of an Account Debtor who has asserted or may reasonably be expected to assert any counterclaims or offsets against Borrower (including offsets for any “contra accounts” owed by Borrower to the Account Debtor for goods purchased by Borrower or for services performed for Borrower). Notwithstanding the foregoing, up to \$500,000 in Receivables in the aggregate that are contra accounts with respect to which the Account Debtor is Yahoo or Google may be included as Eligible Receivables.
- (e) The Receivable represents a genuine obligation of the Account Debtor and to the extent any credit balances exist in favor of the Account Debtor, such credit balances shall be deducted in calculating the Receivable Amount.
- (f) Borrower has sent an invoice to the Account Debtor in the amount of the Receivable.
- (g) Borrower is not prohibited by the laws of the jurisdiction where the Account Debtor is located from bringing an action in the courts of that jurisdiction to enforce the Account Debtor’s obligation to pay the Receivable. Borrower has taken all appropriate actions to ensure access to the courts of the jurisdiction where Account Debtor is located, including, where necessary; the filing of a Notice of Business Activities Report or other similar filing with the applicable governmental agency or the qualification by Borrower as a foreign corporation authorized to transact business in such jurisdiction.
- (h) The Receivable is owned by Borrower free of any title defects or any liens or interests of others except the security interest in favor of Lender, and Lender has a perfected, first priority security interest in such Receivable.
- (i) The Account Debtor on the Receivable is not any of the following: (i) an employee, Affiliate, parent or Subsidiary of Borrower, or any Person which has common officers or directors with Borrower, (ii) the U.S. government or any agency or department of the U.S. government unless otherwise approved by Lender in writing in its sole discretion on a case-by-case basis, or (iii) any Person located in a foreign country with the exception of Canada (but not including the province of Quebec) unless otherwise approved by Lender in writing in its sole discretion on a case-by-case basis.
- (j) The Receivable is not in default (a Receivable will be considered in default if any of the following occur: (i) the Receivable is not paid within ninety (90) days from its invoice date; (ii) the Account Debtor obligated upon the Receivable suspends business, makes a general assignment for the benefit of creditors, or fails to pay its debts generally as they come due; or (iii) any petition is filed by or against the Account Debtor obligated upon the Receivable under any bankruptcy law or any other law or laws for the relief of debtors).
- (k) The Receivable does not arise from the sale of goods which remain in Borrower’s possession or under Borrower’s control.
- (l) The Receivable is not evidenced by a promissory note or chattel paper, nor is the Account Debtor obligated to Borrower under any other obligation which is evidenced by a promissory note.
- (m) The Receivable does not constitute a prebilling, prepaid deposit, retention billing, bonded receivable, or progress billing.

(n) The Receivable is not owing from an Account Debtor with respect to which Borrower has received deferred revenue (but such Receivable shall only be offset to the extent of such deferred revenue), unless otherwise approved by Lender in writing in its sole discretion on a case-by-case basis.

(o) The Receivable is otherwise acceptable to Lender.

**"Eligible Unbilled Receivable"** means a Receivable for which an invoice has not yet been sent to the Account Debtor but which otherwise meets all of the requirements of an Eligible Receivable; provided that such Receivable shall be invoiced and otherwise meet all of the requirements of an Eligible Receivable within three (3) business days after the end of the month during which such Receivable is financed as an Eligible Unbilled Receivable hereunder.

**"Eligible Unbilled Receivable Sublimit"** means (a) from the Closing Date through January 31, 2019, \$2,500,000, and (b) from and at all times after February 1, 2019, \$0.

**"Event of Default"** has the meaning set forth in Section 9.1.

**"Facility Fee"** means a payment of \$11,765 due on the Closing Date and a payment of an annual fee equal to one-quarter percentage point (0.25%) of the Formula Account Balance due on April 20, 2019 and annually thereafter on each anniversary of April 20 until this Agreement is terminated pursuant to Section 17 hereof.

**"Fee In Lieu of Warrant"** means a payment of a fee equal to \$30,000 due upon the Closing Date.

**"Finance Charge"** means for each Monthly Period an interest amount equal to the applicable Finance Charge Percentage of the average daily Account Balance outstanding during such Monthly Period.

