

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2022

OR

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

For the transition period from _____ to _____

Commission File Number 001-36404

INPIXON

(Exact name of registrant as specified in its charter)

Nevada

88-0434915

(State or other jurisdiction of
incorporation or organization)

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

**2479 E. Bayshore Road
Suite 195**

Palo Alto, CA 94303

(Address of principal executive offices)

(Zip Code)

(408) 702-2167

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which each is registered
Common Stock, par value \$0.001	INPX	The Nasdaq Stock Market LLC

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

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

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

Indicate by check mark whether the issuer 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.

Common Stock, Par Value \$0.001	161,984,389
(Class)	Outstanding at August 13, 2022

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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND OTHER INFORMATION
CONTAINED IN THIS REPORT**

This Quarterly Report on Form 10-Q (this “Form 10-Q”) contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and the provisions of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements give our current expectations or forecasts of future events. You can identify these statements by the fact that they do not relate strictly to historical or current facts. You can find many (but not all) of these statements by looking for words such as “approximates,” “believes,” “hopes,” “expects,” “anticipates,” “estimates,” “projects,” “intends,” “plans,” “would,” “should,” “could,” “may” or other similar expressions in this Form 10-Q. In particular, these include statements relating to future actions; prospective products, applications, customers and technologies; future performance or results of anticipated products; anticipated expenses; and projected financial results. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our historical experience and our present expectations or projections. Factors that could cause actual results to differ from those discussed in the forward-looking statements include, but are not limited to:

- our history of losses;
- our ability to achieve profitability;
- our limited operating history with recent acquisitions;
- risks related to our recent acquisitions;
- our ability to successfully integrate companies or technologies we acquire;
- emerging competition and rapidly advancing technology in our industry that may outpace our technology;
- customer demand for the products and services we develop;
- the impact of competitive or alternative products, technologies and pricing;
- our ability to manufacture any products we develop;
- general economic conditions and events and the impact they may have on us and our potential customers, including, but not limited to supply chain challenges, increased costs for materials and labor and other impacts resulting from COVID-19 and the Russia/Ukraine conflict;
- our ability to obtain adequate financing in the future;
- our ability to consummate strategic transactions which may include acquisitions, mergers, dispositions or investments;
- our ability to maintain compliance with the continued listing requirements of the Nasdaq Stock Market LLC;
- lawsuits and other claims by third parties or investigations by various regulatory agencies that we are and may be become subject to and are required to report, including but not limited to, the U.S. Securities and Exchange Commission;
- our success at managing the risks involved in the foregoing items; and
- other factors discussed in this Form 10-Q.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have included important factors in the cautionary statements included in this Form 10-Q, particularly in the “Risk Factors” section, that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking

statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make or collaborations or strategic partnerships we may enter into.

You should read this Form 10-Q and the documents that we have filed as exhibits to this Form 10-Q completely and with the understanding that our actual future results may be materially different from what we expect. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Unless otherwise stated or the context otherwise requires, the terms “Inpixon” “we,” “us,” “our” and the “Company” refer collectively to Inpixon and, where appropriate, its subsidiaries.

Unless indicated otherwise in this Form 10-Q, all references to “\$” refer to United States dollars, the lawful currency of the United States of America. References to “CAD” refer to Canadian dollars, the lawful currency of Canada. References to “INR” refer to Indian rupees, the lawful currency of India. References to “EUR” refer to euros, the single currency of Participating Member States of the European Union. References to “GBP” refer to the British pound, the lawful currency of the United Kingdom.

PART I — FINANCIAL INFORMATION

ITEM 1: FINANCIAL STATEMENTS

The accompanying condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information which are the accounting principles that are generally accepted in the United States of America and in accordance with the instructions for Form 10-Q. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements.

In the opinion of management, the condensed consolidated financial statements contain all material adjustments, consisting only of normal recurring adjustments necessary to present fairly the financial condition, results of operations, and cash flows of the Company for the interim periods presented.

The results for the period ended June 30, 2022 are not necessarily indicative of the results of operations for the full year. These financial statements and related notes should be read in conjunction with the consolidated financial statements and notes thereto included in our audited consolidated financial statements for the fiscal years December 31, 2021 and 2020 included in the annual report on Form 10-K filed with the U.S. Securities and Exchange Commission (the “SEC”) on March 16, 2022.

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except number of shares and par value data)

	<u>As of June 30,</u> 2022	<u>As of December 31,</u> 2021
	(Unaudited)	(Audited)
Assets		
Current Assets		
Cash and cash equivalents	\$ 65,755	\$ 52,480
Accounts receivable, net of allowances of \$268 and \$272, respectively	2,767	3,218
Other receivables	311	321
Inventory	1,581	1,976
Short-term investments	—	43,125
Note receivable	5,967	—
Prepaid expenses and other current assets	3,463	4,842
Total Current Assets	79,844	105,962
Property and equipment, net	1,348	1,442
Operating lease right-of-use asset, net	1,582	1,736
Software development costs, net	1,647	1,792
Investments in equity securities	582	1,838
Long-term investments	2,500	2,500
Intangible assets, net	30,126	33,478
Goodwill	—	7,672
Other assets	217	253
Total Assets	\$ 117,846	\$ 156,673

The accompanying notes are an integral part of these financial statements

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS (CONTINUED)

(In thousands, except number of shares and par value data)

	As of June 30, 2022	As of December 31, 2021
	(Unaudited)	(Audited)
Liabilities and Stockholders' Equity		
Current Liabilities		
Accounts payable	\$ 900	\$ 2,414
Accrued liabilities	4,116	10,665
Operating lease obligation, current	600	643
Deferred revenue	3,638	4,805
Short-term debt	1,911	3,490
Acquisition liability	3,486	5,114
Total Current Liabilities	14,651	27,131
Long Term Liabilities		
Operating lease obligation, noncurrent	1,022	1,108
Other liabilities, noncurrent	28	28
Acquisition liability, noncurrent	—	220
Total Liabilities	15,701	28,487
Commitments and Contingencies	—	—
Mezzanine Equity		
Series 7 Convertible Preferred Stock - 58,750 shares authorized; zero and 49,250 issued and outstanding as of June 30, 2022 and December 31, 2021, respectively.	—	44,695
Series 8 Convertible Preferred Stock- 53,197.7234 shares authorized; 53,197.7234 and zero issued and outstanding as of June 30, 2022 and December 31, 2021, respectively. (Liquidation preference of \$53,197,723)	48,158	—
Stockholders' Equity		
Preferred Stock -\$0.001 par value; 5,000,000 shares authorized		
Series 4 Convertible Preferred Stock - 10,415 shares authorized; 1 issued and 1 outstanding as of June 30, 2022 and December 31, 2021	—	—
Series 5 Convertible Preferred Stock - 12,000 shares authorized; 126 issued and 126 outstanding as of June 30, 2022 and December 31, 2021	—	—
Common Stock - \$0.001 par value; 2,000,000,000 shares authorized; 155,105,962 and 124,440,924 issued and 155,105,961 and 124,440,923 outstanding as of June 30, 2022 and December 31, 2021, respectively.	155	124
Additional paid-in capital	334,436	332,639
Treasury stock, at cost, 1 share	(695)	(695)
Accumulated other comprehensive income	598	44
Accumulated deficit	(281,463)	(250,309)
Stockholders' Equity Attributable to Inpixon	53,031	81,803
Non-controlling Interest	956	1,688

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS (CONTINUED)
(In thousands, except number of shares and par value data)

Total Stockholders' Equity	53,987	83,491
Total Liabilities, Mezzanine Equity and Stockholders' Equity	<u>\$ 117,846</u>	<u>\$ 156,673</u>

The accompanying notes are an integral part of these financial statements

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share data)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
	(Unaudited)			
Revenues	\$ 4,725	\$ 3,453	\$ 9,956	\$ 6,407
Cost of Revenues	1,396	896	2,782	1,780
Gross Profit	3,329	2,557	7,174	4,627
Operating Expenses				
Research and development	4,912	3,223	8,997	5,931
Sales and marketing	2,324	2,073	4,600	3,712
General and administrative	6,897	8,828	13,002	17,999
Acquisition-related costs	147	535	268	1,005
Impairment of goodwill	7,570	—	7,570	—
Amortization of intangibles	1,369	1,191	2,691	1,693
Total Operating Expenses	23,219	15,850	37,128	30,340
Loss from Operations	\$ (19,890)	(13,293)	(29,954)	\$ (25,713)
Other Income (Expense)				
Interest income (expense), net	176	1,555	178	1,206
Loss on exchange of debt for equity	—	—	—	(30)
Recovery of valuation allowance on related party loan - held for sale	—	7,462	—	7,345
Other (expense)/income, net	(879)	125	(771)	511
Gain on related party loan - held for sale	—	49,817	—	49,817
Unrealized gain/(loss) on equity securities	247	(28,965)	(1,256)	(28,965)
Total Other Income (Expense)	(456)	29,994	(1,849)	29,884
Net (Loss) Income, before tax	(20,346)	16,701	(31,803)	4,171
Income tax benefit/(provision)	16	(2,195)	(84)	(2,204)
Net (Loss) Income	\$ (20,330)	14,506	(31,887)	\$ 1,967
Net (Loss) Income Attributable to Non-controlling Interest	(458)	(253)	(804)	(235)
Net Loss Attributable to Stockholders of Inpixon	(19,872)	14,759	(31,083)	2,202
Accretion of Series 7 Preferred Stock	—	—	(4,555)	—
Accretion of Series 8 Preferred Stock	(6,237)	—	(6,785)	—
Deemed dividend for the modification related to Series 8 Preferred Stock	—	—	(2,627)	—
Deemed contribution for the modification related to Warrants issued in connection with Series 8 Preferred Stock	—	—	1,469	—
Amortization premium- modification related to Series 8 Preferred Stock	1,252	—	1,362	—
Net (Loss) Income Attributable to Common Stockholders	\$ (24,857)	\$ 14,759	\$ (42,219)	\$ 2,202

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share data)

Net (Loss) Income Per Share - Basic	\$	(0.16)	\$	0.13	\$	(0.29)	\$	0.02
Net (Loss) Income Per Share - Diluted	\$	(0.16)	\$	0.13	\$	(0.29)	\$	0.02
Weighted Average Shares Outstanding								
Basic		153,519,283		110,040,532		146,052,371		94,577,520
Diluted		153,519,283		110,041,378		146,052,371		94,591,619

The accompanying notes are an integral part of these financial statements

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
	(Unaudited)			
Net (Loss) Income	\$ (20,330)	\$ 14,506	\$ (31,887)	\$ 1,967
Unrealized gain on available for sale debt securities	375	\$ —	375	—
Unrealized foreign exchange (loss) income from cumulative translation adjustments	282	52	180	(619)
Comprehensive (Loss) Income	<u>\$ (19,673)</u>	<u>\$ 14,558</u>	<u>\$ (31,332)</u>	<u>\$ 1,348</u>

The accompanying notes are an integral part of these financial statements

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN MEZZANINE EQUITY AND STOCKHOLDERS' EQUITY
(Unaudited)
(In thousands, except per share data)

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	Series 7 Preferred Stock		Series 8 Preferred Stock		Series 4 Convertible Preferred Stock		Series 5 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Non-Controlling Interest	Total Stockholders' (Deficit) Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount		Shares	Amount				
Balance - January 1, 2022	49,250	\$ 44,695	—	\$ —	1	\$ —	126	\$ —	124,440,924	\$ 124	\$ 332,639	(1)	\$ (695)	\$ 44	\$ (250,309)	\$ 1,688	\$ 83,491
Common shares issued for extinguishment of debt	—	—	—	—	—	—	—	—	4,310,245	4	1,496	—	—	—	—	—	\$ 1,500
Stock options and restricted stock awards granted to employees for services	—	—	—	—	—	—	—	—	—	—	1,533	—	—	—	—	—	\$ 1,533
Series 7 Preferred redeemed for cash	(49,250)	(49,250)	—	—	—	—	—	—	—	—	— ¹	—	—	—	—	—	\$ —
Series 8 Preferred stock issued for cash	—	—	53,197,7234	41,577	—	—	—	—	—	—	5,329	—	—	—	—	—	\$ 5,329
Accretion Discount-Series 7 Preferred Shares	—	4,555	—	—	—	—	—	—	—	—	(4,555)	—	—	—	—	—	\$ (4,555)
Accretion Discount-Series 8 Preferred Shares	—	—	—	548	—	—	—	—	—	—	(548)	—	—	—	—	—	\$ (548)
Deemed dividend for the modification related to Series 8 Preferred Stock	—	—	—	2,627	—	—	—	—	—	—	(2,627)	—	—	—	—	—	\$ (2,627)
Deemed contribution for the modification related to Warrants issued in connection with Series 8 Preferred Stock	—	—	—	(1,469)	—	—	—	—	—	—	1,469	—	—	—	—	—	\$ 1,469
Amortization Premium-modification related to Series 8 Preferred Stock	—	—	—	(110)	—	—	—	—	—	—	110	—	—	—	—	—	\$ 110
Restricted stock grants withheld for taxes	—	—	—	—	—	—	—	(960,106)	(1)	(335)	—	—	—	—	—	—	\$ (336)
Common shares issued for CXApp earnout	—	—	—	—	—	—	—	10,873,886	11	3,686	—	—	—	—	—	—	\$ 3,697
Common shares issued for exchange of warrants	—	—	—	—	—	—	—	13,811,407	14	(14)	—	—	—	—	—	—	\$ —
Cumulative translation adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	(102)	(15)	15	\$ (102)
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(11,211)	(346)	\$ (11,557)
Balance - March 31, 2022	—	—	53,197,7234	43,173	1	—	126	—	152,476,356	152	338,183	(1)	(695)	(58)	(261,535)	1,357	\$ 77,404
Stock options and restricted stock awards granted to employees for services	—	—	—	—	—	—	—	—	—	—	741	—	—	—	—	—	\$ 741
Common shares issued for extinguishment of debt	—	—	—	—	—	—	—	2,629,606	3	497	—	—	—	—	—	—	\$ 500
Accretion Discount-Series 8 Preferred Shares	—	—	—	6,236	—	—	—	—	—	—	(6,236)	—	—	—	—	—	\$ (6,236)
Amortization Premium-modification related to Series 8 Preferred Stock	—	—	—	(1,251)	—	—	—	—	—	—	1,251	—	—	—	—	—	\$ 1,251
Cumulative translation adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	656	(56)	57	\$ 657
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(19,872)	(458)	\$ (20,330)
Balance - June 30, 2022	—	\$ —	53,197,7234	\$ 48,158	1	\$ —	126	\$ —	155,105,962	\$ 155	\$ 334,436	(1)	\$ (695)	\$ 598	\$ (281,463)	\$ 956	\$ 53,987

The accompanying notes are an integral part of these financial statements

INPIXON AND SUBSIDIARIES
**CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN MEZZANINE EQUITY AND STOCKHOLDERS' EQUITY
(Unaudited)**
(In thousands, except per share data)

	Series 7 Preferred Stock		Series 4 Convertible Preferred Stock		Series 5 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Non-Controlling Interest	Total Stockholders' (Deficit) Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount		Shares	Amount				
Balance - January 1, 2021	—	—	1	\$ —	126	\$ —	53,178,462	\$ 53	\$ 225,613	(1)	\$ (695)	\$ 660	\$ (180,992)	\$ 41	\$ 44,680
Common shares issued for registered direct offering	—	—	—	—	—	—	15,800,000	16	74,058	—	—	—	—	—	74,074
Common shares issued for extinguishment of debt	—	—	—	—	—	—	893,921	1	1,499	—	—	—	—	—	1,500
Common shares issued for cashless stock options exercised	—	—	—	—	—	—	4,977	—	—	—	—	—	—	—	—
Common shares issued for net proceeds from warrants exercised	—	—	—	—	—	—	31,505,088	32	3,747	—	—	—	—	—	3,779
Stock options granted to employees and consultants for services	—	—	—	—	—	—	—	—	5,096	—	—	—	—	—	5,096
Cumulative translation adjustment	—	—	—	—	—	—	—	—	—	—	—	(671)	—	—	(671)
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(12,557)	18	(12,539)
Balance - March 31, 2021	—	—	1	\$ —	126	\$ —	101,382,448	\$ 102	\$ 310,013	(1)	\$ (695)	\$ (11)	\$ (193,549)	\$ 59	\$ 115,919
Stock options and restricted stock awards granted to employees for services	—	—	—	—	—	—	—	—	2,053	—	—	—	—	—	2,053
Common shares issued for Game Your Game acquisition	—	—	—	—	—	—	1,179,077	1	1,402	—	—	—	—	—	1,403
Common shares issued for Visualix acquisition	—	—	—	—	—	—	369,563	—	429	—	—	—	—	—	429
Common shares issued for the CXApp	—	—	—	—	—	—	8,849,538	9	9,991	—	—	—	—	2,811	12,811
Common shares for cashless stock options exercised	—	—	—	—	—	—	414	—	—	—	—	—	—	—	—
Common shares issued for restricted stock grants	—	—	—	—	—	—	4,672,988	5	(5)	—	—	—	—	—	—
Taxes paid on stock based compensation	—	—	—	—	—	—	—	—	(1,687)	—	—	—	—	—	(1,687)
Cumulative translation adjustment	—	—	—	—	—	—	—	—	—	—	—	63	(141)	130	52
Net income (loss)	—	—	—	—	—	—	—	—	—	—	—	—	14,759	(253)	14,506
Balance - June 30, 2021	—	—	1	\$ —	126	\$ —	116,454,028	\$ 117	\$ 322,196	(1)	\$ (695)	\$ 52	\$ (178,931)	\$ 2,747	\$ 145,486

The accompanying notes are an integral part of these financial statements

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	For the Six Months Ended June 30,	
	2022	2021
	(Unaudited)	
Cash Flows Used in Operating Activities		
Net (loss) income	\$ (31,887)	\$ 1,967
Adjustment to reconcile net (loss) income to net cash used in operating activities:		
Depreciation and amortization	650	625
Amortization of intangible assets	3,026	2,007
Amortization of right of use asset	353	370
Stock based compensation	2,274	7,149
Earnout expense valuation benefit	(2,827)	—
Loss on exchange of debt for equity	—	30
Amortization of debt discount	—	224
Amortization of original issued discount	(92)	—
Accrued interest income, related party	—	(1,627)
Unrealized gain on note	344	(490)
Recovery for valuation allowance for held for sale loan	—	(7,345)
Gain on settlement of related party promissory note and loan related party receivable	—	(49,817)
Deferred income tax	(1)	(4,507)
Unrealized loss on equity securities	1,256	28,965
Impairment of goodwill	7,570	—
Other	181	57
Changes in operating assets and liabilities:		
Accounts receivable and other receivables	361	532
Inventory	285	(555)
Prepaid expenses and other current assets	1,357	(319)
Other assets	25	203
Accounts payable	(1,498)	(331)
Accrued liabilities	542	2,494
Income tax liabilities	(40)	6,711
Deferred revenue	(1,096)	(238)
Operating lease obligation	(327)	(364)
Other liabilities	—	96
Net Cash Used in Operating Activities	(19,544)	(14,163)
Cash Flows Used in Investing Activities		
Purchase of property and equipment	(140)	(149)
Investment in capitalized software	(306)	(373)
Investments in short term investments	—	(2,000)
Purchase of convertible note	(5,500)	—
Purchases of treasury bills	—	(63,362)
Sales of treasury bills	43,001	28,000

INPIXON AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)
(In thousands)

Purchase of Systat licensing agreement	—	(900)
Acquisition of Game Your Game	—	184
Acquisition of CXApp	—	(15,186)
Acquisition of Visualix	—	(61)
Net Cash Provided By (Used in) Investing Activities	37,055	(53,847)
Cash From Financing Activities		
Net proceeds from issuance of preferred stock and warrants	46,906	—
Net proceeds from issuance of common stock and warrants	—	77,853
Net proceeds from promissory note	364	—
Cash paid for redemption of preferred stock series 7	(49,250)	—
Taxes paid related to net share settlement of restricted stock units	(336)	(1,687)
Loans to related party	—	(117)
Repayment of CXApp acquisition liability	(1,847)	(137)
Repayment of acquisition liability to Nanotron shareholders	—	(467)
Repayment of acquisition liability to Locality shareholders	—	(500)
Net Cash (Used In) Provided By Financing Activities	(4,163)	74,945
Effect of Foreign Exchange Rate on Changes on Cash	(73)	(19)
Net Increase in Cash and Cash Equivalents	13,275	6,916
Cash and Cash Equivalents - Beginning of period	52,480	17,996
Cash and Cash Equivalents - End of period	\$ 65,755	\$ 24,912
Supplemental Disclosure of cash flow information:		
Cash paid for:		
Interest	\$ 2	\$ 1
Income Taxes	\$ 100	\$ —
Non-cash investing and financing activities		
Common shares issued for extinguishment of debt	\$ 2,000	\$ 1,500
Common shares issued for CXApp Earnout Payment	\$ 3,697	\$ —
Common shares issued in exchange for warrants	\$ 14	\$ —
Right of use asset obtained in exchange for lease liability	\$ 284	\$ —
Settlement of Sysorex Note	\$ —	\$ 7,462
Investment in equity securities	\$ —	\$ 58,905
Common shares issued for CXApp acquisition	\$ —	\$ 10,000
Common shares issued for Game Your Game acquisition	\$ —	\$ 1,403
Common shares issued for Visualix asset acquisition	\$ —	\$ 429

The accompanying notes are an integral part of these financial statements

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 1 - Organization and Nature of Business

Inpixon is the Indoor Intelligence™ company. Our solutions and technologies help organizations create and redefine exceptional workplace experiences that enable smarter, safer and more secure environments. We leverage our positioning, mapping, analytics and app technologies to achieve higher levels of productivity and performance, increase safety and security, improve worker and employee satisfaction rates and drive a more connected workplace. We have focused our corporate strategy on being the primary provider of the full range of foundational technologies needed in order to offer a comprehensive suite of solutions that make indoor data available and meaningful to organizations and their employees.