**"Finance Charge Percentage"** means a rate per year equal to (a) with respect to Advances made against Eligible Receivables, the Prime Rate plus one percentage point (1.0%) and (a) with respect to Advances made against Eligible Unbilled Receivables, the Prime Rate plus two percentage points (2.0%), plus, in either case, an additional five percentage points (5.0%) during any period that an Event of Default has occurred and is continuing.

**"Financed Receivable"** means a Receivable for which Lender makes an Advance pursuant to a Funding Request.

**"Formula Account Balance"** means the dollar amount resulting from dividing the Credit Limit by the Advance Rate with respect to Eligible Receivables in effect at the time of calculation.

**"Funding Request"** means a writing signed by an Authorized Person which accurately identifies the Receivables which Lender, at its election, is being requested to finance, and includes for each such Receivable the correct amount owed by the Account Debtor, the name and address of the Account Debtor, the invoice number, the invoice date and the account code in the form of the invoice schedule attached as Exhibit B hereto, together with copies of invoices and such other supporting documentation as Lender may from time to time request.

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

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

**"Lender"** means Western Alliance Bank, an Arizona corporation, and its successors and assigns.

**"Lockbox"** is defined in the Lockbox Agreement.

**"Lockbox Agreement"** is defined in Section 2.5.

**"Maintenance Fee"** means the amount equal to one-eighth percentage point (0.125%) per month of the ending daily Account Balance for the relevant period.

**"Material Adverse Change"** means a material adverse change in Borrower's (or any guarantor's) business condition (financial or otherwise), operations, properties or prospects, or ability to repay the credit.

**"Month End"** means the last calendar day of each Monthly Period.

**“Monthly Period”** means each calendar month.

**“Obligations”** means all liabilities and obligations of Borrower to Lender of any kind or nature, present or future, arising under or in connection with this Agreement, any Credit Card Services Agreement, or under any other document, instrument or agreement, whether or not evidenced by any note, guarantee or other instrument, whether arising on account or by overdraft, whether direct or indirect (including those acquired by assignment) absolute or contingent, primary or secondary, due or to become due, now owing or hereafter arising, and however acquired; including, without limitation, all Advances, Finance Charges, fees, interest, expenses, professional fees and attorneys’ fees.

**“Overadvance”** means at any time an amount equal to the greater of the following amounts (if any): (a) the amount by which the total amount of the Advances exceeds the Credit Limit and (b) the amount equal to the sum of (i) the total outstanding amounts of all Advances made with respect to Receivables which were not, or have ceased to be, Eligible Receivables or Eligible Unbilled Receivables and (ii) the amount by which the total outstanding amount of all Advances (other than those under clause (i) above) exceeds the product of (x) the applicable Advance Rate and (y) the total outstanding Receivable Amounts of the Eligible Receivables and Eligible Unbilled Receivables in respect of which such Advances were made.

**“Permitted Indebtedness”** means:

- (a) Indebtedness under this Agreement or that is otherwise owed to Lender.
- (b) Indebtedness existing on the Closing Date and specifically disclosed on a schedule to this Agreement.
- (c) Purchase money indebtedness (including capital leases) incurred to acquire capital assets in ordinary course of business and not exceeding \$500,000 in total principal amount at any time outstanding.
- (d) Other indebtedness in an aggregate amount not to exceed \$500,000 at any time outstanding; provided that such indebtedness is junior in priority (if secured) to the Obligations and provided that the incurrence of such Indebtedness does not otherwise cause an Event of Default hereunder.
- (e) Indebtedness incurred in the refinancing of any indebtedness set forth in (a) through (d) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower.
- (f) Subordinated Debt.

**“Permitted Investment”** means:

- (a) Investments existing on the Closing Date and specifically disclosed on a schedule to this Agreement.
- (b) Cash Equivalents and Lender’s money market accounts.
- (c) Investments of one Borrower in another Borrower.

**“Permitted Liens”** means:

- (a) Liens securing any of the indebtedness described in clauses (a) through (d) of the definition of Permitted Indebtedness.
- (b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Lender’s security interests.
- (c) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness described in clause (e) of the definition of Permitted Indebtedness, provided that any extension, renewal or replacement lien shall be limited to the property encumbered by the existing lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

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

**"Prime Rate"** means the greater of three and one-half percent (3.50%) per year or the rate of interest publicly announced from time to time by Lender as its Prime Rate. Lender may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in Lender's Prime Rate.

**"Prior Agreement"** is defined in the Recitals hereto.

**"Receivable Amount"** means as to any Receivable, the amount due from the Account Debtor after deducting all discounts, credits, offsets, payments or other deductions of any nature whatsoever, whether or not claimed by the Account Debtor.

**"Receivables"** means Borrower's rights to payment arising in the ordinary course of Borrower's business, including accounts, chattel paper, instruments, contract rights, documents, general intangibles, letters of credit, drafts, and bankers acceptances.

**"Recovery Fee"** means for each item of Collections which Borrower has failed to remit as required by the Agreement, a fee equal to the lesser of \$5,000 or five percent (5%) of the amount of such item, but in no case less than \$1,000.

**"Refundable Reserve"** means for any Month End:

(a) The sum of (i) the total of the Cash Reserves as to all Financed Receivables as of such Month End and (ii) the amount of Collections received by Lender during the Monthly Period with respect to Receivables other than Financed Receivables and not previously remitted to Borrower,

minus

(b) The total for that Monthly Period ending on such Month End of:

(i) Maintenance Fee, Facility Fee, Due Diligence Fee, and Recovery Fees;

(ii) Finance Charges;

(iii) Adjustments;

(iv) Any outstanding Overadvance Amounts;

(v) all amounts due, including professional fees and expenses, as set forth in Section 11 for which oral or written demand has been made by Lender to Borrower during that Monthly Period to the extent Lender has agreed to accept payment thereof by deduction from the Refundable Reserve; and

(vi) all amounts collected by Borrower on Financed Receivables during the Monthly Period and not remitted to Lender.

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

**"Reserve"** means as to any Financed Receivable the amount by which the Receivable Amount of the Financed Receivable exceeds the Advance on that Financed Receivable.

**"Subordinated Debt"** means indebtedness of Borrower that is expressly subordinated to the indebtedness of Borrower owed to Lender pursuant to a subordination agreement satisfactory in form and substance to Lender.

**"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.

**"Success Fee"** is a non-refundable fee, fully-earned as of the Closing Date, in an amount equal to Seventy-Five Thousand Dollars (\$75,000).

**"Transfer"** has the meaning set forth in Section 6.9.

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

#### 14.2 Construction:

(a) In this Agreement: (i) references to the plural include the singular and to the singular include the plural; (ii) references to any gender include any other gender; (iii) the terms **"include"** and **"including"** are not limiting; (iv) the term **"or"** has the inclusive meaning represented by the phrase **"and/or,"** (v) unless otherwise specified, section and subsection references are to this Agreement, and (vi) any reference to any statute, law, or regulation shall include all amendments thereto and revisions thereof.

(b) Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against either Borrower or Lender, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by each party hereto and their respective counsel. In case of any ambiguity or uncertainty, this Agreement shall be construed and interpreted according to the ordinary meaning of the words used to accomplish fairly the purposes and intentions of all parties hereto.

(c) Titles and section headings used in this Agreement are for convenience only and shall not be used in interpreting this Agreement.

15. **JURY TRIAL WAIVER.** THE UNDERSIGNED ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT BETWEEN THE UNDERSIGNED PARTIES.

#### 16. JUDICIAL REFERENCE PROVISION.

16.1 In the event the Jury Trial Waiver set forth above is not enforceable, the parties elect to proceed under this Judicial Reference Provision.

16.2 With the exception of the items specified in Section 16.3 below, any controversy, dispute or claim (each, a **"Claim"**) between the parties arising out of or relating to this Agreement, any Credit Card Services Agreement, or any other document, instrument or agreement between the undersigned parties (collectively in this Section, the **"Loan Documents"**), will be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (**"CCP"**), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Except as otherwise provided in the Loan Documents, venue for the reference proceeding will be in the state or federal court in the county or district where the real property involved in the action, if any, is located or in the state or federal court in the county or district where venue is otherwise appropriate under applicable law (the **"Court"**).

16.3 The matters that shall not be subject to a reference are the following: (i) nonjudicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this reference provision as provided herein.

16.4 The referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP § 170.6, each party shall have one peremptory challenge to the referee selected by the Presiding Judge of the Court (or his or her representative).