Our Indoor Intelligence solutions are used by our customers for a variety of use cases including, but not limited to, employee and visitor experience enhancement through a customer branded app with features such as desk booking, wayfinding and navigation, and the delivery of content to tens of thousands of attendees in hybrid events. Our real time location (RTLS) and asset tracking products offer manufacturing and warehouse logistics optimization and automation, increase workforce productivity, and enhance worker safety and security.

In addition to our Indoor Intelligence technologies and solutions, we also offer:

- Digital solutions (eTearsheets; eInvoice, adDelivery) or cloud-based applications and analytics for the advertising, media and publishing industries y advertising management platform referred to as Shoom by Inpixon; and
- A comprehensive set of data analytics and statistical visualization solutions for engineers and scientists referred to as SAVES by Inpixon.

We report financial results for three segments: Indoor Intelligence, Shoom and SAVES. For Indoor Intelligence, we generate revenue from sales of hardware, software licenses and professional services. For Shoom and SAVES, we generate revenue from the sale of software licenses.

Note 2 - Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP"), for interim financial information and the rules and regulations of the Securities and Exchange Commission ("SEC"). Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Interim results for the three and six months ended June 30, 2022 are not necessarily indicative of the results for the full year ending December 31, 2022. These interim unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes for the years ended December 31, 2021 and 2020 included in the annual report on Form 10-K for the year ended December 31, 2021, filed with the SEC on March 16, 2022.

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 3 - Summary of Significant Accounting Policies

The Company's complete accounting policies are described in Note 2 to the Company's audited consolidated financial statements and notes for the years ended December 31, 2021 and 2020.

Liquidity

As of June 30, 2022, the Company has a working capital surplus of approximately \$65.2 million, and cash of approximately \$65.8 million. For the three and six months ended June 30, 2022, the Company had a net loss of approximately \$20.3 million and \$31.9 million, respectively. During the six months ended June 30, 2022, the Company used approximately \$19.5 million of cash for operating activities.

During the first quarter of 2022, the Company was required to redeem its Series 7 Preferred Stock for an aggregate amount of \$9.3 million, however, on March 22, 2022, the Company entered into a Securities Purchase Agreement with certain institutional investors named therein, pursuant to which it sold in a registered direct offering (i) 53,197,723 shares of Series 8 Convertible Preferred Stock and (ii) related warrants to purchase up to an aggregate of 112,778,720 shares of common stock. Each share of Series 8 Convertible Preferred Stock and the related warrants were sold at a subscription amount of \$940, representing an original issue discount of 6% of the stated value of each share of Series 8 Convertible Preferred Stock for an aggregate subscription amount of \$50.0 million. The net proceeds to the Company from this offering was \$46.9 million after placement agent commissions and other offering costs. See further breakdown in Note 14 - Capital Raises.

On July 22, 2022, the Company entered into a note purchase agreement in an aggregate initial principal amount of \$5.5 million for which in exchange for the Note, the company received \$5.0 million. Additionally on July 22, 2022, the Company entered into an Equity Distribution Agreement under which the Company may offer and sell shares of its common stock having an aggregate offering price of up to \$25 million. The Company is not obligated to make any sales of the Shares under the Sales Agreement and no assurance can be given that the Company will sell any Shares under the Sales Agreement, or if it does, as to the price or amount of Shares that the Company will sell, or the date on which any such sales will take place.

Risks and Uncertainties

The Company cannot assure you that we will ever earn revenues sufficient to support our operations, or that we will ever be profitable. In order to continue our operations, we have supplemented the revenues we earned with proceeds from the sale of our equity and debt securities and proceeds from loans and bank credit lines. While the impact of the COVID-19 pandemic is generally subsiding, the lasting impact on our business and results of operations continues to remain uncertain. While we were able to continue operations remotely throughout the pandemic, we have experienced supply chain cost increases and constraints and delays in the receipt of certain components of our hardware products impacting delivery times for our products. In addition, to the extent that certain customers continue to be challenged by the lasting effects of the pandemic, we have and may continue to see an impact in the demand of certain products and delays in certain projects and customer orders.

Certain global events, such as the continued impact of the pandemic, the recent military conflict between Russia and Ukraine, and other general economic factors that are beyond our control may impact our results of operations. These factors can include interest rates; recession; inflation; unemployment trends; the threat or possibility of war, terrorism or other global or national unrest; political or financial instability; and other matters that influence our customers spending. Increasing volatility in financial markets and changes in the economic climate could adversely affect our results of operation. We also expect that supply chain interruptions and constraints, and increased costs on parts, materials and labor may continue to be a challenge for our business. While we have been able to realize growth in the three and six months ended June 30, 2022 as compared to the same periods in 2021, the impact that these global events will have on general economic conditions is continuously evolving and the ultimate impact that they will have on our results of operations continues to remain uncertain. There are no assurances that we will be able to continue to experience the same growth or not be materially adversely effected.

The Company's recurring losses and utilization of cash in its operations are indicators of going concern however with the Company's current liquidity position, the Company believes it has the ability to mitigate such concerns for a period of at least one year from the date these financial statements are issued.

Use of Estimates

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 3 - Summary of Significant Accounting Policies (continued)

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during each of the reporting periods. Actual results could differ from those estimates. The Company's significant estimates consist of:

- the valuation of stock-based compensation;
- the valuation of the Company's common stock issued in transactions, including acquisitions;
- the allowance for credit losses;
- the valuation of loans receivable;
- the valuation of equity securities;
- the valuation allowance for deferred tax assets; and
- impairment of long-lived assets and goodwill.

Business Combinations

The Company accounts for business combinations under Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 805 "Business Combinations" using the acquisition method of accounting, and accordingly, the assets and liabilities of the acquired business are recorded at their fair values at the date of acquisition. The excess of the purchase price over the estimated fair value is recorded as goodwill. All acquisition costs are expensed as incurred. Upon acquisition, the accounts and results of operations are consolidated as of and subsequent to the acquisition date.

Investments

Short-term investments

Investments with maturities greater than 90 days but less than one year are classified as short-term investments on the consolidated balance sheets and consist of U.S. Treasury Bills. Accrued interest on U.S. Treasury bills are also classified as short term investment.

Our short-term investments are considered available for use in current operations, are classified as available-for-sale securities. Available for sale securities are carried at fair value, with an unrealized gains and losses included in the Other income (expense) line of the Condensed Consolidated Statements of Operations. The Company recorded unrealized losses of approximately \$0.04 million and \$0.12 million for the three and six months ended June 30, 2022, respectively. The Company recorded unrealized losses of approximately \$0.06 million and \$0.06 million for the three and six months ended June 30, 2021, respectively.

Mezzanine equity

When ordinary or preferred shares are determined to be conditionally redeemable upon the occurrence of certain events that are not solely within the control of the issuer, and upon such event, the shares would become redeemable at the option of the holders, they are classified as 'mezzanine equity' (temporary equity). The purpose of this classification is to convey that such a security may not be permanently part of equity and could result in a demand for cash, securities or other assets of the entity in the future.

Investment in equity securities- fair value

Investment securities—fair value consist primarily of investments in equity securities and are carried at fair value in accordance with Accounting Standards Codification ("ASC") 321, *Investments-Equity Securities* ("ASC 321"). These securities are marked to market based on the respective publicly quoted market prices of the equity securities adjusted for liquidity. These securities transactions are recorded on a trade date basis. Any unrealized appreciation or depreciation on investment securities is reported in the Condensed Consolidated Statement of Operations within Unrealized Loss on Equity Securities. The Unrealized (gain) or loss

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 3 - Summary of Significant Accounting Policies (continued)

on equity securities for the three and six months ended June 30, 2022 was approximately a gain of \$0.2 million and loss of \$1.3 million, respectively, and for the three and six months ended June 30, 2021 was a loss of approximately \$29.0 million and \$29.0 million, respectively.

Revenue Recognition

The Company recognizes revenue when control is transferred of the promised products or services to its customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those products or services. The Company derives revenue from software as a service, design and implementation services for its Indoor Intelligence systems, and professional services for work performed in conjunction with its systems.

Hardware and Software Revenue Recognition

For sales of hardware and software products, the Company's performance obligation is satisfied at a point in time when they are shipped to the customer. This is when the customer has title to the product and the risks and rewards of ownership. The delivery of products to Inpixon's customers occurs in a variety of ways, including (i) as a physical product shipped from the Company's warehouse, (ii) via drop-shipment by a third-party vendor, or (iii) via electronic delivery with respect to software licenses. The Company leverages drop-ship arrangements with many of its vendors and suppliers to deliver products to customers without having to physically hold the inventory at its warehouse. In such arrangements, the Company negotiates the sale price with the customer, pays the supplier directly for the product shipped, bears credit risk of collecting payment from its customers and is ultimately responsible for the acceptability of the product and ensuring that such product meets the standards and requirements of the customer. Accordingly, the Company is the principal in the transaction with the customer and records revenue on a gross basis. The Company receives fixed consideration for sales of hardware and software products. The Company's customers generally pay within 30 to 60 days from the receipt of a customer approved invoice. The Company has elected the practical expedient to expense the costs of obtaining a contract when they are incurred because the amortization period of the asset that otherwise would have been recognized is less than a year.

Software As A Service Revenue Recognition

With respect to sales of the Company's maintenance, consulting and other service agreements including the Company's digital advertising and electronic services, customers pay fixed monthly fees in exchange for the Company's service. The Company's performance obligation is satisfied over time as the digital advertising and electronic services are provided continuously throughout the service period. The Company recognizes revenue evenly over the service period using a time-based measure because the Company is providing continuous access to its service.

Professional Services Revenue Recognition

The Company's professional services include milestone, fixed fee and time and materials contracts.

Professional services under milestone contracts are accounted for using the percentage of completion method. As soon as the outcome of a contract can be estimated reliably, contract revenue is recognized in the consolidated statement of operations in proportion to the stage of completion of the contract. Contract costs are expensed as incurred. Contract costs include all amounts that relate directly to the specific contract, are attributable to contract activity, and are specifically chargeable to the customer under the terms of the contract.

Professional services are also contracted on the fixed fee and time and materials basis. Fixed fees are paid monthly, in phases, or upon acceptance of deliverables. The Company's time and materials contracts are paid weekly or monthly based on hours worked. Revenue on time and material contracts is recognized based on a fixed hourly rate as direct labor hours are expended. Materials, or other specified direct costs, are reimbursed as actual costs and may include markup. The Company has elected the practical expedient to recognize revenue for the right to invoice because the Company's right to consideration corresponds directly with the value to the customer of the performance completed to date. For fixed fee contracts including maintenance service provided by in house personnel, the Company recognizes revenue evenly over the service period using a time-based measure because the Company is providing continuous service. Because the Company's contracts have an expected duration of one year or less, the Company has elected the practical expedient in ASC 606-10-50-14(a) to not disclose information about its remaining performance

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 3 - Summary of Significant Accounting Policies (continued)

obligations. Anticipated losses are recognized as soon as they become known. For the three months ended June 30, 2022 and 2021, the Company did not incur any such losses. These amounts are based on known and estimated factors.

License Revenue Recognition

The Company enters into contracts with its customers whereby it grants a non-exclusive on-premise license for the use of its proprietary software. The contracts provide for either (i) a one year stated term with a one year renewal option, (ii) a perpetual term or (iii) a two year term with the option to upgrade to a perpetual license at the end of the term. The contracts may also provide for yearly on-going maintenance services for a specified price, which includes maintenance services, designated support, and enhancements, upgrades and improvements to the software (the "Maintenance Services"), depending on the contract. Licenses for on-premises software provide the customer with a right to use the software as it exists when made available to the customer. All software provides customers with the same functionality and differ mainly in the duration over which the customer benefits from the software.

The timing of the Company's revenue recognition related to the licensing revenue stream is dependent on whether the software licensing agreement entered into represents a good or service. Software that relies on an entity's IP and is delivered only through a hosting arrangement, where the customer cannot take possession of the software, is a service. A software arrangement that is provided through an access code or key represents the transfer of a good. Licenses for on-premises software represents a good and provide the customer with a right to use the software as it exists when made available to the customer. Customers may purchase perpetual licenses or subscribe to licenses, which provide customers with the same functionality and differ mainly in the duration over which the customer benefits from the software. Revenue from distinct on-premises licenses is recognized upfront at the point in time when the software is made available to the customer.

Renewals or extensions of licenses are evaluated as distinct licenses (i.e., a distinct good or service), and revenue attributed to the distinct good or service cannot be recognized until (1) the entity provides the distinct license (or makes the license available) to the customer and (2) the customer is able to use and benefit from the distinct license. Renewal contracts are not combined with original contracts, and, as a result, the renewal right is evaluated in the same manner as all other additional rights granted after the initial contract. The revenue is not recognized until the customer can begin to use and benefit from the license, which is typically at the beginning of the license renewal period. Therefore, the Company recognizes revenue resulting from renewal of licensed software at a point in time, specifically, at the beginning of the license renewal period.

The Company recognizes revenue related to Maintenance Services evenly over the service period using a time-based measure because the Company is providing continuous service and the customer simultaneously receives and consumes the benefits provided by the Company's performance as the services are performed.

Contract Balances

The timing of the Company's revenue recognition may differ from the timing of payment by its customers. The Company records a receivable when revenue is recognized prior to payment and the Company has an unconditional right to payment. Alternatively, when payment precedes the provision of the related services, the Company records deferred revenue until the performance obligations are satisfied. The Company had deferred revenue of approximately \$3.6 million and \$4.8 million as of June 30, 2022 and December 31, 2021, respectively, related to cash received in advance for product maintenance services and professional services provided by the Company's technical staff. The Company expects to satisfy its remaining performance obligations for these maintenance services and professional services, and recognize the deferred revenue and related contract costs over the next twelve months.

Stock-Based Compensation

The Company accounts for options granted to employees by measuring the cost of services received in exchange for the award of equity instruments based upon the fair value of the award on the date of grant. The fair value of that award is then ratably recognized as an expense over the period during which the recipient is required to provide services in exchange for that award.

Options and warrants granted to consultants and other non-employees are recorded at fair value as of the grant date and subsequently adjusted to fair value at the end of each reporting period until such options and warrants vest, and the fair value of such instruments, as adjusted, is expensed over the related vesting period.

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 3 - Summary of Significant Accounting Policies (continued)

The Company measures the cost of services received in exchange for an award of equity instruments based on the fair value of the award. The fair value of the award is measured on the grant date and recognized over the period services are required to be provided in exchange for the award, usually the vesting period. Forfeitures of unvested stock options are recorded when they occur.

The Company incurred stock-based compensation charges of approximately \$0.7 million and \$2.1 million for the three months ended June 30, 2022 and 2021, respectively. The Company incurred stock-based compensation charges of approximately \$2.3 million and \$7.1 million for the six months ended June 30, 2022 and 2021, respectively, which are included in general and administrative expenses. Stock-based compensation charges are related to employee compensation and related benefits.

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 3 - Summary of Significant Accounting Policies (continued)

Net Income (Loss) Per Share

The Company computes basic and diluted earnings per share by dividing net loss by the weighted average number of common shares outstanding during the period. Basic and diluted net loss per common share were the same since the inclusion of common shares issuable pursuant to the exercise of options and warrants in the calculation of diluted net loss per common shares would have been anti-dilutive.

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Net (loss) income attributable to common stockholders	\$ (24,857)	\$ 14,759	\$ (42,219)	\$ 2,202
Basic: Weighted -average number of shares outstanding	153,519,283	110,040,532	146,052,371	94,577,520
Plus: Incremental shares from assumed conversion of options	—	—	—	382
Incremental shares from assumed conversion of warrants	—	—	—	12,871
Incremental shares from assumed conversion of convertible preferred stock	—	846	—	846
Diluted Weighted-average number of shares outstanding	153,519,283	110,041,378	146,052,371	94,591,619
Earnings (loss) per Share- Basic	\$ (0.16)	\$ 0.13	\$ (0.29)	\$ 0.02
Earnings (loss) per Share- Diluted	\$ (0.16)	\$ 0.13	\$ (0.29)	\$ 0.02

The following table summarizes the number of common shares and common share equivalents excluded from the calculation of diluted net loss per common share for the three months ended June 30, 2022 and 2021:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Options	(649,377)	6,847,877	27,806,944	1,659,366
Warrants	(4)	49,398,428	130,321,966	44,398,428
Convertible preferred stock	—	—	112,779,566	—
Rights to common stock	—	—	3,938,424	—
Total	(649,381)	56,246,305	274,846,900	46,057,794

Preferred Stock

The Company relies on the guidance provided by ASC 480, "Distinguishing Liabilities from Equity", to classify certain redeemable and/or convertible instruments. Preferred shares subject to mandatory redemption are classified as liability instruments and are measured at fair value. Conditionally redeemable preferred shares (including preferred shares that feature redemption rights that are either within the control of the holder or subject to redemption upon the occurrence of uncertain events not solely within the Company's control) are classified as temporary equity. At all other times, preferred shares are classified as permanent equity.

The Company also follows the guidance provided by ASC 815 "Derivatives and Hedging", which states that contracts that are both, (1) indexed to its own stock and (2) classified in stockholders' equity in its statement of financial position, are not classified as derivative instruments, and to be recorded under stockholder's equity on the balance sheet of the financial statements.

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 3 - Summary of Significant Accounting Policies (continued)

Management assessed the preferred stock and determined that it did meet the scope exception under ASC 815, and would be recorded as equity, and not a derivative instrument, on the balance sheet of the Company's financial statements.

Fair Value of Financial Instruments

Financial instruments consist of cash and cash equivalents, investments in equity securities, short-term investment, accounts receivable, notes receivable, accounts payable, and short-term debt. Company determines the estimated fair value of such financial instruments presented in these financial statements using available market information and appropriate methodologies. These financial instruments, except for short-term debt and investments in equity securities, are stated at their respective historical carrying amounts, which approximate fair value due to their short-term nature. Investments in equity securities are marked to market based on the respective publicly quoted market prices of the equity securities adjusted for liquidity, as necessary. Short-term debt approximates market value based on similar terms available to the Company in the market place.

Recently Issued and Adopted Accounting Standards

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-06, "*Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40)*" ("ASU 2020-06"). ASU 2020-06 reduces the number of models used to account for convertible instruments, amends diluted EPS calculations for convertible instruments, and amends the requirements for a contract (or embedded derivative) that is potentially settled in an entity's own shares to be classified in equity. The amendments add certain disclosure requirements to increase transparency and decision-usefulness about a convertible instrument's terms and features. Under the amendment, the Company must use the if-converted method for including convertible instruments in diluted EPS as opposed to the treasury stock method. ASU 2020-06 is effective for annual reporting periods beginning after December 15, 2023 for smaller reporting companies as defined by the SEC. Early adoption is allowed under the standard with either a modified retrospective or full retrospective method. The Company early adopted ASU 2020-06 on January 1, 2022 using the modified retrospective method. As a result of Management's evaluation, the adoption of ASU 2020-06 did not have a material impact on the consolidated financial statements.

In May 2021, the FASB issued ASU 2021-04, "Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity Classified Written Call Options" ("ASU 2021-04"), which introduces a new way for companies to account for warrants either as stock compensation or derivatives. Under the new guidance, if the modification does not change the instrument's classification as equity, the company accounts for the modification as an exchange of the original instrument for a new instrument. In general, if the fair value of the "new" instrument is greater than the fair value of the "original" instrument, the excess is recognized based on the substance of the transaction, as if the issuer has paid cash. The effective date of the standard is for interim and annual reporting periods beginning after December 15, 2021 for all entities, and early adoption is permitted. The Company adopted ASU 2021-04 on January 1, 2022. As a result of Management's evaluation, the adoption of ASU 2021-04 did not have a material impact on the consolidated financial statements.

In October 2021, the FASB issued ASU 2021-08, "Accounting for Contract Assets and Contract Liabilities from Contracts with Customers" ("ASU 2021-08"), which addresses diversity in practice related to the accounting for revenue contracts with customers acquired in a business combination. Under the new guidance, the acquirer is required to apply Topic 606 to recognize and measure contract assets and contract liabilities in a business combination. The effective date of the standard is for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, with early adoption permitted. The Company adopted ASU 2021-08 on January 1, 2022. As a result of Management's evaluation, the adoption of ASU 2021-08 did not have a material impact on the consolidated financial statements.