16.5 The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues of law or fact within one hundred twenty (120) days after the date of the conference and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

16.6 The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "**priority**" in conducting discovery, depositions may be taken by either party upon seven (7) days written notice, and all other discovery shall be responded to within fifteen (15) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

16.7 Except as expressly set forth herein, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

16.8 The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. Pursuant to CCP § 644, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court and any such decision will be final, binding and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

16.9 If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

16.10 THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CONTROVERSY, DISPUTE OR CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

17. **TERM AND TERMINATION.** Borrower and Lender each have the right to terminate the financing of Receivables under this Agreement at any time upon notice to the other: provided that no such termination shall affect Lender's security interest in the Financed Receivables and other Collateral, and this Agreement shall continue to be effective, and the obligations of Borrower to indemnify Lender with respect to the expenses, damages, losses, costs and liabilities described in Section 11 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Lender have run, and Lender's rights and remedies hereunder shall survive any such termination, until all transactions entered into and Obligations incurred hereunder or in connection herewith have been completed and satisfied in full. Upon any such termination, Borrower shall, upon demand by Lender, immediately repay all Advances then outstanding.

18. **EXECUTION, EFFECTIVENESS, SURVIVAL.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other documents executed in connection herewith constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement shall become effective upon the execution and delivery hereof by Borrower and Lender and shall continue in full force and effect until



terminated in accordance with Section 17 above and thereafter so long as any Obligations remain outstanding hereunder. Notwithstanding anything to the contrary contained herein, Borrower's obligations with respect to that certain Success Fee in Section 4.2(f) shall survive termination of this Agreement or any other Loan Document.

19. **OTHER AGREEMENTS.** (i) Any security agreements, liens and/or security interests securing payment of any obligations of Borrower owing to Lender or its Affiliates also secure the Obligations, and are valid and subsisting and are not adversely affected by execution of this Agreement. An Event of Default under this Agreement constitutes a default under other outstanding agreements between Borrower and Lender or its Affiliates; (ii) Lender reserves the right to issue press releases, advertisements, and other promotional materials describing any successful outcome of services provided on Borrower's behalf. Borrower agrees that Lender shall have the right to identify Borrower by name in those materials.
20. **BORROWER LIABILITY.** Any Borrower may, acting singly, request credit extensions hereunder. Each Borrower hereby appoints the other as agent for itself for all purposes hereunder, including with respect to requesting credit extensions hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay all Obligations, including, without limitation, all credit extensions made hereunder, regardless of which Borrower actually receives said credit extensions, as if each Borrower hereunder directly received all credit extensions. Each Borrower waives (a) any suretyship defenses available to it under the UCC or any other applicable law, and (b) any right to require Lender to: (i) proceed against any Borrower or any other Person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Lender may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability.

Notwithstanding any other provision of this Agreement or other related document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Lender 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 shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Lender and such payment shall be promptly delivered to Lender for application to the Obligations, whether matured or unmatured.

21. **REVIVAL AND REINSTATEMENT OF OBLIGATIONS.** If the incurrence or payment of the Obligations by Borrower or any guarantor, or the transfer to Lender of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the United States Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "**Voidable Transfer**"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and reasonable attorneys' fees of Lender related thereto, the liability of Borrower and such guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.
22. **PATRIOT ACT NOTIFICATION .** Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 ("**Patriot Act**"), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the names and addresses of Borrower and other information that will allow Lender to identify Borrower in accordance with the Patriot Act.
23. **SUCCESSORS AND ASSIGNS.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Lender's prior written consent (which may be granted or withheld in Lender's discretion). Lender 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, Lender's obligations, rights, and benefits under this Agreement and the other Loan Documents.
24. **THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.
25. **NO NOVATION.** Nothing contained herein shall in any way impair the Prior Agreement and the other Loan Documents now held for the Obligations, nor affect or impair any rights, powers, or remedies under the Prior Agreement or any Loan Document, it being the intent of the parties hereto that this Agreement shall not constitute a novation of the Prior Agreement or an accord and satisfaction of the Obligations. Except as expressly provided for in this Agreement, the Loan Documents are hereby ratified and reaffirmed and shall remain in full force and effect. Borrower hereby ratifies and reaffirms the validity and enforceability of all of the liens and security interests heretofore granted pursuant to the Loan Documents, as collateral security

for the Obligations, and acknowledges that all of such liens and security interests, and all Collateral heretofore pledged as security for the Obligations, continues to be and remains Collateral for the Obligations from and after the Closing Date.

26. **NOTICE OF FINAL AGREEMENT.** BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THIS WRITTEN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

[Signature page follows]

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement on the day and year above written.