In November 2021, the FASB issued ASU 2021-10, "Government Assistance (Topic 832)" ("ASU 2021-10"), which provides guidance on disclosing government assistance. Under the new guidance, the Company is required to including the disclosure of (1) the types of assistance, (2) an entity's accounting for the assistance, and (3) the effect of the assistance on the entity's financial statements. The effective date of the standard is for annual periods beginning after December 15, 2021. The Company adopted ASU 2021-10 on January 1, 2022. As a result of Management's evaluation, the adoption of ASU 2021-10 did not have a material impact on the consolidated financial statements.

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 4 - Disaggregation of Revenue
Disaggregation of Revenue

The Company recognizes revenue when control is transferred of the promised products or services to its customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those products or services. The Company derives revenue from software as a service, design and implementation services for its Indoor Intelligence systems, and professional services for work performed in conjunction with its systems recognition policy. Revenues consisted of the following (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Recurring revenue				
Hardware	\$ —	\$ —	\$ —	\$ —
Software	2,380	1,662	4,690	3,122
Professional services	—	—	—	35
Total recurring revenue	\$ 2,380	\$ 1,662	\$ 4,690	\$ 3,157
Non-recurring revenue				
Hardware	\$ 875	\$ 400	\$ 1,696	\$ 1,214
Software	397	297	765	608
Professional services	1,073	1,094	2,805	1,428
Total non-recurring revenue	\$ 2,345	\$ 1,791	\$ 5,266	\$ 3,250
Total Revenue	\$ 4,725	\$ 3,453	\$ 9,956	\$ 6,407

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Revenue recognized at a point in time				
Indoor Intelligence (1)	\$ 874	\$ 400	\$ 1,695	\$ 1,214
Saves (1)	398	297	766	608
Shoom (1)	—	—	—	—
Total	\$ 1,272	\$ 697	\$ 2,461	\$ 1,822
Revenue recognized over time				
Indoor Intelligence (2) (3)	\$ 2,612	\$ 1,869	\$ 5,770	\$ 2,672
Saves (3)	328	386	694	907
Shoom (3)	513	501	1,031	1,006
Total	\$ 3,453	\$ 2,756	\$ 7,495	\$ 4,585
Total Revenue	\$ 4,725	\$ 3,453	\$ 9,956	\$ 6,407

(1) Hardware and Software's performance obligation is satisfied at a point in time where when they are shipped to the customer.

(2) Professional services are also contracted on the fixed fee and time and materials basis. Fixed fees are paid monthly, in phases, or upon acceptance of deliverables. The Company has elected the practical expedient to recognize revenue for the right

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 4 - Disaggregation of Revenue (continued)

to invoice because the Company's right to consideration corresponds directly with the value to the customer of the performance completed to date, in which revenue is recognized over time.

(3) Software As A Service Revenue's performance obligation is satisfied evenly over the service period using a time-based measure because the Company is providing continuous access to its service and service is recognized overtime.

Note 5 – CXApp Acquisition

On March 3, 2022, we entered into a Second Amendment to that certain Stock Purchase Agreement, dated as of April 30, 2021 (the CXApp Stock Purchase Agreement"), by and among the Company, Design Reactor, Inc. (the "CXApp") and the holders of the outstanding capital stock of CXApp (the "Sellers") with the Sellers' Representative (as defined in the CXApp Stock Purchase Agreement), pursuant to which the parties agreed that withholding taxes payable by certain of the Sellers, as applicable, in connection with the issuance of the Earnout Shares (as defined in the CXApp Purchase Agreement) would be offset up to the aggregate amount payable to such Seller by the Company from the Holdback Amount (as defined in the CXApp Purchase Agreement) and the Holdback Amount would be reduced by an equal amount. On March 3, 2022, the Company issued 10,873,886 shares of common stock to the Sellers in connection with the satisfaction of the Earnout Payment (as defined in the CXApp Purchase Agreement). The fair market value of the Earnout Shares issued was lower than the fair market value of the Earnout Shares as of December 31, 2021, and therefore the Company recorded a benefit of \$2.8 million for the six months ended June 30, 2022, which is included in the General and Administrative costs of the condensed consolidated statements of operations.

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Note 6 - Proforma Financial Information*CXApp Proforma Financial Information*

The following unaudited proforma financial information presents the consolidated results of operations of the Company and the CXApp for the three and six months ended June 30, 2021, as if the acquisition had occurred as of the beginning of the first period presented instead of on April 30, 2021. The proforma information does not necessarily reflect the results of operations that would have occurred had the entities been a single company during those periods.

The proforma financial information for Game Your Game, Visualix and IntraNav have not been presented as it is deemed immaterial.

The proforma financial information for the Company and the CXApp is as follows (in thousands):

	For the Three Months Ended June 30, 2021	For the Six Months Ended June 30, 2021
Revenues	\$ 3,828	\$ 8,527
Net income (loss) attributable to common stockholders	\$ 14,875	\$ 1,794
Net income (loss) per basic common share	\$ 0.13	\$ 0.02
Net income (loss) per diluted common share	\$ 0.13	\$ 0.02
Weighted average common shares outstanding:		
Basic	112,957,969	100,444,630
Diluted	112,958,815	100,458,729

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Note 7- Goodwill and Intangibles

Goodwill:

The following table summarizes the changes in the carrying amount of Goodwill for the six months ended June 30, 2022 (in thousands):

Segments	Acquisitions	Balance as of January 1, 2022	Goodwill additions through acquisitions	Valuation Measurement Period Adjustments	Exchange rate fluctuations as of June 30, 2022	Balance as of June 30, 2022
SAVES	Systat	\$ 695	\$ —	\$ (695)	\$ —	\$ —
Indoor Intelligence	GTX	1	—	(1)	—	—
	Nanotron	1,119	—	(1,035)	(84)	—
	Jibestream	480	—	(474)	(6)	—
	CXApp	5,066	—	(5,066)	—	—
	Game Your Game	152	—	(152)	—	—
	IntraNav	159	—	(147)	(12)	—
	Total	<u>\$ 7,672</u>	<u>\$ —</u>	<u>\$ (7,570)</u>	<u>(102)</u>	<u>\$ —</u>

The Company reviews goodwill for impairment on a reporting unit basis on December 31 of each year and whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable. The Company's goodwill balance and other assets with indefinite lives were evaluated for potential goodwill impairment on a reporting unit basis during the period ended June 30, 2022 as certain indications on a qualitative and a quantitative basis were identified that an impairment exists as of the reporting date primarily from a sustained decrease in their stock price.

The Company utilized a mix of both the income and market approaches in determining the fair value of the reporting units. The Company noted that 50% weight was attributed to the income approach and 50% was attributed to the market approach. During the period ended June 30, 2022, the Company recognized approximately \$7.6 million of goodwill impairment on Systat, GTX, Nanotron, Jibestream, CXApp, Game Your Game, and IntraNav. As of June 30, 2022, the Company's cumulative impairment charges are approximately \$31.0 million with approximately \$29.1 million related to the Indoor Intelligence reporting unit, approximately \$1.2 million related to the Shoom reporting unit and approximately \$0.7 million related to the SAVES reporting unit. As of December 31, 2021, the Company's cumulative goodwill impairment charges were approximately \$23.4 million with approximately \$22.2 million related to the Indoor Intelligence reporting unit and approximately \$1.2 million related to the Shoom reporting unit.

Intangibles assets at June 30, 2022 and December 31, 2021 consisted of the following (in thousands):

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Note 7- Goodwill and Intangibles (continued)

	Gross Carrying Amount		Accumulated Amortization Amount		Remaining Weighted Average Useful Life
	June 30,	December 31,	June 30,	December 31,	
	2022	2021	2022	2021	
IP Agreement	\$ 158	\$ 172	\$ (70)	\$ (54)	2.25
Trade Name/Trademarks	3,585	3,602	(1,031)	(662)	3.80
Webstores & Websites	404	404	(191)	(123)	1.58
Customer Relationships	9,152	9,294	(2,096)	(1,440)	5.42
Developed Technology	21,959	22,175	(4,180)	(3,010)	8.04
Non-compete Agreements	4,255	4,786	(1,819)	(1,666)	1.98
Totals	\$ 39,513	\$ 40,433	\$ (9,387)	\$ (6,955)	

Amortization Expense:

Amortization expense for the three and six months ended June 30, 2022 was approximately \$1.5 million and \$3.0 million, respectively, and for the three and six months ended June 30, 2021 was approximately \$1.4 million and \$2.0 million, respectively.

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Note 7- Goodwill and Intangibles (continued)

Future amortization expense on intangibles assets is anticipated to be as follows (in thousands):

	Amount	
December 31, 2022 (for 6 months)	\$	3,065
December 31, 2023		5,925
December 31, 2024		4,981
December 31, 2025		4,355
December 31, 2026 and thereafter		11,800
	<u>\$</u>	<u>30,126</u>

Note 8 - Inventory

Inventory as of June 30, 2022 and December 31, 2021 consisted of the following (in thousands):

	As of June 30, 2022		As of December 31, 2021	
Raw materials	\$	170	\$	163
Work-in-process		457		539
Finished goods		954		1,274
Inventory	<u>\$</u>	<u>1,581</u>	<u>\$</u>	<u>1,976</u>

Note 9 - Investments in Equity Securities

Investment securities—fair value consist of investments in the Company’s investment in shares and rights of equity securities. The composition of the Company’s investment securities—fair value was as follows (in thousands):

	As of June 30, 2022	
	Cost	Fair Value
Investments in equity securities- fair value		
Equity shares	\$ 47,841	\$ 473
Equity rights	11,064	109
Total investments in equity securities- fair value	<u>\$ 58,905</u>	<u>\$ 582</u>

For the three months ended June 30, 2022 and 2021, the Company recognized a net unrealized (gain) loss on equity securities of \$(0.2) million and \$29.0 million, respectively, and \$1.3 million and \$29.0 million for the six months ended June 30, 2022 and 2021, respectively, in the other income/expense section of the condensed consolidated statements of operations.

Note 10 - Investments in Debt Securities

On April 27, 2022, the Company purchased a 10% convertible note in aggregate principal amount of \$6.1 million for a purchase price of \$5.5 million from FOXO Technologies Inc. (“FOXO”). Interest on the convertible note accrues at 12% per annum. The term of the convertible note is twelve months, however FOXO has the ability to extend the maturity date for an additional 3 months. The convertible note is subject to certain conversion features which include qualified financing, and/or qualified transaction, as defined in the securities purchase agreement. The Company can voluntarily convert the note after 270 days. The note will be required to convert upon FOXO completing a qualified offering.

The convertible note receivable is not traded in active markets and fair value was determined using a present value technique. The convertible note receivable is accounted for as available-for-sale debt securities based on “Level 3” inputs, which consist of

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unobservable inputs and reflect management’s estimates of assumptions that market participants would use in pricing the asset, with unrealized holding gains and losses excluded from earnings and reported in other comprehensive income (loss).

Note 11 - Other Long Term Investments

In 2020, the Company paid \$1.8 million for 600,000 Class A Units and 2,500,000 Class B Units of Cardinal Ventures Holdings LLC, (“CVH”). CVH is a Delaware limited liability company formed to conduct any business, enterprise or activity permitted to owning certain interests in a sponsor of a special purpose acquisition company (“SPAC”). The \$1.8 million purchase price was paid on October 12, 2020 and therefore is the date the purchase of the Units was closed. On December 16, 2020, the Company increased its capital contribution by \$0.7 million in exchange for an additional 700,000 Class B Units. It is anticipated that the Contribution will be used by CVH to fund the Sponsor’s purchase of securities in the SPAC. The agreement provides that each Class A Unit and each Class B Unit represents the right of the Company to receive any distributions made by the Sponsor on account of the Class A Interests and Class B Interests, respectively, of the Sponsor.

The Company generally records its share of earnings in its equity method investments using a three-month lag methodology and within net investment income. During the period January 1, 2021 to December 31, 2021 and January 1, 2022 to June 30, 2022, CVH had no operating results as CVH is a holding company. CVH only contains units and has not been allocated shares of the SPAC, therefore CVH is not allocating any portion of income or expense incurred by the SPAC. As such, there was no share of earnings recognized by the Company in its statement of operations on its proportional equity investment.

The following component represents components of Other long-term investments as of June 30, 2022:

Investee	Ownership interest as of June 30,	Instrument Held
	2022	
CVH LLC Class A	14.1 %	Units
CVH LLC Class B	38.4 %	Units

Inpixon’s investment in equity method eligible entities are represented on balance sheet as an asset of \$2.5 million as of June 30, 2022 and December 31, 2021. Ownership interest in equity method eligible entities did not change from the year ended December 31, 2021 to June 30, 2022.

Note 12 - Accrued Liabilities

Accrued liabilities as of June 30, 2022 and December 31, 2021 consisted of the following (in thousands):

	As of June 30, 2022	As of December 31, 2021
Accrued compensation and benefits	\$ 1,391	\$ 8,027
Accrued interest expense	1,174	1,012
Accrued bonus and commissions	832	597
Accrued other	580	707
Accrued sales and other indirect taxes payable	139	322
	\$ 4,116	\$ 10,665

Note 13 - Debt

Debt as of June 30, 2022 and December 31, 2021 consisted of the following (in thousands):

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Note 13- Debt (continued)

Short-Term Debt	Maturity	June 30, 2022		December 31, 2021	
March 2020 10% Note	3/18/2023	\$	1,308	\$	3,251
Third Party Note Payable	12/31/2022	\$	603	\$	239
Total Short-Term Debt		\$	1,911	\$	3,490

Interest expense on the short-term debt totaled approximately \$0.1 million and \$1.4 million for the three months ended June 30, 2022 and 2021, respectively, and approximately \$0.2 million and \$2.0 million for the six months ended June 30, 2022 and 2021, respectively, which was amortized to interest expense from the combined amortization of deferred financing costs and note discounts recorded at issuance for the Short Term Debt.

*Notes Payable**March 2020 10% Note Purchase Agreement and Promissory Note*

On March 18, 2020, the Company entered into a note purchase agreement with Iliad Research and Trading, L.P. ("Iliad"), pursuant to which the Company agreed to issue and sell to the holder an unsecured promissory note (the "March 2020 10% Note") in an aggregate initial principal amount of \$6.5 million, which is payable on or before the date that is 12 months from the issuance date. The initial principal amount includes an original issue discount of \$0.5 million and \$0.02 million that the Company agreed to pay to the holder to cover the holder's legal fees, accounting costs, due diligence, monitoring and other transaction costs.

In exchange for the March 2020 10% Note, the holder paid an aggregate purchase price of \$5.0 million. Interest on the March 2020 10% Note accrues at a rate of 10% per annum and is payable on the maturity date or otherwise in accordance with the March 2020 10% Note. The Company may pay all or any portion of the amount owed earlier than it is due; provided, that in the event the Company elects to prepay all or any portion of the outstanding balance, it shall pay to the holder 115% of the portion of the outstanding balance the Company elects to prepay.

Beginning on the date that is 6 months from the issuance date and at the intervals indicated below until the March 2020 10% Note is paid in full, the holder shall have the right to redeem up to an aggregate of 1/3 of the initial principal balance of the March 2020 10% Note each month by providing written notice delivered to the Company; provided, however, that if the holder does not exercise any monthly redemption amount in its corresponding month then such monthly redemption amount shall be available for the holder to redeem in any future month in addition to such future month's monthly redemption amount.

Upon receipt of any monthly redemption notice, the Company shall pay the applicable monthly redemption amount in cash to the holder within five business days of the Company's receipt of such Monthly Redemption Notice. The March 2020 10% Note includes customary event of default provisions, subject to certain cure periods, and provides for a default interest rate of 22%. Upon the occurrence of an event of default (except a default due to the occurrence of bankruptcy or insolvency proceedings, the holder may, by written notice, declare all unpaid principal, plus all accrued interest and other amounts due under the March 2020 10% Note to be immediately due and payable. Upon the occurrence of a bankruptcy-related event of default, without notice, all unpaid principal, plus all accrued interest and other amounts due under the March 2020 10% Note will become immediately due and payable at the mandatory default amount. On September 17, 2020, the Company amended the one time monitoring fee applicable in the event the note was outstanding on the date that was 6 months from the issuance date, from 10% to 5% which was added to the March 2020 10% Note balance. On March 17, 2021, the Company extended the maturity date of the March 2020 10% Note from March 18, 2021 to March 18, 2022.

On February 11, 2021, the Company entered into an exchange agreement with Iliad, pursuant to which the Company and Iliad agreed to: (i) partition a new promissory note in the form of the March 2020 10% Note equal to \$1.5 million and then cause the outstanding balance of the March 2020 10% Note to be reduced by \$1.5 million; and (ii) exchange the partitioned note for the delivery of 893,921 shares of the Company's common stock, at an effective price per share equal to \$0.678. The Company analyzed the exchange of the principal under the March 2020 10% Note as an extinguishment and compared the net carrying value of the debt being extinguished to the reacquisition price (shares of common stock being issued) and recorded approximately a \$30,000 loss on the exchange of debt for equity as a separate item in the other income/expense section of the condensed consolidated statements of operations for six months ended June 30, 2021.

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Note 13- Debt (continued)

The Company entered into an exchange agreement with Iliad which afforded a free trading date of July 1, 2021, pursuant to which the Company and Iliad agreed to: (i) partition a new promissory note in the form of the March 2020 10% Note equal to \$1.0 million and then cause the outstanding balance of the March 2020 10% Note to be reduced by \$1.0 million; and (ii) exchange the partitioned note for the delivery of 877,192 shares of the Company's common stock, at an effective price per share equal to \$.14. The Company analyzed the exchange of the principal under the March 2020 10% Note as an extinguishment and compared the net carrying value of the debt being extinguished to the reacquisition price (shares of common stock being issued) and there was no loss on the exchange for debt for equity.

On February 1, 2022, the Company entered into an exchange agreement with Iliad, pursuant to which the Company and Iliad agreed to: (i) partition a new promissory note in the form of the March 2020 10% Note equal to \$0.5 million and then cause the outstanding balance of the March 2020 10% Note to be reduced by \$0.5 million; and (ii) exchange the partitioned note for the delivery of 1,191,611 shares of the Company's common stock, at an effective price per share equal to \$0.4196. The Company analyzed the exchange of the principal under the March 2020 10% Note as an extinguishment and compared the net carrying value of the debt being extinguished to the reacquisition price (shares of common stock being issued) and there was no loss on the exchange for debt for equity.

On February 18, 2022, the Company entered into an exchange agreement with Iliad, pursuant to which the Company and Iliad agreed to: (i) partition a new promissory note in the form of the March 2020 10% Note equal to \$0.4 million and then cause the outstanding balance of the March 2020 10% Note to be reduced by \$0.4 million; and (ii) exchange the partitioned note for the delivery of 966,317 shares of the Company's common stock, at an effective price per share equal to \$0.3622. The Company analyzed the exchange of the principal under the March 2020 10% Note as an extinguishment and compared the net carrying value of the debt being extinguished to the reacquisition price (shares of common stock being issued) and there was no loss on the exchange for debt for equity.

On March 15, 2022, the Company entered into an exchange agreement with Iliad, pursuant to which the Company and Iliad agreed to: (i) partition a new promissory note in the form of the March 2020 10% Note equal to \$0.7 million and then cause the outstanding balance of the March 2020 10% Note to be reduced by \$0.7 million; and (ii) exchange the partitioned note for the delivery of 2,152,317 shares of the Company's common stock, at an effective price per share equal to \$0.3020. The Company analyzed the exchange of the principal under the March 2020 10% Note as an extinguishment and compared the net carrying value of the debt being extinguished to the reacquisition price (shares of common stock being issued) and there was no loss on the exchange for debt for equity.

Effective as of March 16, 2022, we entered into a third amendment (the "Third Amendment") to the Original Note which was accounted for as a modification. Pursuant to the terms of the Third Amendment, the maturity date of the Original Note was extended from March 18, 2022 to March 18, 2023 (the "Maturity Date Extension"). In exchange for the Maturity Date Extension, we agreed to pay a 2% extension fee in the amount of approximately \$56,860 (the "Extension Fee"), which was added to the outstanding balance of the Original Note.

On May 17, 2022, the Company entered into an exchange agreement with Iliad, pursuant to which the Company and Iliad agreed to: (i) partition a new promissory note in the form of the March 2020 10% Note equal to approximately \$0.3 million and then cause the outstanding balance of the March 2020 10% Note to be reduced by approximately \$0.3 million; and (ii) exchange the partitioned note for the delivery of 1,144,164 shares of the Company's common stock, at an effective price per share equal to \$0.22. The Company analyzed the exchange of the principal under the March 2020 10% Note as an extinguishment and compared the net carrying value of the debt being extinguished to the reacquisition price (shares of common stock being issued) and there was no loss on the exchange for debt for equity.

On May 31, 2022, the Company entered into an exchange agreement with Iliad, pursuant to which the Company and Iliad agreed to: (i) partition a new promissory note in the form of the March 2020 10% Note equal to approximately \$0.3 million and then cause the outstanding balance of the March 2020 10% Note to be reduced by approximately \$0.3 million; and (ii) exchange the partitioned note for the delivery of 1,485,442 shares of the Company's common stock, at an effective price per share equal to \$0.17. The Company analyzed the exchange of the principal under the March 2020 10% Note as an extinguishment and compared the net carrying value of the debt being extinguished to the reacquisition price (shares of common stock being issued) and there was no loss on the exchange for debt for equity.

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Note 13- Debt (continued)

Third Party Note Payable

Game Your Game entered into promissory notes with an individual whereby it received approximately \$0.2 million on October 29, 2021, approximately \$0.2 million on January 18, 2022, and approximately \$0.1 million on March 22, 2022 for funding of outside liabilities and working capital needs. All of the promissory notes have a interest rate of 8% and are due on or before December 31, 2022. As of June 30, 2022, the balance owed under the notes was \$0.6 million.

Note 14 - Capital Raises

Registered Direct Offerings

On January 24, 2021, the Company entered into a securities purchase agreement with an institutional investor, pursuant to which it sold in a registered direct offering 5,800,000 shares of its common stock, and warrants to purchase up to 19,354,838 shares of common stock at an exercise price of \$1.55 per share (the "January 2021 Purchase Warrants") for a combined purchase price of \$1.55 per share and pre-funded warrants to purchase up to 13,554,838 shares of common stock ("January 2021 Pre-funded Warrants") at an exercise price of \$0.001 per share, at a purchase price of \$1.549 per share for net proceeds of approximately \$27.8 million. Each January 2021 Purchase Warrant and January 2021 Pre-funded Warrant is exercisable for one share of common stock, is immediately exercisable and will expire 5 years from the issuance date. The January 2021 Pre-funded Warrants were exercised in full as of February 8, 2021. In addition, the investor exercised its purchase rights for 3,000,000 shares of common stock pursuant to the the January 2021 Purchase Warrant on February 11, 2021.

On February 12, 2021, the Company entered into a securities purchase agreement with an institutional investor, pursuant to which it sold in a registered direct offering, 7,000,000 shares of its common stock, and warrants to purchase up to 15,000,000 shares of common stock at an exercise price of \$2.00 per share (the "First February 2021 Purchase Warrants") for a combined purchase price of \$2.00 per share and pre-funded warrants to purchase up to 8,000,000 shares of common stock ("First February 2021 Pre-funded Warrants") at an exercise price of \$0.001 per share, at a purchase price of \$1.999 per share for net proceeds of approximately \$27.8 million. Each First February 2021 Purchase Warrant and First February 2021 Pre-funded Warrant is exercisable for one share of common stock, is immediately exercisable and will expire 5 years from the issuance date. The First February 2021 Pre-funded warrants were exercised in full as of February 18, 2021.

On February 16, 2021, the Company entered into a securities purchase agreement with an institutional investor, pursuant to which the Company sold in a registered direct offering, 3,000,000 shares of its common stock, and warrants to purchase up to 9,950,250 shares of common stock at an exercise price of \$2.01 per share (the "Second February 2021 Purchase Warrants") for a combined purchase price of \$2.01 per share and pre-funded warrants to purchase up to 6,950,250 shares of common stock ("Second February 2021 Pre-funded Warrants") at an exercise price of \$0.001 per share, at a purchase price of \$2.009 per share for net proceeds of \$18.5 million after deducting placement agent commissions and offering expenses. Each Second February 2021 Purchase Warrant and Second February 2021 Pre-funded Warrant is exercisable for one share of common stock, is immediately exercisable and will expire five years from the issuance date. The Second February 2021 Pre-funded warrants were exercised in full as of March 1, 2021.

On September 13, 2021, the Company entered into a securities purchase agreement with certain institutional investors named therein, pursuant to which the Company sold in a registered direct offering (i) 58,750 shares of Series 7 Convertible Preferred Stock and (ii) related warrants to purchase up to an aggregate of 47,000,000 shares of common stock. Each share of Series 7 Convertible Preferred Stock and the related Warrants were sold at a subscription amount of \$920, representing an original issue discount of 8% of the stated value of each share of Series 7 Convertible Preferred Stock for an aggregate subscription amount of \$54.1 million. In connection with this offering, the Company filed a Certificate of Designation for the Series 7 Convertible Preferred Stock with the Nevada Secretary of State. The Company has authorized the issuance of 5,000,000 shares of preferred stock, of which 49,250 shares were issued and outstanding as of June 30, 2022. Each share of Series 7 Convertible Preferred Stock has a par value of \$0.001 per share and stated value of \$1,000 per share. The shares of Series 7 Convertible Preferred Stock are convertible into shares of the Company's common stock, at a conversion price of \$1.25 per share. Each share of Series 7 Convertible Preferred Stock is entitled to receive cumulative dividends, payable in the same form as dividends paid on shares of the Company's common stock. At any time beginning on the 6-month anniversary of the date the shares of Series 7 Convertible Preferred Stock are issued and ending 90 days thereafter, the holders of the Series 7 Convertible Preferred Stock have the right to redeem all or part of the shares held by such holder in cash for the redemption price equal to the stated value of

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Note 14- Capital Raises (continued)

such share, plus all accrued but unpaid dividends thereon and all liquidated damages and other costs, expenses or amounts due. Upon redemption, the holder of the Series 7 Convertible Preferred Stock will forfeit 75% of the warrants issued in connection therewith. The holders of the Series 7 Convertible Preferred Stock are entitled to vote together with all other classes and series of stock of the Company as a single class on all actions to be taken by the stockholders of the Company. The Series 7 Convertible Preferred Stock and related warrants subject to forfeiture are recorded as Mezzanine Equity in the accompanying balance sheets as the holder has the option to redeem these shares for cash and the warrants are an embedded feature for the Series 7 Convertible Preferred Stock. The remaining warrants that are not subject to forfeiture are recorded within Stockholders' Equity as the remaining warrants are classified as freestanding instruments. The aggregate net proceeds from the offering, after deducting the placement agent fees and other estimated offering expenses, were approximately \$50.6 million. See Note 15 for Preferred Stock and Note 19 for Warrant details.

On March 22, 2022, the Company entered into a Securities Purchase Agreement with certain institutional investors named therein, pursuant to which the Company sold in a registered direct offering (i) 53,197,723 shares of Series 8 Convertible Preferred Stock and (ii) related warrants to purchase up to an aggregate of 12,778,720 shares of common stock. Each share of Series 8 Convertible Preferred Stock and the related Warrants were sold at a subscription amount of \$940, representing an original issue discount of 6% of the stated value of each share of Series 8 Convertible Preferred Stock for an aggregate subscription amount of \$50.0 million. In connection with this offering, the Company filed a Certificate of Designation for the Series 8 Convertible Preferred Stock with the Nevada Secretary of State. Each share of Series 8 Convertible Preferred Stock has a par value of \$0.001 per share and stated value of \$1,000 per share. The shares of Series 8 Convertible Preferred Stock are convertible into shares of the Company's common stock, at a conversion price of \$0.4717 per share. Each share of Series 8 Convertible Preferred Stock is entitled to receive cumulative dividends, payable in the same form as dividends paid on shares of the Company's common stock. At any time beginning on October 1, 2022 and ending ninety 90 days thereafter, the holders of the Series 8 Convertible Preferred Stock have the right to redeem all or part of the shares held by such holder in cash for the redemption price equal to the stated value of such share, plus all accrued but unpaid dividends thereon and all liquidated damages and other costs, expenses or amounts due. Upon redemption, the holder of the Series 8 Convertible Preferred Stock will forfeit 50% of the warrants issued in connection therewith. The holders of the Series 8 Convertible Preferred Stock shall vote together with all other classes and series of stock of the Company as a single class on all actions to be taken by the stockholders of the Company. The Series 8 Convertible Preferred Stock and related warrants subject to forfeiture are recorded as Mezzanine Equity in the accompanying balance sheets as the holder has the option to redeem these shares for cash and the warrants are an embedded feature for the Series 8 Convertible Preferred Stock. The remaining warrants that are not subject to forfeiture are recorded within Stockholders' Equity as the remaining warrants are classified as freestanding instruments containing a total value of \$5.6 million. The aggregate net proceeds from the offering, after deducting the placement agent fees and other estimated offering expenses, were approximately \$46.9 million. See **Note 15** for Preferred Stock and Note 19 for Warrant details.

Between March 15, 2022 and March 22, 2022, the Company received cash redemption notices from the holders of the Series 7 Convertible Preferred Stock issued on September 15, 2021, totaling 49,250 shares of Series 7 Convertible Preferred Stock for aggregate cash required to be paid of approximately \$9.3 million. In addition, in accordance with the related purchase agreement, upon redemption of the Series 7 Convertible Preferred Stock, each holder will forfeit 75% of the related warrants that were issued. Therefore, as of March 22, 2022, 49,250 shares of Series 7 Convertible Preferred Stock were redeemed and 29,550,000 related warrants were forfeited. The Company noted about 71% of the Series 7 Preferred Stock holders that redeemed shares also participated as Series 8 Convertible Preferred Stock holders ("shared holders"). The Company accounted for proceeds of the shared holders as a modification to the Series 7 and Series 8 Convertible Preferred Stock, as well as the related embedded warrants. The total change in fair value as a result of modification related to the Preferred Stock amounted to \$2.6 million which were recognized as a deemed dividend at the date of the modification, upon which will be amortized until the redemption period begins on October 1, 2022. The total change in fair value as a result of modification related to the embedded warrants amounted to \$1.5 million which was recognized as a deemed contribution at the date of the modification, upon which will be accreted until the redemption period begins on October 1, 2022.

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Note 15 - Common Stock

On January 28, 2022, the Company entered into an exchange agreement with the holder of certain existing warrants of the Company which were exercisable for an aggregate of 49,305,088 shares of the Company's common stock. Pursuant to the exchange agreement, the Company agreed to issue to the warrant holder an aggregate of 13,811,407 shares of common stock and rights to receive an aggregate of 3,938,424 shares of common stock in exchange for the existing warrants.

On February 19, 2022, 960,106 shares of common stock issued in connection with restricted stock grants were withheld for employee taxes.

On March 3, 2022, the Company issued 10,873,886 shares of common stock to the sellers of the CXApp in connection with the satisfaction of an earnout payment. See Note 5.

During the three months ended March 31, 2022, the Company issued 4,310,245 shares of common stock under exchange agreements to settle outstanding balances totaling approximately \$1.5 million under partitioned notes.

During the three months ended June 30, 2022, the Company issued 2,629,606 shares of common stock under exchange agreements to settle outstanding balances totaling approximately \$0.5 million under partitioned notes. See **Note 13**.

Note 16 - Preferred Stock

The Company is authorized to issue up to 5,000,000 shares of preferred stock with a par value of \$0.001 per share with rights, preferences, privileges and restrictions as to be determined by the Company's Board of Directors.

Series 4 Convertible Preferred Stock

On April 20, 2018, the Company filed with the Secretary of State of the State of Nevada the Certificate of Designation that created the Series 4 Convertible Preferred Stock ("Series 4 Preferred"), authorized 10,415 shares of Series 4 Preferred and designated the preferences, rights and limitations of the Series 4 Preferred. The Series 4 Preferred is non-voting (except to the extent required by law) and was convertible into the number of shares of common stock, determined by dividing the aggregate stated value of the Series 4 Preferred of \$1,000 per share to be converted by \$828.

As of June 30, 2022, there was 1 share of Series 4 Preferred outstanding.

Series 5 Convertible Preferred Stock

On January 14, 2019, the Company filed with the Secretary of State of the State of Nevada the Certificate of Designation that created the Series 5 Convertible Preferred Stock, authorized 12,000 shares of Series 5 Convertible Preferred Stock and designated the preferences, rights and limitations of the Series 5 Convertible Preferred Stock. The Series 5 Convertible Preferred Stock is non-voting (except to the extent required by law). The Series 5 Convertible Preferred Stock is convertible into the number of shares of common stock, determined by dividing the aggregate stated value of the Series 5 Convertible Preferred Stock of \$1,000 per share to be converted by \$149.85.

As of June 30, 2022, there were 126 shares of Series 5 Convertible Preferred Stock outstanding.

Series 7 Convertible Preferred Stock

On September 13, 2021, the Company filed a Certificate of Designation with the Secretary of State of the State of Nevada, amending the Company's Articles of Incorporation, as amended, to establish the Series 7 Convertible Preferred Stock, consisting of 58,750 authorized shares, \$0.001 par value per share and \$1,000 stated value per share. The holders of the Series 7 Convertible Preferred Stock have full voting rights and powers, except as otherwise required by the Articles of Incorporation, as amended, or applicable law. The holders of Series 7 Convertible Preferred Stock are entitled to vote together with all other classes and series of stock of the Company as a single class on all actions to be taken by the stockholders of the Company. Each holder of the Series 7 Convertible Preferred Stock is entitled to the number of votes equal to the number of shares of common

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Note 16- Preferred Stock (continued)

stock into which the Series 7 Convertible Preferred Stock then held by such holder could be converted on the record date for the vote which is being taken, provided, however, that the voting power of a holder together with its Attribution Parties (as defined in the Certificate of Designation), may not exceed 19.99% (or such greater percentage allowed by the Nasdaq Listing Rules without any shareholder approval requirements). The Series 7 Convertible Preferred Stock is convertible into the number of shares of common stock, determined by dividing the aggregate stated value of the Series 7 Convertible Preferred Stock of \$1,000 per share to be converted by \$1.25.

On September 13, 2021, the Company entered into a securities purchase agreement with certain institutional investors named therein, pursuant to which the Company agreed to issue and sell in a registered direct offering (i) up to 58,750 shares of Series 7 Convertible Preferred Stock and (ii) related warrants to purchase up to an aggregate of 47,000,000 shares of common stock (the "Warrants"). Each share of Series 7 Convertible Preferred Stock and the related Warrants were sold at a subscription amount of \$ 920, representing an original issue discount of 8% of the stated value for an aggregate subscription amount of \$54.1 million. The shares of Series 7 Convertible Preferred Stocks are recorded as Mezzanine Equity in the accompanying balance sheets as the holder has the option to redeem these shares for cash. The aggregate net proceeds from the offering, after deducting the placement agent fees and other estimated offering expenses, was approximately \$50.6 million. The Company has elected to accrete the issuance costs, discount, and freestanding warrants through the date shares can be first be redeemed at the option of the holders, which is the sixth month anniversary of the original issuance date using the effective interest method.

During the year ended December 31, 2021, 9,500 shares of Series 7 Convertible Preferred Stock were converted into 7,600,000 shares of the Company's common stock.

Between March 15, 2022 and March 22, 2022, the Company received cash redemption notices from the holders of the Series 7 Convertible Preferred Stock issued on September 15, 2021, totaling 49,250 shares of Series 7 Convertible Preferred Stock for aggregate cash required to be paid of approximately \$9.3 million.

As of June 30, 2022 there were 0 shares of Series 7 Convertible Preferred stock outstanding.

Series 8 Convertible Preferred Stock

On March 22, 2022, the Company filed a Certificate of Designation with the Secretary of State of the State of Nevada, amending the Company's Articles of Incorporation, as amended, by establishing the Series 8 Convertible Preferred Stock, consisting of 53,197.7234 authorized shares, \$0.001 par value per share and \$1,000 stated value per share. The holders of the Series 8 Convertible Preferred Stock have full voting rights and powers, except as otherwise required by the Articles of Incorporation, as amended, or applicable law. The holders of Series 8 Convertible Preferred Stock are entitled to vote together with all other classes and series of stock of the Company as a single class on all actions to be taken by the stockholders of the Company. Each holder of the Series 8 Convertible Preferred Stock is entitled to the number of votes equal to the number of shares of common stock into which the Series 8 Convertible Preferred Stock then held by such holder could be converted on the record date for the vote which is being taken, provided, however, that the voting power of a holder together with its Attribution Parties (as defined in the Certificate of Designation), may not exceed 19.99% (or such greater percentage allowed by the Nasdaq Listing Rules without any shareholder approval requirements). The Series 8 Convertible Preferred Stock is convertible into the number of shares of common stock, determined by dividing the aggregate stated value of the Series 8 Convertible Preferred Stock of \$1,000 per share to be converted by \$0.4717.

On March 22, 2022, the Company entered into a securities purchase agreement with certain institutional investors named therein, pursuant to which the Company agreed to issue and sell in a registered direct offering (i) up to 53,197.7234 shares of Series 8 Convertible Preferred Stock and (ii) related warrants to purchase up to an aggregate of 112,778,720 shares of common stock (the "Warrants"). Each share of Series 8 Convertible Preferred Stock and the related Warrants (see Note 17) were sold at a subscription amount of \$940, representing an original issue discount of 6% of the stated value for an aggregate subscription amount of \$50.0 million. The shares of Series 8 Convertible Preferred Stocks are recorded as Mezzanine Equity in the accompanying balance sheets as the holder has the option to redeem these shares for cash. The aggregate net proceeds from the offering, after deducting the placement agent fees and other estimated offering expenses, was approximately \$46.9 million. The Company has elected to accrete the issuance costs, discount, and freestanding warrants through the date shares can be first be redeemed at the option of the holders, which is the sixth month anniversary of the original issuance date using the effective interest method.

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Note 17- Authorized Share Increase

On November 18, 2021, the Company filed a certificate of amendment to the Company's articles of incorporation, as amended, with the Secretary of State of the State of Nevada to increase the number of authorized shares of common stock from 250,000,000 to 2,000,000,000 shares effective as of November 18, 2021.

Note 18 - Stock Award Plans and Stock-Based Compensation

In September 2011, the Company adopted the 2011 Employee Stock Incentive Plan (the "2011 Plan") which provides for the granting of incentive and non-statutory common stock options and stock based incentive awards to employees, non-employee directors, consultants and independent contractors. The plan was terminated by its terms on August 31, 2021 and no new awards will be issued under the 2011 Plan.

In February 2018, the Company adopted the 2018 Employee Stock Incentive Plan (the "2018 Plan" and together with the 2011 Plan, the "Option Plans"), which is utilized for employees, corporate officers, directors, consultants and other key persons employed. The 2018 Plan provides for the granting of incentive stock options, NQSOs, stock grants and other stock-based awards, including Restricted Stock and Restricted Stock Units (as defined in the 2018 Plan).

Incentive stock options granted under the Option Plans are granted at exercise prices not less than 100% of the estimated fair market value of the underlying common stock at date of grant. The exercise price per share for incentive stock options may not be less than 110% of the estimated fair value of the underlying common stock on the grant date for any individual possessing more than 10% of the total outstanding common stock of the Company. Options granted under the Option Plans vest over periods ranging from immediately to four years and are exercisable over periods not exceeding ten years.

The aggregate number of shares that may be awarded under the 2018 Plan as of June 30, 2022 is 46,000,000. As of June 30, 2022, 31,029,530 of stock options and restricted stock were granted to employees, directors and consultants of the Company (including 1 share outside of our plan and 70 under our 2011 Plan) and 14,970,541 options were available for future grant under the 2018 Plan.

Employee Stock Options

During the six months ended June 30, 2021, the Company granted options under the 2018 Plan for the purchase of 1,605,000 shares of common stock to employees and consultants of the Company. These options are 100% vested or vest pro-rata over 12, 24 or 36 months, have a life of ten years and an exercise price of \$1.83 per share. The Company valued the stock options using the Black-Scholes option valuation model and the fair value of the awards was determined to be approximately \$1.0 million. The fair value of the common stock as of the grant date was determined to be \$1.83 per share.

On February 5, 2021, the Company issued 4,977 shares of common stock in connection with the cashless exercise of 14,583 employee stock options.

On June 10, 2021, the Company issued 414 shares of common stock in connection with the cashless exercise of 6,111 employee stock options.

During the six months ended June 30, 2022, the Company granted options under the 2018 Plan for the purchase of 9,945,000 shares of common stock to employees and consultants of the Company. These options are 100% vested or vest pro-rata over 12 or 48 months, have a life of ten years and an exercise price of \$0.53 per share. The Company valued the stock options using the Black-Scholes option valuation model and the fair value of the awards was determined to be approximately \$1.8 million. The fair value of the common stock as of the grant date was determined to be \$0.53 per share.

During the three months ended June 30, 2022 and 2021, the Company recorded a charge for the amortization of stock options of approximately \$0.7 million and \$0.3 million, respectively, and approximately \$1.6 million and \$0.8 million for the six months ended June 30, 2022 and 2021, respectively, which is included in the general and administrative section of the condensed consolidated statement of operations.

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Note 18 - Stock Award Plans and Stock-Based Compensation (continued)

As of June 30, 2022, the fair value of non-vested stock options totaled approximately \$0.8 million, which will be amortized to expense over the weighted average remaining term of 1.13 years.