**BORROWER:**

**LENDER:**

**INUVO, INC.**

**WESTERN ALLIANCE BANK, AN ARIZONA CORPORATION**

By: \_  
Name: \_  
Title: \_

By: \_  
Name: \_  
Title: \_

**BABYTOBEE, LLC**

Address for Notices:  
Western Alliance Bank, an Arizona corporation  
55 Almaden Blvd.  
San Jose, CA 95113  
Fax: (408) 423-8520  
Email: lisa.chang@bridgebank.com  
Attn: Lisa Change

By: \_  
Name: \_  
Title: \_

**KOWABUNGA MARKETING, INC.**

By: \_  
Name: \_  
Title: \_

**VERTRO, INC.**

By: \_  
Name: \_  
Title: \_

**A LOT, INC.**

By: \_  
Name: \_  
Title: \_

**NETSEER, INC.**

By: \_  
Name: \_  
Title: \_

Address for Notices:

c/o Inuvo, Inc.  
500 President Clinton Avenue, Suite 300  
Little Rock, AR 72201  
Fax: \_  
Email: \_  
Attn: Chief Executive Officer

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EXHIBIT A

**COMPLIANCE CERTIFICATE**

TO: WESTERN ALLIANCE BANK, an Arizona corporation (the "Lender")

FROM: INUVO, INC. ("Parent"), BABYTOBEE, LLC ("Babytobee"), KOWABUNGA MARKETING, INC. ("Kowabunga"), VERTRO, INC. ("Vertro"), A LOT, INC. ("A LOT"), and NETSEER, INC. ("NetSeer" and together with Parent, Babytobee, Kowabunga, Vertro and A LOT, individually and collectively, jointly and severally, "Borrower")

The undersigned authorized officer of Inuvo, Inc., on behalf of all Borrowers, hereby certifies that in accordance with the terms and conditions of the Amended and Restated Business Financing Agreement between Borrower and Lender (the "Agreement"), (i) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

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

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>	
Monthly financial statements and Compliance Certificate	Within 30 days of the end of each calendar month	Yes	No
A/R & A/P Agings	Within 10 days of the end of each calendar month	Yes	No
Annual financial statements (CPA-audited)	Within 90 days of each FYE	Yes	No
10K and 10Q reports	Concurrent with SEC filing dates (where applicable)	Yes	No
Board approved operating projections (including income statements, balance sheets and cash flow statements)	FYE within 60 days	Yes	No
13-Week Cash Flow Projection	Weekly, by Friday of each week	Yes	No
Report on A/P Agings and Unvouchered A/P	With each request for an Advance	Yes	No

**Deposits**

Deposits held at Bridge Bank: \$ \_\_\_\_\_  
Deposits held outside of Bridge Bank: \$ \_\_\_\_\_

**Comments Regarding Exceptions:** See Attached.

Sincerely,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

<b>BANK USE ONLY</b>			
Received by: _			
	AUTHORIZED SIGNER		
Date: _			
Verified: _			
	AUTHORIZED SIGNER		
Date: _			
Compliance Status		Yes	No

## INDEMNIFICATION AGREEMENT

INDEMNIFICATION AGREEMENT, effective as of November 2, 2018, between Inuvo, Inc., a Nevada corporation (the “Company”), and [DIRECTOR] (the “Indemnitee”).

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available;

WHEREAS, Indemnitee is a director or officer of the Company;

WHEREAS, both the Company and Indemnitee recognize the increased risk of litigation and other claims being asserted against directors and officers of public companies in today’s environment;

WHEREAS, the Company’s Articles of Incorporation, as amended (the “Articles”) and Bylaws (the “Bylaws”) permit the Company to indemnify and advance expenses to its directors and officers to the fullest extent permitted by law and Indemnitee has been serving and continues to serve as a director or officer of the Company in reliance in part on the Articles or Bylaws;

WHEREAS, Nevada Revised Statutes 78.7502, 78.751 and 78.752 set forth provisions providing for the mandatory and permissive indemnification of, and advancement of expenses to, officers and directors of a Nevada corporation and are specifically not exclusive of other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise;

WHEREAS, the Company would like for Indemnitee to exercise his or her best judgment in the performance of his or her duties or in his or her service to the Company or any of its subsidiaries or any other business entity or employee benefit plan to which Indemnitee renders services at the request of the Company, without undue concern for claims for damages arising out of or related to the performance of those duties or for expenses related to such claims; and