See below for a summary of the stock options granted under the 2011 and 2018 plans:

	2011 Plan	2018 Plan	Non Plan	Total
Beginning balance as of January 1, 2022	73	18,882,229	1	18,882,303
Granted	—	9,945,000	—	9,945,000
Exercised	—	—	—	—
Expired	(3)	(228,914)	—	(228,917)
Forfeited	—	(791,442)	—	(791,442)
Ending balance as of June 30, 2022	70	27,806,873	1	27,806,944

The fair value of each employee option grant is estimated on the date of the grant using the Black-Scholes option-pricing model. Key weighted-average assumptions used to apply this pricing model during six months ended June 30, 2022 were as follows:

	For the Six Months Ended June 30, 2022
Risk-free interest rate	1.50%
Expected life of option grants	5 years
Expected volatility of underlying stock	37.24%
Dividends assumption	--

The expected stock price volatility for the Company's stock options was determined by the historical volatility for industry peers and used an average of those volatility. The Company attributes the value of stock-based compensation to operations on the straight-line single option method. Risk free interest rates were obtained from U.S. Treasury rates for the applicable periods. The dividends assumptions was \$0 as the Company historically has not declared any dividends and does not expect to.

Restricted Stock Awards

On February 19, 2021, the Company granted 5,250,000 restricted stock awards to employees of the Company. These stock awards vest either 25% on the grant date and 25% on each one year anniversary of the grant date or 50% on the grant date and 50% on the one year anniversary. In accordance with the terms of the restricted stock award agreements 921,838 shares of common stock underlying the awards were withheld by the Company in satisfaction of the employee portion of the payroll taxes required to paid in connection with the grant of such awards.

On April 23, 2021, the Company granted 344,826 restricted stock awards to employees of the Company. These stock awards either vest 50% at the 6 months anniversary and 50% on the one year anniversary or over 2 years pro rata every 6 months.

On August 21, 2021, 337,500 of unvested restricted stock award grants were forfeited in connection with the departure of an employee.

On February 19, 2022, 960,106 restricted stock grants were forfeited for employee taxes.

During the three months ended June 30, 2022 and 2021, the Company recorded a charge of \$0.04 million and \$1.7 million, respectively, and \$0.7 million and \$6.3 million for the six months ended June 30, 2022 and 2021, respectively, for the amortization of vested restricted stock awards.

The following table summarizes restricted stock based award activity granted:

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Note 18 - Stock Award Plans and Stock-Based Compensation (continued)

	Restricted Stock Grants
Beginning balance as of January 1, 2022	4,182,692
Granted	—
Exercised	—
Expired	—
Forfeited	(960,106)
Ending balance as of June 30, 2022	<u>3,222,586</u>

The Company determined the fair value of these grants based on the closing price of the Company's common stock on the respective grant dates. The compensation expense is being amortized over the respective vesting periods.

Note 19 - Warrants

On January 24, 2021, Inpixon entered into a securities purchase agreement (the "January 2021 Purchase Agreement") with an institutional investor named therein (the "Investor"), pursuant to which the Company agreed to issue and sell, in a registered direct offering, 5,800,000 shares of the Company's common stock, par value \$0.001 per share, and warrants to purchase up to 19,354,838 shares of common stock (the "Purchase Warrants") at a combined offering price of \$1.55 per share. The Purchase Warrants have an exercise price of \$1.55 per share. Each Purchase Warrant is exercisable for one share of common stock and will be immediately exercisable and will expire five years from the issuance date.

The Company also offered and sold to the Investor pre-funded warrants to purchase up to 3,000,000 shares of common stock (the "Pre-Funded Warrants" and, together with the 5,800,000 shares and the Purchase Warrants, the "Securities"), in lieu of shares of common stock at the Investor's election. Each Pre-Funded Warrant is exercisable for one share of common stock. The purchase price of each Pre-Funded Warrant is \$1.549, and the exercise price of each Pre-Funded Warrant is \$0.001 per share. The Pre-Funded Warrants are immediately exercisable and may be exercised at any time until all of the Pre-Funded Warrants are exercised in full.

During the year ended December 31, 2021, the Company issued 13,554,838 shares of common stock in connection with the exercise of 13,554,838 Pre-Funded Warrants at \$0.001 per share in connection with the January 2021 Purchase Agreement.

On February 12, 2021, Inpixon entered into a securities purchase agreement (the "February 12, 2021 Securities Purchase Agreement") with an institutional investor named therein (the "Investor"), pursuant to which the Company agreed to issue and sell, in a registered direct offering, 7,000,000 shares of the Company's common stock, par value \$0.001 per share, and warrants to purchase up to 15,000,000 shares of common stock (the "Purchase Warrants") at a combined offering price of \$2.00 per share. The Purchase Warrants have an exercise price of \$2.00 per share. Each Purchase Warrant is exercisable for one share of common stock and will be immediately exercisable and will expire five years from the issuance date.

The Company also offered and sold to the Investor pre-funded warrants to purchase up to 8,000,000 shares of common stock (the "Pre-Funded Warrants" and, together with the 7,000,000 shares and the Purchase Warrants, the "Securities"), in lieu of shares of common stock at the Investor's election. Each Pre-Funded Warrant is exercisable for one share of common stock. The purchase price of each Pre-Funded Warrant is \$1.999, and the exercise price of each Pre-Funded Warrant is \$0.001 per share. The Pre-Funded Warrants are immediately exercisable and may be exercised at any time until all of the Pre-Funded Warrants are exercised in full.

During the year ended December 31, 2021, the Company issued 8,000,000 shares of common stock in connection with the exercise of 8,000,000 Pre-Funded Warrants at an exercise price of \$0.001 per share in connection with the February 12, 2021 Securities Purchase Agreement.

On February 16, 2021, Inpixon entered into a securities purchase agreement (the "February 16, 2021 Securities Purchase Agreement") with an institutional investor named therein (the "Investor"), pursuant to which the Company agreed to issue and

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Note 19 - Warrants (continued)

sell, in a registered direct offering, 3,000,000 shares of the Company's common stock, par value 0.001 per share, and warrants to purchase up to 9,950,250 shares of common stock (the "Purchase Warrants") at a combined offering price of \$2.01 per share. The Purchase Warrants have an exercise price of \$2.01 per share. Each Purchase Warrant is exercisable for one share of common stock and will be immediately exercisable and will expire five years from the issuance date.

The Company also offered and sold to the Investor pre-funded warrants to purchase up to 6,950,250 shares of common stock in lieu of shares of common stock at the Investor's election. Each Pre-Funded Warrant is exercisable for one share of common stock. The purchase price of each Pre-Funded Warrant is \$2.009, and the exercise price of each Pre-Funded Warrant is 0.001 per share. The Pre-Funded Warrants are immediately exercisable and may be exercised at any time until all of the Pre-Funded Warrants are exercised in full.

During the year ended December 31, 2021, the Company issued 6,950,250 shares of common stock in connection with the exercise of 6,950,250 pre-funded warrants at \$0.001 per share in connection with the February 16, 2021 Securities Purchase Agreement.

On September 13, 2021, the Company entered into a securities purchase agreement with certain investors pursuant to which the Company agreed to issue and sell, in a registered direct offering sold an aggregate of 58,750 shares of the Company's Series 7 Convertible Preferred Shares, par value \$0.001 per share, which are convertible into 47,000,000 shares of the Company's common stock and warrants to purchase up to 47,000,000 shares of common stock. Each share and related warrants were sold together at a subscription amount of \$920, representing an original issue discount of 8% of the stated value for an aggregate subscription amount of \$54.1 million.

On January 28, 2022, the Company entered into an exchange agreement with the holder of certain existing warrants of the Company which were exercisable for an aggregate of 49,305,088 shares of the Company's common stock. Pursuant to the exchange agreement, the Company agreed to issue to the warrant holder an aggregate of 3,811,407 shares of common stock and rights to receive an aggregate of 3,938,424 shares of common stock in exchange for the existing warrants. The Company accounted for the exchange agreement as a warrant modification. The Company determined the fair value of the existing warrants as if issued on the exchange agreement date and compared that to the fair value of the common stock issued. The Company calculated the fair value of the existing warrants using a Black-Scholes Option pricing model and determined it to be approximately \$0.16 per share. The fair value of the common stock issued was based on the closing stock price of the date of the exchange. The total fair value of the warrants prior to modification was greater than the fair value of the common stock issued, and therefore, there was no incremental fair value related to the exchange.

Between March 15 and March 22, 2022, we received cash redemption notices from the holders of the Company's Series 7 Convertible Preferred Stock issued on September 15, 2021, totaling 49,250 shares of Series 7 Convertible Preferred Stock for aggregate cash required to be paid of approximately \$9.3 million. In addition, upon redemption of the Series 7 Convertible Preferred Stock, each holder forfeited 75% of the related warrants that were issued together with the Series 7 Convertible Preferred Stock (the "Series 7 Warrants"). 29,550,000 corresponding warrants issued in connection with the issuance of the Series 7 Convertible Preferred Stock been forfeited and 17,450,000 related warrants remain outstanding.

On March 22, 2022, the Company entered into a securities purchase agreement with certain investors pursuant to which the Company agreed to issue and sell, in a registered direct offering sold an aggregate of 53,197,723 shares of the Company's Series 8 Convertible Preferred Shares, par value \$0.001 per share, and warrants to purchase up to 112,778,720 shares of common stock. Each share and related warrants were sold together at a subscription amount of \$40, representing an original issue discount of 6% of the stated value for an aggregate subscription amount of \$50.0 million.

Note 20- Income Taxes

There is an income tax benefit of approximately \$0.02 million and income tax expense of \$2.2 million for the three months ended June 30, 2022 and 2021, respectively. There is an income tax expense of approximately \$0.1 million and \$2.2 million for the six months ended June 30, 2022 and 2021, respectively.

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Note 21 - Credit Risk and Concentrations

Financial instruments that subject the Company to credit risk consist principally of trade accounts receivable and cash and cash equivalents. The Company performs certain credit evaluation procedures and does not require collateral for financial instruments subject to credit risk. The Company believes that credit risk is limited because the Company routinely assesses the financial strength of its customers and, based upon factors surrounding the credit risk of its customers, establishes an allowance for uncollectible accounts and, consequently, believes that its accounts receivable credit risk exposure beyond such allowances is limited.

The Company maintains cash deposits with financial institutions, which, from time to time, may exceed federally insured limits. Cash is also maintained at foreign financial institutions for its Canadian subsidiary, UK subsidiary, German subsidiaries and its majority-owned India subsidiary. Cash in foreign financial institutions as of June 30, 2022 and December 31, 2021 was immaterial. The Company has not experienced any losses and believes it is not exposed to any significant credit risk from cash.

The following table sets forth the percentages of revenue derived by the Company from those customers, which accounted for at least 10% of revenues during the three and six months ended June 30, 2022 and 2021 (in thousands):

	For the Three Months Ended June 30, 2022		For the Three Months Ended June 30, 2021	
	\$	%	\$	%
Customer B	349	7%	316	9%

	For the Six Months Ended June 30, 2022		For the Six Months Ended June 30, 2021	
	\$	%	\$	%
Customer B	693	7%	630	10%

As of June 30, 2022, two customers represented approximately 18% of total accounts receivable. As of June 30, 2021, there were no customers that exceeded 10% of total accounts receivable.

As of June 30, 2022, two vendors represented approximately 23% of total gross accounts payable. Purchases from these vendors during the six months ended June 30, 2022 was approximately \$0.4 million. As of June 30, 2021, two vendors represented approximately 23% of total gross accounts payable. Purchases from these vendors during the six months ended June 30, 2021 was approximately \$0.4 million.

For the six months ended June 30, 2022, one vendor represented approximately 33% of total purchases. For the six months ended June 30, 2021, three vendors represented approximately 23%, 16%, and 12% of total purchases.

Segments

The Company's operations consist of three reportable segments based on similar economic characteristics, the nature of products and production processes, end-use markets, channels of distribution, and regulatory environments: Indoor Intelligence, Saves, and Shoom.

During the second quarter of 2021, the Company changed the level of detail at which its Chief Executive Officer ("CEO") acting as the Chief Operating Decision Maker, or "CODM") regularly reviews and manages certain of its businesses, resulting in the bifurcation of its former one segment into three standalone reportable segments: Indoor Intelligence, Saves, and Shoom. The Company now manages and reports its operating results through these three reportable segments. This change allows the Company to enhance its customer focus and better align its business models, resources, and cost structure to the specific current and future growth drivers of each business, while providing increased transparency to the Company's shareholders. The historical segment information has been recast to conform to the current segment structure.

Gross profit is the primary measure of segment profitability used by the Company's CODM.

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Note 21 - Credit Risk and Concentrations (continued)

Revenues and gross profit segments consisted of the following (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Revenue by Segment				
Indoor Intelligence	\$ 3,487	\$ 2,269	\$ 7,466	\$ 3,886
Saves	726	683	1,460	1,515
Shoom	512	501	1,030	1,006
Total segment revenue	4,725	3,453	\$ 9,956	\$ 6,407
Gross profit by Segment				
Indoor Intelligence	\$ 2,413	\$ 1,662	\$ 5,344	\$ 2,676
Saves	482	466	974	1,099
Shoom	434	429	856	852
Gross profit by Segment	\$ 3,329	\$ 2,557	\$ 7,174	\$ 4,627
Income (loss) from operations by Segment				
Indoor Intelligence	\$ (18,958)	\$ (13,289)	\$ (28,991)	\$ (25,873)
Saves	(1,105)	(229)	(1,358)	(296)
Shoom	173	225	395	456
Income (loss) from operations by Segment	\$ (19,890)	\$ (13,293)	\$ (29,954)	\$ (25,713)

The reporting package provided to the Company's CODM does not include the measure of assets by segment as that information isn't reviewed by the CODM when assessing segment performance or allocating resources.

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Note 22 - Fair Value of Financial Instruments

The Company's estimates of fair value for financial assets and financial liabilities are based on the framework established in ASC 820. The framework is based on the inputs used in valuation and gives the highest priority to quoted prices in active markets and requires that observable inputs be used in the valuations when available. The disclosure of fair value estimates in the ASC 820 hierarchy is based on whether the significant inputs into the valuation are observable. In determining the level of the hierarchy in which the estimate is disclosed, the highest priority is given to unadjusted quoted prices in active markets and the lowest priority to unobservable inputs that reflect the Company's significant market assumptions. We classified our financial instruments measured at fair value on a recurring basis in the following valuation hierarchy.

The Company's assets measured at fair value consisted of the following at June 30, 2022 and December 31, 2021:

	Fair Value at June 30, 2022			
	Total	Level 1	Level 2	Level 3
Assets:				
Short-term investments	\$ —	\$ —	\$ —	\$ —
Investments in equity securities	582	—	—	582
Investments in debt securities	5,967	—	—	5,967
Total assets	\$ 6,549	\$ —	\$ —	\$ 6,549

	Fair Value at December 31, 2021			
	Total	Level 1	Level 2	Level 3
Assets:				
Short-term investments	\$ 43,125	\$ 43,125	\$ —	\$ —
Investments in equity securities	1,838	—	—	1,838
Total assets	\$ 44,963	\$ 43,125	\$ —	\$ 1,838

The following is a discussion of the valuation methodologies used for the Company's assets measured at fair value.

Short-term investments represent U.S. treasury bills with maturities greater than three months. The fair value of the U.S. treasury bills are based on quoted market prices in active markets and are included in the Level 1 fair value hierarchy. The market for U.S. treasury bills is an actively traded market given the high level of daily trading volume. All U.S. treasury bills were sold by the Company during the period ended June 30, 2022.

Investments in equity securities are marked to market based on the respective publicly quoted market prices of the equity securities adjusted for liquidity. The fair value was determined using a pricing model with certain significant unobservable market data inputs.

Investments in debt securities are valued using an option pricing model under the income approach methodology as the investment does not have observable inputs of identical or comparable instruments.

The following table is a reconciliation of assets for Level 3 investments for which significant unobservable inputs were used to determine fair value For the Six Months Ended June 30, 2022:

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	Level 3
Level 3 Investments	
Balance at January 1, 2022	\$ 1,838
Transfers in - FOXO Technologies, Inc. convertible note	6,050
FOXO Technologies, Inc. - Original issue discount	(550)
FOXO Technologies, Inc. - Amortization of original issue discount	92
Unrealized loss on equity securities	(1,256)
Unrealized gain on debt securities	375
Balance at June 30, 2022	<u>\$ 6,549</u>

The following table is a reconciliation of assets for Level 3 investments for which significant unobservable inputs were used to determine fair value for the six months ended June 30, 2021:

	Level 3
Level 3 Investments	
Balance at January 1, 2021	\$ —
Transfers in- Sysorex Securities Settlement Agreement	
Benefit (provision for valuation allowance on related party loan - held for sale)	7,461
Interest income (expense), net	1,627
Gain on related party loan held for sale	49,817
Unrealized loss on equity securities	(28,965)
Balance at June 30, 2021	<u>\$ 29,940</u>

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
FOR THE SIX MONTHS ENDED JUNE 30, 2022 AND 2021

Note 23 - Foreign Operations

The Company's operations are located primarily in the United States, Canada, India, Germany, Ireland, Philippines, and the United Kingdom. Revenues by geographic area are attributed by country of domicile of our subsidiaries. The financial data by geographic area are as follows (in thousands):

	United States	Canada	India	Germany	United Kingdom	Ireland	Philippines	Eliminations	Total
<u>For the Three Months Ended June 30, 2022:</u>									
Revenues by geographic area	\$ 3,144	\$ 616	\$ 285	\$ 1,023	\$ 125	\$ 2	\$ —	\$ (470)	\$ 4,725
Operating (loss) income by geographic area	\$ (15,575)	\$ (1,799)	\$ 17	\$ (2,428)	\$ 44	\$ (131)	\$ (27)	\$ 9	\$ (19,890)
Net (loss) income by geographic area	\$ (15,061)	\$ (2,460)	\$ 76	\$ (2,639)	\$ 45	\$ (263)	\$ (28)	\$ —	\$ (20,330)
<u>For the Three Months Ended June 30, 2021:</u>									
Revenues by geographic area	\$ 2,395	\$ 706	\$ 223	\$ 514	\$ 91	\$ —	\$ —	\$ (476)	\$ 3,453
Operating (loss) income by geographic area	\$ (11,030)	\$ (1,252)	\$ (62)	\$ (883)	\$ 12	\$ (78)	\$ —	\$ —	\$ (13,293)
Net (loss) income by geographic area	\$ 16,706	\$ (1,230)	\$ (63)	\$ (839)	\$ 14	\$ (82)	\$ —	\$ —	\$ 14,506
<u>For the Six months ended June 30, 2022:</u>									
Revenues by geographic area	\$ 6,855	\$ 1,217	\$ 682	\$ 1,971	\$ 243	\$ 5	\$ —	\$ (1,017)	\$ 9,956
Operating (loss) income by geographic area	\$ (22,974)	\$ (3,075)	\$ 127	\$ (3,768)	\$ 56	\$ (292)	\$ (27)	\$ (1)	\$ (29,954)
Net (loss) income by geographic area	\$ (23,930)	\$ (3,599)	\$ 88	\$ (4,012)	\$ 59	\$ (466)	\$ (28)	\$ 1	\$ (31,887)
<u>For the Six Months Ended June 30, 2021:</u>									
Revenues by geographic area	\$ 4,056	\$ 1,461	\$ 664	\$ 1,409	\$ 169	\$ —	\$ —	\$ (1,352)	\$ 6,407
Operating (loss) income by geographic area	\$ (21,598)	\$ (2,465)	\$ 51	\$ (1,630)	\$ 7	\$ (78)	\$ —	\$ —	\$ (25,713)
Net (loss) income by geographic area	\$ 5,759	\$ (2,189)	\$ 39	\$ (1,564)	\$ 4	\$ (82)	\$ —	\$ —	\$ 1,967
<u>As of June 30, 2022:</u>									
Identifiable assets by geographic area	\$ 187,174	\$ 5,924	\$ 667	\$ 17,935	\$ 246	\$ 71	\$ 253	\$ (94,424)	\$ 117,846
Long lived assets by geographic area	\$ 25,173	\$ 5,401	\$ 142	\$ 3,749	\$ 1	\$ 5	\$ 232	\$ —	\$ 34,703
Goodwill by geographic area	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
<u>As of December 31, 2021:</u>									
Identifiable assets by geographic area	\$ 216,338	\$ 7,191	\$ 675	\$ 20,238	\$ 283	\$ 69	\$ —	\$ (88,121)	\$ 156,673
Long lived assets by geographic area	\$ 27,773	\$ 5,864	\$ 181	\$ 4,624	\$ 2	\$ 4	\$ —	\$ —	\$ 38,448
Goodwill by geographic area	\$ 5,914	\$ 480	\$ —	\$ 1,278	\$ —	\$ —	\$ —	\$ —	\$ 7,672

INPIXON AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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Note 24 - Related Party Transactions

Nadir Ali, the Company's Chief Executive Officer and a member of its Board of Directors, was a member of the Board of Directors of Sysorex, Inc. ("Sysorex") until he resigned on May 14, 2021. In addition, Nadir Ali previously entered into a consulting agreement with Sysorex, pursuant to which he agreed to provide certain business services specified in the agreement for the benefit of Sysorex in exchange for shares of Sysorex's common stock. The consulting agreement was terminated on October 14, 2021.