WHEREAS, in recognition of Indemnitee’s need for substantial protection against personal liability in order to enhance Indemnitee’s continued service to the Company in an effective manner, and Indemnitee’s reliance on the Articles and Bylaws, and in part to provide Indemnitee with specific contractual assurance that the protection permitted by the Articles or Bylaws will be available to Indemnitee (regardless of, among other things, any amendment to or revocation of the Articles or Bylaws or any change in the composition of the Company’s Board of Directors or any acquisition transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of and the advancement of expenses to Indemnitee to the fullest extent (whether partial or complete) permitted by law and as set forth in this Agreement, and, to the extent insurance is maintained, for the continued coverage of Indemnitee under the Company’s directors’ and officers’ liability insurance policies;

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NOW, THEREFORE, in consideration of the premises and of Indemnitee continuing to serve the Company directly or, at its request, another enterprise, and intending to be legally bound hereby, the parties hereto agree as follows:

#### 1. Certain Definitions.

(a) Change in Control: the consummation of a “change in the ownership” of the Company, a “change in effective control” of the Company or a “change in the ownership of a substantial portion of the assets” of the Company, in each case, as defined under Section 409A of the Internal Revenue Code of 1986, as amended.

(b) Claim: any threatened, pending or completed action, suit or proceeding, or any inquiry or investigation, whether instituted by the Company or any other person or entity (including, without limitation, a governmental entity, agency or instrumentality), that Indemnitee in good faith believes might lead to the institution of any action, suit or proceeding, whether civil, criminal, administrative, investigative or other.

(c) Expenses: include reasonable attorneys’ fees and all other costs, expenses and obligations paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness in or participate in, any Claim relating to any Indemnifiable Event, including any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement.

(d) Expense Advance: shall have the meaning specified in Section 2(a).

(e) Indemnifiable Event: any event or occurrence related to the fact that Indemnitee is or was a director, officer, employee, trustee, agent or fiduciary of the Company, or is or was serving at the request of the Company as a director, officer, employee, trustee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, or by reason of anything done or not done by Indemnitee in any such capacity.

(f) Independent Legal Counsel: an attorney or firm of attorneys, selected in accordance with the provisions of Section 3, who shall not have otherwise performed services for the Company or Indemnitee within the last five years (other than with respect to matters in which such counsel was engaged as Independent Legal Counsel concerning the rights of Indemnitee under this Agreement, or of other indemnitees under similar indemnity agreements with the Company).

(g) Reviewing Party: the Board of Directors of the Company or Independent Legal Counsel. Except as provided in Section 3 of this Agreement (in the event of a Change in Control), a determination by the Reviewing Party must be made (i) by the Company’s Board of Directors by majority vote of a quorum consisting of directors who are not parties to the Claim, (ii) if a majority vote of a quorum consisting of directors who are not parties to the Claim so orders, by Independent Legal Counsel in a written opinion or (iii) if a quorum consisting of directors who are not parties to the Claim cannot be obtained, by Independent Legal Counsel in a written opinion.

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## 2. Basic Indemnification Arrangement.

(a) In the event Indemnitee was, is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Claim by reason of (or arising in part out of) an Indemnifiable Event, the Company shall indemnify Indemnitee to the fullest extent permitted by law as soon as practicable but in any event no later than thirty days after written demand or request is presented to the Company, against any and all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties or amounts paid in settlement) of such Claim. If so requested by Indemnitee in writing, the Company shall advance to Indemnitee ahead of the final disposition of the Claim any and all Expenses (an "Expense Advance") as soon as practicable but in any event no later than thirty days after such request is presented to the Company or as otherwise specifically provided herein.

(b) Notwithstanding the foregoing, (i) the obligations of the Company under Section 2(a) shall be subject to the condition that, except with respect to Expense Advances, the Reviewing Party shall have determined (in a written opinion, in any case in which the Independent Legal Counsel referred to in Section 3 is the Reviewing Party) that indemnification is proper in the circumstances, and (ii) the obligation of the Company to make an Expense Advance pursuant to this Agreement shall be subject to the condition that, if, when and to the extent that it is ultimately determined by a court of competent jurisdiction that Indemnitee is not entitled to be indemnified by the Company under applicable law, the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

If there has not been a Change in Control, the Reviewing Party shall be as set forth in Section 1(g), and if there has been such a Change in Control, the Reviewing Party shall be the Independent Legal Counsel referred to in Section 3.