Sysorex Note Purchase Agreement

On December 31, 2018, the Company and Sysorex entered into a note purchase agreement (the "Note Purchase Agreement") pursuant to which the Company agreed to purchase from Sysorex at a purchase price equal to the Loan Amount (as defined below), a secured promissory note (the "Secured Note") for up to an aggregate principal amount of \$3 million (the "Principal Amount"), including any amounts advanced through the date of the Secured Note (the "Prior Advances"), to be borrowed and disbursed in increments (such borrowed amount, together with the Prior Advances, collectively referred to as the "Loan Amount"), with interest to accrue at a rate of 10% percent per annum on all such Loan Amounts, beginning as of the date of disbursement with respect to any portion of such Loan Amount. In addition, Sysorex agreed to pay \$20,000 to the Company to cover the Company's legal fees, accounting costs, due diligence, monitoring and other transaction costs incurred in connection with the purchase and sale of the Secured Note (the "Transaction Expense Amount"), all of which amount is included in the Principal Amount. Sysorex may borrow repay and borrow under the Secured Note, as needed, for a total outstanding balance, exclusive of any unpaid accrued interest, not to exceed the Principal Amount at any one time.

All sums advanced by the Company to the Maturity Date (as defined below) pursuant to the terms of the Note Purchase Agreement will become part of the aggregate Loan Amount underlying the Secured Note. All outstanding principal amounts and accrued unpaid interest owing under the Secured Note shall become immediately due and payable on the earlier to occur of (i) 24 month anniversary of the date the Secured Note is issued (the "Maturity Date"), (ii) at such date when declared due and payable by the Company upon the occurrence of an Event of Default (as defined in the Secured Note), or (iii) at any such earlier date as set forth in the Secured Note. All accrued unpaid interest shall be payable in cash. On February 4, 2019, April 2, 2019, and May 22, 2019, the Secured Note was amended to increase the Principal Amount from \$3 million to \$5 million, \$5 million to \$8 million and \$8 million to \$10 million, respectively. On March 1, 2020, the Company extended the maturity date of the Secured Note to December 31, 2022. In addition, the Secured Note was amended to increase the default interest rate from 18% to 21% or the maximum rate allowable by law and to require a cash payment to the Company by Sysorex against the Loan Amount in an amount equal to no less than 6% of the aggregate gross proceeds raised following the completion of any financing, or series of related financings, in which Sysorex raises aggregate gross proceeds of at least \$5 million.

In accordance with the terms of the Systat License Agreement, on June 30, 2020, the Company partitioned a portion of the outstanding balance of the Secured Note into a new note in an amount equal to \$3 million in principal plus accrued interest (the "Closing Note") and assigned the Closing Note and all rights and obligations thereunder to Systat in accordance with the terms and conditions of that certain Promissory Note Assignment and Assumption Agreement ("Assignment Agreement"). An additional \$2.3 million of the principal balance underlying the Sysorex Note was partitioned into a new note and assigned to Systat as consideration payable for the rights granted under the license as of December 31, 2020. During the year ended December 31, 2020, an additional amount of approximately \$2.6 million was advanced under the Secured Note and approximately \$200,000 was repaid. The amount owed for principal as of December 31, 2020 and accrued interest through September 30, 2019 by Sysorex to the Company as of December 31, 2020 was approximately \$7.7 million. These amounts excludes \$275,000 of additional interest that the Company is contractually entitled to accrue from October 1, 2019 through December 31, 2019 and approximately \$1.1 million of additional interest from January 1, 2020 through December 31, 2020 in accordance with the terms of the Sysorex Note, but did not accrue due to the uncertainty of repayment.

During the three months ended March 31, 2020 an additional \$17,000 was advanced under the Secured Note and the Company was entitled to an additional \$251,806 of interest in accordance with the terms of the Note, but did not accrue due to the uncertainty of repayment. An additional \$1 million of the principal balance under the Secured Note was assigned to Systat on March 19, 2021, as the final portion of the total consideration due in connection with the license.

As of April 14, 2021, the Sysorex Note Purchase Agreement was settled, see Sysorex Securities Settlement Agreement below.

INPIXON AND SUBSIDIARIES
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Note 24 - Related Party Transactions (continued)

Sysorex Receivable

On February 20, 2019, the Company, Sysorex and Atlas Technology Group, LLC (“Atlas”) entered into a settlement agreement resulting in a net award of \$941,796 whereby Atlas agreed to accept an aggregate of 16,655 shares of freely-tradable common stock of the Company in full satisfaction of the award. The Company and Sysorex each agreed pursuant to the terms and conditions of that certain Separation and Distribution Agreement, dated August 7, 2018, as amended, that 50% of the costs and liabilities related to the arbitration action would be shared by each party following the Spin-off. As a result, Sysorex owes the Company \$0.6 million for the settlement plus the interest accrued during the fiscal year ended December 31, 2020 of \$0.1 million. The total owed to the Company for this settlement as of December 31, 2021 and 2020 was \$0 and \$0.6 million, respectively. The Company established a full valuation allowance against this balance as of December 31, 2020.

As of April 14, 2021, the Sysorex Receivable was settled, see Sysorex Securities Settlement Agreement below.

Sysorex Securities Settlement Agreement

On April 14, 2021, the Company entered into a Securities Settlement Agreement (the “SSA”) and a Rights Letter Agreement (the “RLA”), each with Sysorex, whereby Sysorex agreed to satisfy in full its outstanding debt, in the aggregate amount of \$9,088,176 as of March 31, 2021, owed to the Company under that certain secured promissory note, originally dated December 31, 2018, as amended from time to time, and in connection with that certain settlement agreement, dated February 20, 2019, by and among the Company, Sysorex and Atlas Technology Group, LLC (the “Debt Settlement”). To effect the Debt Settlement, Sysorex agreed to issue to the Company (i) pursuant to the terms of the SSA, 12,972,189 shares of its common stock, \$0.00001 par value per share, and (ii) rights to acquire 3,000,000 additional shares of its common stock pursuant to the terms of the RLA. The Debt Settlement was entered into in connection with Sysorex’s closing of a reverse triangular merger with TTM Digital Assets & Technologies, Inc.

The Company recorded \$7.5 million for the release of the previously recorded valuation allowance, \$1.6 million of interest income, and a gain on settlement of \$49.8 million equal to the difference in the carry value of the promissory note, including interest and value of the common stock and rights to acquire additional shares received in the settlement.

In connection with the Debt Settlement, the Company also entered into a Registration Rights Agreement, dated as of April 14, 2021 (the “RRA”), with Sysorex and certain other shareholders of Sysorex (the “Holders”). Pursuant to the terms of the RRA, Sysorex must, subject to certain limitations, register the resale of the shares of common stock held by the Company and the Holders, with the U.S. Securities and Exchange Commission (the “SEC”), during the period that begins on the 90th day following April 14, 2021. In the event Sysorex fails to register such shares within that timeframe, or otherwise fails to meet its obligations under the RRA, then, subject to certain limitations, the Company and the Holders may be entitled to receive from Sysorex an amount in cash equal to the product of 1.5% multiplied by the value of their shares (as set forth in the RRA), which amount is payable each month following the date of such failure for so long as the failure continues; provided that the shares are considered “Registrable Securities” as defined by the RRA. The shares of Sysorex common stock were not deemed Registrable Securities as defined by the RRA as of the date of the registration obligation.

Also, under the RRA, if Sysorex determines to prepare and file with the SEC a registration statement relating to an offering of any of its equity securities, for its own account or the account of others, then the Company and the Holders will have the right, subject to certain limitations, to require Sysorex to include in such registration statement all or any part of the shares of common stock held by them.

Systat License Agreement

Nadir Ali, the Company's Chief Executive Officer and a member of its Board of Directors, is a related party in connection with the acquisition of the Licenses as a result of his prior service as a director of Sysorex, the issuer of the Sysorex Note that was assigned in accordance with the terms and conditions of the License Agreement. In addition, Tanveer Khader and Kareem Irfan, members of the Company's Board of Directors, may also be deemed related parties in connection with the acquisition of the Licenses as a result of their respective employment relationships with the Systat Parties.

INPIXON AND SUBSIDIARIES
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Note 24 - Related Party Transactions (continued)***Cardinal Ventures Holdings Investment***

Nadir Ali, the Company's Chief Executive Officer and a members of its Board of Directors, is also a controlling member of 3AM, LLC which is a member of Cardinal Ventures Holdings ("CVH"), which may, in certain circumstances, be entitled to manage the affairs of CVH. Mr. Ali's relationship may create conflicts of interest between Mr. Ali's obligations to the Company and its shareholders and his economic interests and possible fiduciary obligations in CVH through 3AM. For example, Mr. Ali may be in a position to influence or manage the affairs of CVH in a manner that may be viewed as contrary to the best interests of either the Company or CVH and their respective stakeholders.

Director Services Agreement

The Company and Kareem Irfan, a director of the Company, have amended Mr. Irfan's Director Services Agreement on May 16, 2022 (as amended, the "Amended Director Services Agreement") to increase his quarterly compensation by an additional \$10,000 per month as consideration for the additional time and efforts dedicated to the Company and management in support of the evaluation of strategic relationships and growth initiatives. The Amended Director Services Agreement supersedes and replaces all prior agreements by and between the Company and Mr. Irfan.

Note 25 - Leases

The Company has operating leases for administrative offices in the United States (California), Canada, India, the United Kingdom, Germany, and the Philippines.

The Company terminated the lease in Ratingen, Germany in January 2021. The Company entered into two new operating leases for its administrative offices in Ratingen, Germany, both from February 1, 2021 through January 1, 2023. The monthly lease rate is \$2,618 and \$1,053 per month.

As part of the acquisition of IntraNav on December 9, 2021, the Company acquired right-of-use assets and lease liabilities related to an operating lease for an office space (the IntraNav office) located in Frankfurt, Germany. This lease expires on January 6, 2025 and the current lease rate is approximately \$9,753 per month.

The Company entered into two new operating leases for its administrative office in Hyderabad, India and Manila, Philippines. The Hyderabad, India and Manila, Philippines office lease expires on March 25, 2025 and May 14, 2025, respectively.

The Company has no other operating or financing leases with terms greater than 12 months.

Right-of-use assets are summarized below (in thousands):

	As of June 30, 2022	As of December 31, 2021
Palo Alto, CA Office	\$ 631	\$ 631
Hyderabad, India Office	358	359
Coquitlam, Canada Office	95	97
Westminster, Canada Office	—	10
Toronto, Canada Office	593	949
Ratingen, Germany Office	83	90
Berlin, Germany Office	494	536
Slough, United Kingdom Office	—	34
Frankfurt, Germany Office	287	312
Manila, Philippines Office	250	—
Less accumulated amortization	(1,209)	(1,282)
Right-of-use asset, net	<u>\$ 1,582</u>	<u>\$ 1,736</u>

INPIXON AND SUBSIDIARIES
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Note 25 - Leases (continued)

Lease expense for operating leases recorded in the balance sheet is included in operating costs and expenses and is based on the future minimum lease payments recognized on a straight-line basis over the term of the lease plus any variable lease costs. Operating lease expenses, inclusive of short-term and variable lease expenses, recognized in our consolidated statement of income for the three months ended June 30, 2022 and 2021 was \$0.3 million and \$0.3 million, respectively, and for the Six months ended June 30, 2022 and 2021 was \$0.7 million and \$0.6 million, respectively.

Lease liability is summarized below (in thousands):

	As of June 30, 2022	As of December 31, 2021
Total lease liability	\$ 1,622	\$ 1,751
Less: short term portion	(600)	(643)
Long term portion	<u>\$ 1,022</u>	<u>\$ 1,108</u>

Maturity analysis under the lease agreement is as follows (in thousands):

Year ending December 31, 2022	\$ 412
Year ending December 31, 2023	546
Year ending December 31, 2024	457
Year ending December 31, 2025	279
Year ending December 31, 2026	99
Total	<u>\$ 1,793</u>
Less: Present value discount	(171)
Lease liability	<u>\$ 1,622</u>

Operating lease liabilities are based on the net present value of the remaining lease payments over the remaining lease term. In determining the present value of lease payments, the Company used its incremental borrowing rate based on the information available at the date of adoption of ASC 842, *Leases* ("ASC 842"). As of June 30, 2022, the weighted average remaining lease term is 3.97 years and the weighted average discount rate used to determine the operating lease liabilities was 6.4%.

Note 26 - Commitments and Contingencies***Litigation***

Certain conditions may exist as of the date the consolidated financial statements are issued which may result in a loss to the Company, but which will only be resolved when one or more future events occur or fail to occur. The Company assesses such contingent liabilities, and such assessment inherently involves an exercise of judgment. In assessing loss contingencies related to legal proceedings that are pending against the Company, or unasserted claims that may result in such proceedings, the Company evaluates the perceived merits of any legal proceedings or unasserted claims, as well as the perceived merits of the amount of relief sought or expected to be sought therein.

If the assessment of a contingency indicates that it is probable that a material loss has been incurred and the amount of the liability can be estimated, then the estimated liability would be accrued in the Company's consolidated financial statements. If the assessment indicates that a potentially material loss contingency is not probable, but is reasonably possible, or is probable but cannot be estimated, then the nature of the contingent liability and an estimate of the range of possible losses, if determinable and material, would be disclosed.

Loss contingencies considered remote are generally not disclosed, unless they involve guarantees, in which case the guarantees would be disclosed. There can be no assurance that such matters will not materially and adversely affect the Company's business, financial position, and results of operations or cash flows.

Compliance with Nasdaq Continued Listing Requirement

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Note 26 - Commitments and Contingencies (continued)

On October 25, 2021, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC (“Nasdaq”) indicating that, based upon the closing bid price of our common stock (“Common Stock”) for the prior 30 consecutive business days beginning on September 13, 2021, and ending on October 22, 2021, the Company no longer met the requirement to maintain a minimum bid price of \$1.00 per share, as set forth in Nasdaq Listing Rule 5550(a)(2).

In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have been provided a period of 180 calendar days, or until April 25, 2022, in which to regain compliance. In order to regain compliance with the minimum bid price requirement, the closing bid price of our Common Stock must be at least \$1.00 per share for a minimum of ten consecutive business days during this 180-day period. We were not able to regain compliance within this 180-day period, and were eligible to seek an additional 180 calendar days to meet the minimum bid price requirement if we meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for the Nasdaq Capital Market, with the exception of the bid price requirement, and provide written notice to Nasdaq of our intent to cure the deficiency during this second compliance period, by effecting a reverse stock split, if necessary. We provided Nasdaq written notice of our intention to cure the bid price deficiency during the second compliance period and on April 26, 2022, we received notice from Nasdaq that we were granted an additional 180 days, or until October 24, 2022 to regain compliance with this requirement. If we are not able to cure the deficiency prior to October 24, 2022, Nasdaq will provide notice to us that our common stock will be subject to delisting.

Note 27 - Subsequent Events

Debt Exchanges

During the month of July 2022, the Company exchanged approximately \$0.8 million of the outstanding principal and interest under the March 2020 10% Note Purchase Agreement and Promissory Note for 4,951,646 shares of the Company's common stock at an exchange rate between \$0.15 and \$0.16 per share, in each case based on Nasdaq's minimum price.

On August 4, 2022, the Company exchanged approximately \$0.3 million of the outstanding principal and interest under the March 2020 10% Note Purchase Agreement and Promissory Note for 1,926,782 shares of the Company's common stock at an exchange rate of \$0.1557 per share, in each case based on Nasdaq's minimum price.

At-The-Market (ATM) Program

On July 22, 2022, the Company entered into an Equity Distribution Agreement (the "Sales Agreement") with Maxim Group LLC (“Maxim”) under which the Company may offer and sell shares of its common stock having an aggregate offering price of up to \$25 million (the “Shares”) from time to time through Maxim, acting exclusively as the Company's sales agent (the “Offering”). The Company intends to use the net proceeds of the Offering primarily for working capital and general corporate purposes. The Company is not obligated to make any sales of the Shares under the Sales Agreement and no assurance can be given that the Company will sell any Shares under the Sales Agreement, or if it does, as to the price or amount of Shares that the Company will sell, or the date on which any such sales will take place.

Note Purchase Agreement and Promissory Note

On July 22, 2022, the Company entered into a note purchase agreement (the "Purchase Agreement") with Streeterville Capital, LLC (the “Holder”), pursuant to which the Company agreed to issue and sell to the Holder an unsecured promissory note (the “Note”) in an aggregate initial principal amount of \$6.5 million (the “Initial Principal Amount”), which is payable on or before the date that is 12 months from the issuance date (the “Maturity Date”). The Initial Principal Amount includes an original issue discount of \$1.5 million and \$15,000 that the Company agreed to pay to the Holder to cover the Holder's legal fees, accounting costs, due diligence, monitoring and other transaction costs. In exchange for the Note, the Holder paid an aggregate purchase price of \$5.0 million (the “Transaction”). Interest on the Note accrued at a rate of 10% per annum, which is payable on the maturity date. Beginning on the date that is 6 months from the issue date and at the intervals indicated below until the Note is paid in full, the Holder shall have the right to redeem up to an aggregate of 1/3 of the initial principal balance of the Note for cash each month.

Loan to Cardinal Ventures Holdings, LLC

INPIXON AND SUBSIDIARIES
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Note 27 - Subsequent Events (continued)

On July 1, 2022, the Company loaned \$150,000 to Cardinal Venture Holdings LLC (“CVH”). The Company is a member of CVH. CVH owns certain interests in the sponsor entity (the “Sponsor”) to a special purpose acquisition corporation (the “SPAC”). The loan bears no interest and is due and payable in full on the earlier of: (i) the date by which the SPAC has to complete a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses (a “Business Combination”), and (ii) immediately prior to the date of consummation of the Business Combination of the SPAC, unless accelerated upon the occurrence of an event of default. Nadir Ali, the Company’s Chief Executive Officer and director, is also a member in CVH through 3AM, LLC, which may, in certain circumstances, be entitled to manage the affairs of CVH.

ITEM 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion of our financial condition and results of operations in conjunction with the condensed consolidated financial statements and the related notes included elsewhere in this Form 10-Q and with our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2021, as filed with the SEC. In addition to our historical condensed consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Form 10-Q, particularly in Part II, Item 1A, "Risk Factors."

Overview of Our Business

Inpixon is the Indoor Intelligence™ company. Our solutions and technologies help organizations create and redefine exceptional workplace experiences that enable smarter, safer and more secure environments. We leverage our positioning, mapping, analytics and app technologies to achieve higher levels of productivity and performance, increase safety and security, improve worker and employee satisfaction rates and drive a more connected workplace. We have focused our corporate strategy on being the primary provider of the full range of foundational technologies needed in order to offer a comprehensive suite of solutions that make indoor data available and meaningful to organizations and their employees.

Our Indoor Intelligence solutions are used by our customers for a variety of use cases including, but not limited to, employee and visitor experience enhancement through a customer branded app with features such as desk booking, wayfinding and navigation, and the delivery of content to tens of thousands of attendees in hybrid events. Our real time location (RTLS) and asset tracking products offer manufacturing and warehouse logistics optimization and automation, increase workforce productivity, and enhance worker safety and security.

In addition to our Indoor Intelligence technologies and solutions, we also offer:

- Digital solutions (eTearsheets; eInvoice, and adDelivery) or cloudbased applications and analytics for the advertising, media and publishing industries referred to as Shoom by Inpixon; and
- A comprehensive set of data analytics and statistical visualization solutions for engineers and scientists referred to as SAVES by Inpixon.

We report financial results for three segments: Indoor Intelligence, Shoom and SAVES. For Indoor Intelligence, we generate revenue from sales of hardware, software licenses and professional services. For Shoom and SAVES we generate revenue from the sale of software licenses.

We experienced a net loss of approximately \$31.9 million and net income of \$2.0 million for the six months ended June 30, 2022 and 2021, respectively. We cannot assure that we will ever earn revenues sufficient to support our operations, or that we will ever be profitable. In order to continue our operations, we have supplemented the revenues we earned with proceeds from the sale of our equity and debt securities and proceeds from loans and bank credit lines.

Global Events

While the impact of the COVID-19 pandemic is generally subsiding, the lasting impact on our business and results of operations continues to remain uncertain. While we were able to continue operations remotely throughout the pandemic, we have experienced supply chain cost increases and constraints and delays in the receipt of certain components of our hardware products impacting delivery times for our products. In addition, to the extent that certain customers continue to be challenged by the lasting effects of the pandemic, we have and may continue to see an impact in the demand of certain products and delays in certain projects and customer orders. While we have been able to realize growth in the three and six months ended June 30, 2022 as compared to the same periods in 2021, the impact that these global events will have on general economic conditions is continuously evolving and the ultimate impact that they will have on our results of operations continues to remain uncertain. There are no assurances that we will be able to continue to experience the same growth or not be materially adversely effected.