(c) If the Reviewing Party has not made a determination within thirty days after receipt by the Company of a written demand or request for indemnification, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be deemed to be entitled to such indemnification, absent a final judicial determination that indemnification is not permitted under applicable law. By written notice to Indemnitee, the thirty day period may be extended for a reasonable time, not to exceed fifteen additional days, if the Reviewing Party making the determination requires additional time for obtaining or evaluating documents or information.

If the Reviewing Party determines that Indemnitee substantively would not be permitted to be indemnified in whole or in part under applicable law or if payment is not made as required within the time frame set forth above, Indemnitee shall have the right to commence litigation in any court in the State of Arkansas or State of Nevada having subject matter jurisdiction thereof and in which venue is proper seeking an initial determination by the court or challenging any such determination by the Reviewing

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Party or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and to appear in any such proceeding. Otherwise, any determination by the Reviewing Party shall be conclusive and binding on the Company and Indemnitee.

(d) Indemnification shall not be made for any Claim as to which Indemnitee has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that the court in which the Claim was brought or other court of competent jurisdiction determines upon application that in view of all of the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

3. Change in Control. The Company agrees that if there is a Change in Control, then with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnity payments or Expense Advances under this Agreement or any other agreement or the Articles or any Bylaw now or hereafter in effect relating to Claims for Indemnifiable Events, the Company shall seek legal advice only from Independent Legal Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld or delayed). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be permitted to be indemnified under applicable law. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

4. Indemnification for Additional Expenses. To the fullest extent provided by law, the Company shall indemnify Indemnitee against any and all Expenses (including attorneys' fees) and, if requested in writing by Indemnitee, shall (within ten business days of such request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for (i) the enforcement of this Agreement or the Articles or any Bylaw now or hereafter in effect relating to Claims for Indemnifiable Events and/or (ii) recovery under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance expense payment or insurance recovery, as the case may be.

5. Partial Indemnity, Etc. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses, judgments, fines, penalties and amounts paid in settlement of a Claim but not for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled. Moreover, notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any or all Claims relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, including dismissal without prejudice, Indemnitee shall be indemnified against all Expenses incurred in connection therewith.

6. Burden of Proof. In connection with any determination by the Reviewing Party or otherwise as to whether Indemnitee is entitled to be indemnified hereunder the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

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7. No Presumptions. For purposes of this Agreement, the termination of any Claim, by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law. In addition, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under applicable law, neither of the following shall be a defense to Indemnitee's claim for indemnification or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief:

- i. the failure of the Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor
- ii. an actual determination by the Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief.

8. Nonexclusivity, Etc. The rights of Indemnitee hereunder shall be in addition to any other rights Indemnitee may have under the Articles, the Bylaws, the Nevada Revised Statutes or otherwise. To the extent that a change in the Nevada Revised Statutes (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under the Articles, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change.

9. Liability Insurance. To the extent the Company maintains an insurance policy or policies providing directors' and officers' liability insurance, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available thereunder for any Company director or officer; provided that, for any person that is no longer serving as director or officer of the Company or of any other enterprise at the Company's request, such coverage shall only be provided to the extent that it is generally available to the Company in the insurance marketplace.

10. Period of Limitations. Except as required by applicable law, no legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

11. Amendments, Etc. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

12. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the

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execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

13. Exclusions. The Company shall not be liable under this Agreement to make any payment (i) prohibited by law or (ii) in connection with any Claim made against Indemnitee relating to an Indemnifiable Event to the extent Indemnitee has otherwise actually received payment (under any insurance policy, any provision of the Articles or Bylaws or otherwise) of the amounts otherwise indemnifiable hereunder.