We anticipate that certain global events, such as the continued impact of the pandemic, the recent military conflict between Russia and Ukraine, and inflation on our customers and partners in regions throughout the world, we expect that supply chain interruptions and constraints, and increased costs on parts, materials and labor may continue to be a challenge for

our business. A further discussion of the impact of the COVID-19 pandemic and the Russia and Ukraine conflict on our business is set forth below in Part II, Item 1A. Risk Factors.

Corporate Strategy Update

Since 2019, management has pursued a corporate strategic acquisition strategy focused on building and developing its business as the Indoor Intelligence^{EM} provider with the ability to provide end to end solutions ranging from the collection of data to delivering insights from that data to our customers with a focus on securing, digitizing and optimizing premises with our indoor positioning, mapping and analytics solutions for businesses and governments. In furtherance of this strategy, we have completed a series of strategic transactions to enhance our products and solution offerings, including, the acquisition of (1) technologies allowing for wireless device positioning and radio frequency augmentation of video surveillance systems; (2) GPS tracking products, software, technologies, and related intellectual property to provide ground positioning, asset tracking, and situational awareness monitoring for those whose intelligence needs expand outdoors; (3) our indoor mapping solution, Inpixon Mapping, to provide users with the tools to add intelligence to complex indoor spaces by integrating business data with geospatially accurate indoor maps to create relevant views of indoor environments; (4) a suite of on-device “blue dot” indoor location and motion technologies, including patents, trademarks, software and related intellectual property; (5) IoT solutions for real-time location systems (RTLS) and indoor and outdoor positioning solutions utilizing both industry-standard technologies, such as ultra-wideband (UWB), and patented proprietary wireless communication technologies, such as Chirp Spread Spectrum (CSS); (6) a suite of augmented reality, computer vision, localization, navigation, mapping, and 3D reconstruction technologies, including patents, trademarks, software and related intellectual property; (7) a leading SaaS app platform that enables corporate enterprise organizations to provide a custom-branded, location-aware employee app focused on enhancing the workplace experience and hosting virtual and hybrid events and (8) an industrial IoT, RTLS, and sensor data services provider.

We believe these transactions have positioned us as a market leader with a comprehensive suite of products and solutions allowing us to provide organizations with actionable indoor intelligence to make their indoor spaces smarter, safer and more secure. We also operate and compete in an industry that is characterized by rapid technological innovation, changing customer needs, evolving industry standards and frequent introductions of new products, product enhancements, services and distribution methods. Our success will depend on our ability to develop expertise with these new products, product enhancements, services and distribution methods and to implement solutions that anticipate and respond to rapid changes in technology, the industry, and customer needs. In order to continue to respond to rapid changes and required technological advancements, as well as increase shareholder value, we intend to continue to evaluate various strategic transactions and opportunities that we believe will enhance shareholder value and/or support our commitment to delivering exceptional experiences and continued innovation with technologies that combine the physical and digital worlds with augmented reality and location based technologies. We are primarily focused on identifying potential targets or other opportunities that we believe will increase shareholder value, which may include, but not be limited to other alternative investment opportunities, such as minority investments, joint ventures or special purpose acquisition companies. If we make any acquisitions in the future, we expect that we may pay for such acquisitions with cash, equity securities and/or debt in combinations appropriate for each acquisition. In addition, at the end of last year, our board of directors authorized a review of strategic alternatives, including a possible asset sale, merger with another company or spin-off of one or more of our business units. In this regard, we have received preliminary indications of interest which we are currently evaluating. In addition, we have and may enter into one or more non-binding letters of intent in connection with our due diligence and evaluation process. We may also retain an investment bank as our financial advisor in order to evaluate strategic options that may be available to us.

Recent Events

Financings

At-The-Market (ATM) Program

On July 22, 2022, we entered into an Equity Distribution Agreement (the “Sales Agreement”) with Maxim (“Maxim”) under which we may offer and sell shares of our common stock having an aggregate offering price of up to \$25 million (the “Shares”) from time to time through Maxim, acting exclusively our sales agent (the “Offering”). We intend to use the net proceeds of the Offering primarily for working capital, general corporate purposes or in connection with the execution of our corporate strategy. We are not obligated to make any sales of the Shares under the Sales Agreement and no assurance can be given that we will sell any Shares under the Sales Agreement, or if we do, as to the price or amount of Shares that we will sell, or the date on which any such sales will take place.

Note Purchase Agreement and Promissory Note

On July 22, 2022, we entered into a note purchase agreement (the “Purchase Agreement”) with Streeterville Capital, LLC (the “Holder”) pursuant to which we issued and sold to the Holder an unsecured promissory note (the “Note”) in an aggregate initial principal amount of approximately \$6.5 million (the “Initial Principal Amount”), which is payable on or before the date that is 12 months from the issuance date (the “Maturity Date”). The Initial Principal Amount includes an original issue discount of approximately \$1.5 million and \$15,000.00 that we agreed to pay to the Holder to cover the Holder’s legal fees, accounting costs, due diligence, monitoring and other transaction costs. In exchange for the Note, the Holder paid an aggregate purchase price of \$5 million (the “Transaction”). Interest on the note accrues at a rate of 10% per annum and is payable on the maturity date or otherwise in accordance with the note. We may pay all or any portion of the amount owed earlier than it is due in an amount equal to 115% of the portion of the outstanding balance the Company elects to prepay.

Redemption. Beginning on the date that is 6 months from the issuance date and at the intervals indicated below until the Note is paid in full, the Holder shall have the right to redeem up to an aggregate of 1/3 of the initial principal balance of the Note each month (each monthly exercise, a “Monthly Redemption Amount”) by providing written notice (each, a “Monthly Redemption Notice”) delivered to the Company; provided, however, that if the Holder does not exercise any Monthly Redemption Amount in its corresponding month then such Monthly Redemption Amount shall be available for the Holder to redeem in any future month in addition to such future month’s Monthly Redemption Amount. Upon receipt of any Monthly Redemption Notice, the Company shall pay the applicable Monthly Redemption Amount in cash to the Holder within five business days of the Company’s receipt of such Monthly Redemption Notice.

Monitoring Fee. If the Note is still outstanding on the date that is six (6) months from the issuance date, then a one-time monitoring fee equal to ten percent (10%) of the then-current outstanding balance shall be added to the Note.

Default Events. The Note includes customary event of default provisions, subject to certain cure periods, and provides for a default interest rate of 22%. Upon the occurrence of an event of default (except a default due to the occurrence of bankruptcy or insolvency proceedings (the “Bankruptcy-Related Event of Default”), the Holder may, by written notice, declare all unpaid principal, plus all accrued interest and other amounts due under the Note to be immediately due and payable. Upon the occurrence of a Bankruptcy-Related Event of Default, without notice, all unpaid principal, plus all accrued interest and other amounts due under the Note will become immediately due and payable at the Mandatory Default Amount.

In addition, at any time while the Note is outstanding, if the Company intends to enter into a financing pursuant to which it will issue securities that (A) have or may have conversion rights of any kind, contingent, conditional or otherwise, in which the number of shares that may be issued pursuant to such conversion right varies with the market price of the Company’s common stock, or (B) are or may become convertible into common stock (including without limitation convertible debt, warrants or convertible preferred stock), with a conversion price that varies with the market price of the common stock, even if such security only becomes convertible following an event of default, the passage of time, or another trigger event or condition (a “Future Offering”), then the Company must first offer such opportunity to the Holder to provide such financing to the Company on the same terms no later than five (5) trading days immediately prior to the trading day of the expected announcement of the Future Offering (the “Right of First Refusal”). If the Holder is unwilling or unable to provide such financing to the Company within five (5) trading days from the Holder’s receipt of notice of the Future Offering from the Company, then the Company may obtain such financing upon the exact same terms and conditions offered by the Company to the Holder, which transaction must be completed within 30 days after the date of the notice. If the Company does not receive the financing within 30 days after the date of the notice, then the Company must again offer the financing opportunity to the Holder as described above, and the process detailed above will be repeated. The Right of First Refusal does not apply to an Exempt Issuance (as defined in the Purchase Agreement) or to a registered offering made pursuant to a registration statement on Form S-1 or Form S-3.

In addition, pursuant to the terms of the Purchase Agreement, so long as the Note is outstanding, the Holder has the right to participate in any offering of securities by the Company which contains any term or condition more favorable to the holder of such security or with a term in favor of the holder of such security that was not similarly provided to the Holder (the “Participation Right”). The Participation Right does not apply in connection with an offering of securities which qualifies as an Exempt Issuance, a transaction under Section 3(a)(10) of the Securities Act of 1933, as amended (the “Securities Act”), a registered offering made pursuant to a registration statement on Form S-1 or Form S-3, or in connection with the satisfaction of outstanding trade payables.

Note Exchanges

Since the filing of our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2022 (the “Quarterly Report”), we have issued an aggregate of 9,508,034 shares of common stock to the holder of that certain outstanding promissory note of the Company issued on March 18, 2020 (the “March 2020 Note”), in each case at a price per share equal to

the Minimum Price as defined in Nasdaq Listing Rule 5635(d) for a weighted average price per share equal to approximately \$0.16 in connection with exchange agreements pursuant to which we and the holder agreed to (i) partition new promissory notes in the form of the March 2020 Note in the aggregate original principal amount equal to approximately \$1.6 million and then cause the outstanding balance of the March 2020 Note to be reduced by an aggregate of approximately \$1.6 million; and (ii) exchange the partitioned notes for the delivery of the shares of common stock.

Investments

Debenture

On April 27, 2022, the Company entered into and consummated the transactions contemplated by a securities purchase agreement (the "Purchase Agreement") with an unaffiliated company operating in the insurance technology sector (the "Debenture Seller"), pursuant to which it purchased a 10% Original Issue Discount Senior Convertible Debenture (a "Debenture") issued by the Debenture Seller in an aggregate principal amount of approximately \$6.1 million for a purchase price of \$5.5 million. The Purchase Agreement is one of a series of securities purchase agreements which the Debenture Seller has or will enter into under a private placement of Debentures commenced in February 2022. Interest on the Debenture accrues at a rate of 12% per annum, of which 12 months will be guaranteed, and is payable on each conversion date (as to the principal amount being converted) and on the maturity date, in cash, or in shares of Class A common stock of the Debenture Seller upon a conversion of all or a portion of the outstanding principal amount on the Debenture. The Debenture will mature on the date that is 12 months from the original issue date, which may be extended or accelerated pursuant to the terms of the Debenture.

GYG Promissory Notes

Pursuant to the terms of Securities Purchase Agreements, dated January 18, 2022, March 22, 2022, May 17, 2022 and July 28, 2022, Game Your Game, Inc., a majority owned subsidiary of the Company ("GYG") issued promissory notes in an aggregate principal amount equal to \$1,225,000 (the "2022 GYG Notes"), including an aggregate of \$861,000 to the Company and \$364,000 to a third party. The 2022 GYG Notes are in addition to promissory notes in an aggregate principal amount of \$500,000 issued by GYG to the same parties on October 29, 2021 (the "2021 GYG Notes", together with the 2022 GYG Notes, the "GYG Notes"), of which \$261,000 was issued to the Company and \$239,000 was issued to a third party. All of the GYG Notes have an interest rate of 8% and are due on or before December 31, 2022. The proceeds received from the issuance of the GYG Notes were used to satisfy GYG working capital requirements.

CVH Loan

On July 1, 2022, we loaned \$150,000 to Cardinal Venture Holdings LLC ("CVH"). We are a member of CVH. CVH owns certain interests in the sponsor entity (the "Sponsor") to a special purpose acquisition corporation (the "SPAC"). The loan bears no interest and is due and payable in full on the earlier of: (i) the date by which the SPAC has to complete a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses (a "Business Combination"), and (ii) immediately prior to the date of consummation of the Business Combination of the SPAC, unless accelerated upon the occurrence of an event of default. Nadir Ali, our Chief Executive Officer and director, is also a member in CVH through 3AM, LLC, which may, in certain circumstances, be entitled to manage the affairs of CVH.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). In connection with the preparation of our consolidated financial statements, we are required to make assumptions and estimates about future events, and apply judgments that affect the reported amounts of assets, liabilities, revenue, expenses and the related disclosures. We base our assumptions, estimates and judgments on historical experience, current trends and other factors that management believes to be relevant at the time our consolidated financial statements are prepared. On a regular basis, we review the accounting policies, assumptions, estimates and judgments to ensure that our consolidated financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

Our significant accounting policies are discussed in Note 3 of the condensed consolidated financial statements. We believe that the following accounting estimates are the most critical to aid in fully understanding and evaluating our reported financial results, and they require our most difficult, subjective or complex judgments, resulting from the need to make estimates about the effect of matters that are inherently uncertain. There have been no changes to estimates during the periods presented in the filing. Historically changes in management estimates have not been material.

There have been no significant changes to our critical accounting policies and estimates from the information provided in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," included in the Company's Annual Report on Form 10-K for the year ended December 31, 2021.

Goodwill, Acquired Intangible Assets and Other Long-Lived Assets - Impairment Assessments

We have recorded goodwill and other indefinite-lived assets in connection with our historical acquisitions. Goodwill, which represents the excess of acquisition cost over the fair value of the net tangible and intangible assets of the acquired company, is not amortized. Indefinite-lived intangible assets are stated at fair value as of the date acquired in a business combination. The recoverability of goodwill is evaluated at least annually and when events or changes in circumstances indicate that the carrying amount may not be recoverable. A significant amount of judgment is involved in determining if an indicator of goodwill impairment has occurred. We have determined that we will operate and report in three reporting units: Indoor Intelligence, Saves, and Shoom.

We have selected December 31 as the date to perform our annual goodwill impairment test. Goodwill is the only intangible asset with an indefinite useful life. Circumstances that could indicate impairment and require us to perform a quantitative impairment test include a significant decline in our financial results, a significant decline in our enterprise value relative to our net book value, a sustained decline in our stock price, or an unanticipated change in competition or our market share and a significant change in our strategic plans. As of December 31, 2021, we concluded that our fair value did not exceed our carrying value in our Indoor Intelligence reporting unit and an impairment charge of \$14.8 million was recorded. At December 31, 2021, the fair value of the Saves reporting unit exceeded its carrying value by greater than 100%. There is no goodwill assigned to the Shoom reporting unit. Since December 31, 2021, the price of our common stock has declined significantly and may continue to fluctuate in future periods. A sustained decrease in the price of our common stock is one of the qualitative factors to be considered as part of an impairment test when evaluating whether events or changes in circumstances may indicate that it is more likely than not that a potential goodwill impairment exists. Primarily because of the sustained decrease in stock price, we determined there to be trigger indicators of impairment. At June 30, 2022, the Company completed a quantitative test and concluded to record an impairment charge for \$7.6 million in goodwill which resulted in remaining goodwill being fully impaired.

RESULTS OF OPERATIONS

Three Months Ended June 30, 2022 compared to the Three Months Ended June 30, 2021

The following table sets forth selected consolidated financial data as a percentage of our revenue and the percentage of period-over-period change:

(in thousands, except percentages)	Three Months Ended June 30,					
	2022		2021		\$ Change	% Change*
	Amount	% of Revenues	Amount	% of Revenues		
Revenues	\$ 4,725	100 %	\$ 3,453	100 %	\$ 1,272	37 %
Cost of revenues	\$ 1,396	30 %	\$ 896	26 %	\$ 500	56 %
Gross profit	\$ 3,329	70 %	\$ 2,557	74 %	\$ 772	30 %
Operating expenses	\$ 23,219	491 %	\$ 15,850	459 %	\$ 7,369	46 %
Loss from operations	\$ (19,890)	(421) %	\$ (13,293)	(385) %	\$ (6,597)	(50) %
Other income (expense)	\$ (456)	(10) %	\$ 29,994	869 %	\$ (30,450)	(102) %
Provision for income taxes	\$ 16	— %	\$ (2,195)	(64) %	\$ 2,211	101 %
Net (loss) income	\$ (20,330)	(430) %	\$ 14,506	420 %	\$ (34,836)	(240) %
Net income (loss) attributable to stockholders of Inpixon	\$ (19,872)	(421) %	\$ 14,759	427 %	\$ (34,631)	(235) %

* Amounts used to calculate dollar and percentage changes are based on numbers in the thousands. Accordingly, calculations in this item, which may be rounded to the nearest hundred thousand, may not produce the same results.

Revenues

Revenues for the three months ended June 30, 2022 were \$4.7 million compared to \$3.5 million for the comparable period in the prior year for an increase of approximately \$1.3 million, or approximately 37%. This increase is primarily attributable to the increase in Indoor Intelligence sales, including our smart office app and real time location based technologies.

Cost of Revenues

Cost of revenues for the three months ended June 30, 2022 were \$1.4 million compared to \$0.9 million for the comparable period in the prior year. This increase in cost of revenues of approximately \$0.5 million, or approximately 56%, was primarily attributable to the increased sales during the quarter.

Gross Profit

The gross profit margin for the three months ended June 30, 2022 was 70% compared to 74% for the three months ended June 30, 2021. This decrease in margin is primarily due to the sales mix during the quarter.

Operating Expenses

Operating expenses for the three months ended June 30, 2022 were \$23.2 million and \$15.9 million for the comparable period ended June 30, 2021. This increase of approximately \$7.4 million is primarily attributable to the \$7.6 million of goodwill impairment, increased operating expenses from the CXApp, Game your Game and IntraNav acquisitions as they were acquired during or after the quarter ended June 30, 2021, offset by lower stock based compensation and no earn-out compensation expense in the quarter ended June 30, 2022.

Loss From Operations

Loss from operations for the three months ended June 30, 2022 was \$19.9 million as compared to \$13.3 million for the comparable period in the prior year. This increase in loss of approximately \$6.6 million was primarily attributable to increased operating expenses described above offset by higher gross profit.

Other Income (Expense)

Other income/expense for the three months ended June 30, 2022 was a loss of \$0.5 million compared to income of \$30.0 million for the comparable period in the prior year. This increase in loss of approximately \$30.5 million is primarily attributable to the discounted net gain of approximately \$20.9 million on the Sysorex note, a \$7.5 million release on the valuation allowance on the Sysorex note and approximately \$1.6 million of interest received on the Sysorex note were included in other income for the quarter ended June 30, 2021.

Provision for Income Taxes

There was a net income tax benefit of approximately \$0.02 million for the three months ended June 30, 2022 and an income tax expense of \$2.2 million for the three months ended June 30, 2021.

Net Income (Loss) Attributable To Non-Controlling Interest

Net income (loss) attributable to non-controlling interest for the three months ended June 30, 2022 and 2021 was a loss of \$458,000 and \$253,000, respectively. This increase in loss of \$205,000 was primarily attributable to the increased loss of Game Your Game.

Net Income (Loss) Attributable To Stockholders of Inpixon

Net loss attributable to stockholders of Inpixon for the three months ended June 30, 2022 was \$19.9 million compared to a income of \$14.8 million for the comparable period in the prior year. This increase in loss of approximately \$34.6 million was primarily attributable to the other income items in the three months ended June 30, 2021 period including the discounted net gain on the Sysorex note and the release of the valuation allowance on the Sysorex note, offset by increased operating expenses as described above in the three months ended June 30, 2022.

Six Months Ended June 30, 2022 compared to the Six Months Ended June 30, 2021

The following table sets forth selected consolidated financial data as a percentage of our revenue and the percentage of period-over-period change:

(in thousands, except percentages)	For the Six Months Ended June 30,					
	2022		2021		\$ Change	% Change*
	Amount	% of Revenues	Amount	% of Revenues		
Revenues	\$ 9,956	100 %	\$ 6,407	100 %	\$ 3,549	55 %
Cost of revenues	\$ 2,782	28 %	\$ 1,780	28 %	\$ 1,002	56 %
Gross profit	\$ 7,174	72 %	\$ 4,627	72 %	\$ 2,547	55 %
Operating expenses	\$ 37,128	373 %	\$ 30,340	474 %	\$ 6,788	22 %
Loss from operations	\$ (29,954)	(301) %	\$ (25,713)	(401) %	\$ (4,241)	(16)%
Other income (expense)	\$ (1,849)	(19) %	\$ 29,884	466 %	\$ (31,733)	(106)%
Provision for income taxes	\$ (84)	(1) %	\$ (2,204)	(34) %	\$ 2,120	96 %
Net (loss) income	\$ (31,887)	(320) %	\$ 1,967	31 %	\$ (33,854)	(1,721)%
Net (loss) income attributable to stockholders of Inpixon	\$ (31,083)	(312) %	\$ 2,202	34 %	\$ (33,285)	(1,512)%

* Amounts used to calculate dollar and percentage changes are based on numbers in the thousands. Accordingly, calculations in this item, which may be rounded to the nearest hundred thousand, may not produce the same results.

Revenues

Revenues for the six months ended June 30, 2022 were \$10.0 million compared to \$6.4 million for the comparable period in the prior year for an increase of approximately \$3.5 million, or approximately 55%. This increase is primarily attributable to the increase in Indoor Intelligence sales including the addition of the CXApp product line during the second quarter of 2021 and the addition of the IIoT product line in the fourth quarter of 2021.

Cost of Revenues

Cost of revenues for the six months ended June 30, 2022 were \$2.8 million compared to \$1.8 million for the comparable period in the prior year. This increase in cost of revenues of approximately \$1.0 million, or approximately 56%, was primarily attributable to the increased sales during the quarter.