14. Defense of Claims. The Company shall be entitled to participate in the defense of any Claim relating to an Indemnifiable Event or to assume the defense thereof, with counsel reasonably satisfactory to Indemnitee; provided that if Indemnitee believes, after consultation with counsel selected by Indemnitee, that (i) the use of counsel chosen by the Company to represent Indemnitee would present such counsel with an actual or potential conflict of interest, (ii) the named parties in any such Claim (including any impleaded parties) include the Company or any subsidiary of the Company and Indemnitee and Indemnitee concludes that there may be one or more legal defenses available to him or her that are different from or in addition to those available to the Company or any subsidiary of the Company or (iii) any such representation by such counsel would be precluded under the applicable standards of professional conduct then prevailing, then Indemnitee shall be entitled to retain separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any particular Claim) at the Company's expense; provided that any counsel chosen by Indemnitee shall agree to comply with the Company's outside counsel guidelines, as in effect at the time of the engagement of such counsel, with respect to any matter for which indemnification is sought under this Agreement. The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any Claim relating to an Indemnifiable Event effected without the Company's prior written consent. The Company shall not, without the prior written consent of Indemnitee, effect any settlement of any Claim relating to an Indemnifiable Event to which Indemnitee is or could have been a party unless such settlement solely involves the payment of money and includes a complete and unconditional release of Indemnitee from all liability on all claims that are the subject matter of such Claim. Neither the Company nor Indemnitee shall unreasonably withhold its or his or her consent to any proposed settlement; provided that Indemnitee may withhold consent to any settlement that does not provide a complete and unconditional release of Indemnitee. To the fullest extent permitted by Nevada law, the Company's assumption of the defense of a Claim pursuant to this Section 14 will constitute an irrevocable acknowledgement by the Company that any Expenses incurred by or for the account of Indemnitee in connection therewith are indemnifiable by the Company under Section 2.

15. Binding Effect, Etc. This Agreement replaces and supersedes in its entirety the Indemnification Agreement by and between Indemnitee and the Company currently in effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouses, heirs, executors and personal and legal representatives. The provisions of this Agreement shall apply to the entire term of Indemnitee's service as a director or officer of the Company or of any other enterprise at the Company's request, including service in such capacities prior to the date of this Agreement. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as an officer or director of the Company or of any other enterprise at the Company's request.

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16. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable in any respect, and the validity and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired and shall remain enforceable to the fullest extent permitted by law.

17. Equitable Remedies. The Company and Indemnitee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult to prove and further agree that any breach may cause Indemnitee irreparable harm. Accordingly, the Company and Indemnitee agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance, in addition to other remedies, without any necessity of showing actual damage or irreparable harm. By seeking injunctive relief and/or specific performance, Indemnitee will not be precluded from seeking or obtaining any other relief to which Indemnitee is entitled. The Company and Indemnitee further agree that Indemnitee is entitled to seek temporary restraining orders, preliminary injunctions and permanent injunctions without the necessity of posting bonds or other undertakings. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the court and the Company waives any such requirement of such bond or undertaking.

18. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada applicable to contracts made and to be performed in such state without giving effect to the principles of conflicts of laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

INUVO, INC.

By: \_  
Name:  
Title:

Signature: \_  
Name:

**Rule 13a-14(a)/15d-14(a) Certification**

I, Richard K. Howe, certify that:

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

Date: November 7, 2018

/s/ Richard K. Howe

Richard K. Howe

Chief Executive Officer, principal executive officer

**Rule 13a-14(a)/15d-14(a) Certification**

I, Wallace D. Ruiz, certify that:

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

Date: November 7, 2018

/s/ Wallace D. Ruiz

Wallace D. Ruiz

Chief Financial Officer, principal financial and accounting officer

**Section 1350 Certification**

In connection with the Annual Report of Inuvo, Inc. (the “Company”) on Form 10-K for the year ended September 30, 2018 as filed with the Securities and Exchange Commission (the “Report”), I, Richard K. Howe, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. SS. 1350, as adopted pursuant to SS. 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and
2. The information contained in the Report fairly presents, in all material respects, the financial conditions and results of operations of the Company.

Date: November 7, 2018

/s/ Richard K. Howe

Richard K. Howe

Chief Executive Officer, principal executive officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**Section 1350 Certification**

In connection with the Annual Report of Inuvo, Inc. (the “Company”) on Form 10-K for the year ended September 30, 2018 as filed with the Securities and Exchange Commission (the “Report”), I, Wallace D. Ruiz, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. SS. 1350, as adopted pursuant to SS. 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and
2. The information contained in the Report fairly presents, in all material respects, the financial conditions and results of operations of the Company.

Date: November 7, 2018

/s/ Wallace D. Ruiz

Wallace D. Ruiz

Chief Financial Officer, principal financial and accounting officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.