Gross Profit

The gross profit margin for the six months ended June 30, 2022 was 72% compared to 72% for the six months ended June 30, 2021.

Operating Expenses

Operating expenses for the six months ended June 30, 2022 were \$37.1 million and \$30.3 million for the comparable period ended June 30, 2021. This increase of \$6.8 million is primarily attributable to the \$7.6 million of goodwill impairment, increased operating expenses from the CXApp, Game your Game and IntraNav acquisitions as they were acquired during or after the quarter ended June 30, 2021, offset by lower stock based compensation and decreased earn-out compensation expense in the six months ended June 30, 2022.

Loss From Operations

Loss from operations for the six months ended June 30, 2022 was \$30.0 million as compared to \$25.7 million for the comparable period in the prior year. This increase in loss of approximately \$4.2 million was primarily to increased operating expenses described above offset by higher gross profit.

Other Income (Expense)

Other income/expense for the six months ended June 30, 2022 was a loss of \$1.8 million compared to a gain of \$29.9 million for the comparable period in the prior year. This increase in other loss of approximately \$31.7 million is primarily

attributable to the discounted net gain of approximately \$20.9 million on the Sysorex note, a \$7.5 million release on the valuation allowance on the Sysorex note and approximately \$1.6 million of interest received on the Sysorex note were included in other income for the quarter ended June 30, 2021.

Provision for Income Taxes

There is an income tax expense of approximately \$0.1 million and \$2.2 million for the six months ended June 30, 2022 and 2021, respectively.

Net Income (Loss) Attributable To Non-Controlling Interest

Net income (loss) attributable to non-controlling interest for the six months ended June 30, 2022 and 2021 was a loss of \$804,000 and \$235,000, respectively. This increase in loss of \$569,000 was attributable to the increased loss of the Game Your Game entity.

Net Loss Attributable To Stockholders of Inpixon

Net loss attributable to stockholders of Inpixon six months ended June 30, 2022 was a loss of \$31.1 million compared to a income of \$2.2 million for the comparable period in the prior year. This increase in loss of approximately \$33.3 million was primarily attributable to the other income items in the three months ended June 30, 2021 period including the discounted net gain on the Sysorex note and the release of the valuation allowance on the Sysorex note, offset by increased operating expenses as described above in the six months ended June 30, 2022.

Non-GAAP Financial information

EBITDA

EBITDA is defined as net income (loss) before interest, provision for (benefit from) income taxes, and depreciation and amortization. Adjusted EBITDA is used by our management as the matrix in which it manages the business. It is defined as EBITDA plus adjustments for other income or expense items, non-recurring items and non-cash stock-based compensation.

Adjusted EBITDA for the three months ended June 30, 2022 was a loss of \$9.9 million compared to a loss of \$6.3 million million for the prior year period.

Adjusted EBITDA for the six months ended June 30, 2022 was a loss of \$18.7 million compared to a loss of \$11.8 million for the prior year period.

The following table presents a reconciliation of net income (loss) attributable to stockholders of Inpixon, which is our GAAP operating performance measure, to Adjusted EBITDA for the three and six months ended June 30, 2022 and 2021 (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Net (loss) income attributable to common stockholders	\$ (24,857)	\$ 14,759	\$ (42,219)	\$ 2,202
Adjustments:				
Non-recurring one-time charges:				
Loss on exchange of debt for equity	—	—	—	30
Provision for valuation allowance on held for sale loan	—	(7,462)	—	(7,345)
Gain on related party loan held for sale	—	(49,817)	—	(49,817)
Unrealized loss on equity securities	(247)	28,965	1,256	28,965
Acquisition transaction/financing costs	147	535	268	1,005
Earnout compensation expense/(benefit)	—	2,059	(2,827)	2,059
Accretion of series 7 preferred stock	—	—	4,555	—
Accretion of series 8 preferred stock	6,237	—	6,785	—
Deemed dividend for the modification related to series 8 preferred stock	—	—	2,627	—
Deemed contribution for the modification related to warrants issued in connection with series 8 preferred stock	—	—	(1,469)	—
Amortization premium- modification related to series 8 preferred stock	(1,252)	—	(1,362)	—
Professional service fees	—	422	8	771
Impairment of goodwill	7,570	—	7,570	—
Unrealized losses/(gains) on notes, loans, investments	35	(128)	124	(491)
Stock-based compensation - compensation and related benefits	741	2,053	2,274	7,149
Severance Costs	10	—	121	—
Interest (income)/expense, net	(176)	(1,555)	(178)	(1,206)
Income tax (benefit)/provision	(16)	2,195	84	2,204
Depreciation and amortization	1,870	1,695	3,676	2,638
Adjusted EBITDA	\$ (9,938)	\$ (6,279)	\$ (18,707)	\$ (11,836)

- We rely on Adjusted EBITDA, which is a non-GAAP financial measure for the following:
- To compare our current operating results with corresponding periods and with the operating results of other companies in our industry;
- As a basis for allocating resources to various projects;
- As a measure to evaluate potential economic outcomes of acquisitions, operational alternatives and strategic decisions; and
- To evaluate internally the performance of our personnel.

We have presented Adjusted EBITDA above because we believe it conveys useful information to investors regarding our operating results. We believe it provides an additional way for investors to view our operations, when considered with both our GAAP results and the reconciliation to net income (loss). By including this information, we can provide investors with a more complete understanding of our business. Specifically, we present Adjusted EBITDA as supplemental disclosure because of the following:

- We believe Adjusted EBITDA is a useful tool for investors to assess the operating performance of our business without the effect of interest, income taxes, depreciation and amortization and other non-cash items including

stock based compensation, amortization of intangibles, change in the fair value of shares to be issued, change in the fair value of derivative liability, impairment of goodwill and one time charges including gain/loss on the settlement of obligations, severance costs, provision for doubtful accounts, acquisition costs and the costs associated with the public offering.

- We believe that it is useful to provide to investors with a standard operating metric used by management to evaluate our operating performance; and
- We believe that the use of Adjusted EBITDA is helpful to compare our results to other companies.

Even though we believe Adjusted EBITDA is useful for investors, it does have limitations as an analytical tool. Thus, we strongly urge investors not to consider this metric in isolation or as a substitute for net income (loss) and the other consolidated statement of operations data prepared in accordance with GAAP. Some of these limitations include the fact that:

- Adjusted EBITDA does not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA does not reflect the significant interest expense or the cash requirements necessary to service interest or principal payments on our debt;
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Adjusted EBITDA does not reflect any cash requirements for such replacements;
- Adjusted EBITDA does not reflect income or other taxes or the cash requirements to make any tax payments; and
- Other companies in our industry may calculate Adjusted EBITDA differently than we do, thereby potentially limiting its usefulness as a comparative measure.

Because of these limitations, Adjusted EBITDA should not be considered a measure of discretionary cash available to us to invest in the growth of our business or as a measure of performance in compliance with GAAP. We compensate for these limitations by relying primarily on our GAAP results and providing Adjusted EBITDA only as supplemental information.

Proforma Non-GAAP Net Income (Loss) per Share

Basic and diluted net income (loss) per share for the three months ended June 30, 2022 was a loss of \$0.16 compared to income of \$0.13 for the prior year period. The increase in loss per share in 2022 was attributable to the changes discussed in our results of operations.

Basic and diluted net income (loss) per share for the six months ended June 30, 2022 was a loss of \$0.29 compared to income of \$0.02 for the prior year period. The increase in loss per share in 2022 was attributable to the changes discussed in our results of operations.

Proforma non-GAAP net income (loss) per share is used by our Company's management as an evaluation tool as it manages the business and is defined as net income (loss) per basic and diluted share adjusted for non-cash items including stock based compensation, amortization of intangibles and one time charges including gain on the settlement of obligations, severance costs, provision for doubtful accounts, change in the fair value of shares to be issued, acquisition costs and the costs associated with the public offering.

Proforma non-GAAP net loss per basic and diluted common share for the three months ended June 30, 2022 was a loss of \$0.07 per share compared to a loss of \$0.07 per share for the prior year period. Proforma non-GAAP net loss per basic and diluted common share for the six months ended June 30, 2022 was a loss of \$0.13 per share compared to a loss of \$0.14 per share for the prior year period.

The following table presents a reconciliation of net loss per basic and diluted share, which is our GAAP operating performance measure, to proforma non-GAAP net loss per share for the periods reflected (in thousands, except per share data):

(thousands, except per share data)	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2022	2021	2022	2021
Net (loss) income attributable to common stockholders	\$ (24,857)	\$ 14,759	\$ (42,219)	\$ 2,202
Adjustments:				
Non-recurring one-time charges:				
Loss on the exchange of debt for equity	—	—	—	30
Provision for valuation allowance on held for sale loan	—	(7,462)	—	(7,345)
Gain on related party loan held for sale	—	(49,817)	—	(49,817)
Unrealized loss on equity securities	(247)	28,965	1,256	28,965
Acquisition transaction/financing costs	147	535	268	1,005
Earnout compensation expense/(benefit)	—	2,059	(2,827)	2,059
Accretion of series 7 preferred stock	—	—	4,555	—
Accretion of series 8 preferred stock	6,237	—	6,785	—
Deemed dividend for the modification related to series 8 preferred stock	—	—	2,627	—
Deemed contribution for the modification related to warrants issued in connection with series 8 preferred stock	—	—	(1,469)	—
Amortization premium- modification related to series 8 preferred stock	(1,252)	—	(1,362)	—
Professional service fees	—	422	8	771
Impairment of goodwill	7,570	—	7,570	—
Unrealized losses/(gains) on notes, loans, investments	35	(128)	124	(491)
Stock-based compensation - compensation and related benefits	741	2,053	2,274	7,149
Severance Costs	10	—	121	—
Amortization of intangibles	1,537	1,361	3,026	2,011
Proforma non-GAAP net loss	(10,079)	(7,253)	(19,263)	(13,461)
Proforma non-GAAP net loss per common share - Basic and Diluted	\$ (0.07)	\$ (0.07)	\$ (0.13)	\$ (0.14)
Weighted average basic and diluted common shares outstanding	153,519,283	110,040,532	146,052,371	94,577,520

- We rely on proforma non-GAAP net income (loss) per share, which is a non-GAAP financial measure:
- To compare our current operating results with corresponding periods and with the operating results of other companies in our industry;
- As a measure to evaluate potential economic outcomes of acquisitions, operational alternatives and strategic decisions; and
- To evaluate internally the performance of our personnel.

We have presented proforma non-GAAP net income (loss) per share above because we believe it conveys useful information to investors regarding our operating results. We believe it provides an additional way for investors to view our operations, when considered with both our GAAP results and the reconciliation to net income (loss), and that by including this information we can provide investors with a more complete understanding of our business. Specifically, we present proforma non-GAAP net income (loss) per share as supplemental disclosure because:

- We believe proforma non-GAAP net income (loss) per share is a useful tool for investors to assess the operating performance of our business without the effect of non-cash items including stock based compensation, amortization of intangibles and one time charges including gain on the settlement of obligations, severance costs, provision for doubtful accounts, change in the fair value of shares to be issued, acquisition costs and the costs associated with the public offering.
- We believe that it is useful to provide to investors a standard operating metric used by management to evaluate our operating performance; and
- We believe that the use of proforma non-GAAP net income (loss) per share is helpful to compare our results to other companies.

Liquidity and Capital Resources as of June 30, 2022

Our current capital resources and operating results as of and through June 30, 2022, consist of:

- 1) an overall working capital surplus of approximately \$65.2 million;
- 2) cash of approximately \$65.8 million;
- 3) net cash used by operating activities for the six months ended June 30, 2022 of \$19.5 million.

The breakdown of our overall working capital surplus as of June 30, 2022 is as follows (in thousands):

Working Capital	Assets	Liabilities	Net
Cash and cash equivalents	\$ 65,755	\$ —	\$ 65,755
Accounts receivable, net / accounts payable	2,767	900	1,867
Inventory	1,581	—	1,581
Accrued liabilities	—	4,116	(4,116)
Operating lease obligation	—	600	(600)
Deferred revenue	—	3,638	(3,638)
Notes and other receivables / Short-term debt	6,278	1,911	4,367
Other	3,463	3,486	(23)
Total	\$ 79,844	\$ 14,651	\$ 65,193

In addition, subsequent to the quarter ended June 30, 2022, we entered into a note purchase agreement pursuant to which we issued a promissory note in an aggregate initial principal amount of \$6.5 million in exchange for gross proceeds of \$5.0 million. On July 22, 2022, we also entered into an Equity Distribution Agreement pursuant to which we may offer and sell shares of our common stock having an aggregate offering price of up to \$25 million. We are not obligated to make any sales under the Equity Distribution Agreement and no assurance can be given we will sell any shares or if we do, as to the price or amount of shares that we will sell, or the date on which any such sales will take place.

Contractual Obligations and Commitments

Contractual obligations are cash that we are obligated to pay as part of certain contracts that we have entered during our course of business. Our contractual obligations consists of operating lease liabilities and acquisition liabilities that are included in our consolidated balance sheet and vendor commitments associated with agreements that are legally binding. As of June 30, 2022, the total obligation for operating leases is approximately \$1.8 million, of which approximately \$0.7 million is expected to be paid in the next twelve months. Our vendor commitments are approximately \$0.5 million all of which is expected in the next twelve months. As of June 30, 2022, our obligation for acquisition liabilities is approximately \$3.5 million of which approximately \$3.5 million is expected to be paid in the next twelve months. In addition, any time during the Series 8 Redemption Period, each holder of our Series 8 Shares is entitled to require us to redeem all or part of the Series 8 Shares then held by such holder in cash for a redemption price per share equal to the Series 8 Redemption Amount. Any holder that elects to redeem its shares of Series 8 Preferred Stock will be required to forfeit 50% of the corresponding warrants held by such holder. The aggregate Redemption Amount that we may be required to pay is equal to \$53.2 million (which may be increased to \$58.5

million in the event of certain events of default) plus any accrued but unpaid dividends, liquidated damages and other costs, expenses, or amounts due in respect of the shares, to the extent applicable.

As of June 30, 2022, we owed approximately \$1.9 million in principal under promissory notes with third parties. This balance excludes intercompany amounts that are eliminated in the financial statements. These notes are payable within the next twelve months and the interest rate charged under the notes range from 8% to 10%. See Note 13 of the Notes to Consolidated Financial Statements included elsewhere in this quarterly Report.

Subsequent to the quarter ended June 30, 2022, we issued additional promissory notes in a principal amount of \$6.5 million which is payable within the next twelve months for aggregate gross proceeds of \$5 million.

Net cash used in operating activities during the six months ended June 30, 2022 of \$19.5 million consists of a net loss of \$31.9 million offset by non-cash adjustments of approximately \$12.7 million less net cash changes in operating assets and liabilities of approximately \$0.4 million. Although the Company has sustained significant losses during six months ended June 30, 2022, we raised net proceeds of approximately \$46.9 million after placement agent commissions and other offering costs from the sale of our Series 8 Preferred Stock and securities in connection with a registered direct offering and in July 2022 raised \$5 million in connection with the debt offering described above. The Company has also filed an At-The-Market financing facility that it can access should the Company deem necessary. Given our current cash balances, financing facilities and budgeted cash flow requirements, the Company believes such funds are sufficient to satisfy its working capital needs, capital asset purchases, debt repayments and other liquidity requirements associated with its existing operations for the next 12 months from the issuance date of the financial statements.

However, general economic or other conditions resulting from COVID 19 or other events materially may impact the liquidity of our common stock or our ability to continue to access capital from the sale of our securities to support our growth plans. While the impact of the COVID-19 pandemic is generally subsiding, the lasting impact on our business and results of operations continues to remain uncertain. While we were able to continue operations remotely throughout the pandemic, we have experienced supply chain cost increases and constraints and delays in the receipt of certain components of our hardware products impacting delivery times for our products. In addition, to the extent that certain customers continue to be challenged by the lasting effects of the pandemic, we have and may continue to see an impact in the demand of certain products and delays in certain projects and customer orders. Our business has been impacted by the COVID-19 pandemic and may continue to be impacted. While we have been able to continue operations remotely, we have and continue to experience supply chain cost increases and constraints and delays in the receipt of certain components of our products impacting delivery times for our products. We have also seen some impact in the demand of certain products and delays in certain projects and customer orders either because they require onsite services which could not be performed as a result of new rules and regulations resulting from the pandemic, customer facilities being partially or fully closed during the pandemic or because of the uncertainty of the customer's financial position and ability to invest in our technology.

Certain global events, such as the continued impact of the pandemic, the recent military conflict between Russia and Ukraine, and other general economic factors that are beyond our control may impact our results of operations. These factors can include interest rates; recession; inflation; unemployment trends; the threat or possibility of war, terrorism or other global or national unrest; political or financial instability; and other matters that influence our customers spending. Increasing volatility in financial markets and changes in the economic climate could adversely affect our results of operation. We also expect that supply chain interruptions and constraints, and increased costs on parts, materials and labor may continue to be a challenge for our business. While we have been able to realize growth in the three and six months ended June 30, 2022 as compared to the same periods in 2021, the impact that these global events will have on general economic conditions is continuously evolving and the ultimate impact that they will have on our results of operations continues to remain uncertain. There are no assurances that we will be able to continue to experience the same growth or not be materially adversely effected. The Company may continue to pursue strategic transactions and may raise such additional capital as needed, using our equity securities and/or cash and debt financings in combinations appropriate for each transaction.

Liquidity and Capital Resources as of June 30, 2022 Compared With June 30, 2021

The Company's net cash flows used in operating, investing and financing activities for the six months ended June 30, 2022 and 2021 and certain balances as of the end of those periods are as follows (in thousands):

	For the Six Months Ended June 30,	
	2022	2021
Net cash used in operating activities	\$ (19,544)	\$ (14,163)
Net cash provided by (used in) investing activities	37,055	(53,847)
Net cash (used in) provided by financing activities	(4,163)	74,945
Effect of foreign exchange rate changes on cash	(73)	(19)
Net increase in cash and cash equivalents	<u>\$ 13,275</u>	<u>\$ 6,916</u>
	As of June 30,	As of December 31,
	2022	2021
Cash and cash equivalents	<u>\$ 65,755</u>	<u>\$ 52,480</u>
Working capital surplus	<u>\$ 65,193</u>	<u>\$ 78,831</u>

Operating Activities for the six months ended June 30, 2022

Net cash used in operating activities during the six months ended June 30, 2022 was approximately \$19.5 million. The cash flows related to the six months ended June 30, 2022 consisted of the following (in thousands):

Net income (loss)	\$ (31,887)
Non-cash income and expenses	12,734
Net change in operating assets and liabilities	(391)
Net cash used in operating activities	<u>\$ (19,544)</u>

The non-cash income and expense of approximately \$12.7 million consisted primarily of the following (in thousands):

\$ 3,676	Depreciation and amortization expenses (including amortization of intangibles) primarily attributable to the Shoom, AirPatrol, LightMiner, Locality, GTX, Jibestream, Systat, Ten Degrees, Nanotron, Game Your Game, Visualix, CXApp and IntraNav, which were acquired effective August 31, 2013, April 16, 2014, November 21, 2016, May 21, 2019, June 27, 2019, August 15, 2019, June 30, 2020, August 19, 2020, October 6, 2020, April 9, 2021, April 23, 2021, April 30, 2021, December 9, 2021 respectively.
353	Amortization of right of use asset
2,274	Stock-based compensation expense attributable, warrants, restricted stock grants and options issued as part of Company operations
(2,827)	Earnout expense valuation benefit
(92)	Amortization of issued discount
344	Unrealized gain/loss on note
(1)	Deferred income tax
1,256	Unrealized loss on equity securities
7,570	Impairment of goodwill
181	Other
<u>\$ 12,734</u>	<u>Total non-cash expenses</u>

The net cash used in the change in operating assets and liabilities aggregated approximately \$0.4 million and consisted primarily of the following (in thousands):

\$	361	Decrease in accounts receivable and other receivables	
	1,667	Decrease in inventory, other current assets and other assets	
	(1,498)	Decrease in accounts payable	
	502	Increase in accrued liabilities, income tax liabilities and other liabilities	
	(327)	Decrease in operating lease liabilities	
	(1,096)	Decrease in deferred revenue	
\$	<u>(391)</u>	Net cash used in the changes in operating assets and liabilities	

Operating Activities for the six months ended June 30, 2021

Net cash used in operating activities during the six months ended June 30, 2021 was approximately \$14.2 million. The cash flows related to the six months ended June 30, 2021 consisted of the following (in thousands):

Net income (loss)	\$	1,967
Non-cash income and expenses		(24,359)
Net change in operating assets and liabilities		<u>8,229</u>
Net cash used in operating activities	\$	<u>(14,163)</u>

The non-cash income and expense of approximately \$24.4 million consisted primarily of the following (in thousands):

\$	2,632	Depreciation and amortization expenses (including amortization of intangibles) primarily attributable to the Shoom, AirPatrol, LightMiner, Locality, GTX, Jibestream, Systat, Ten Degrees, Nanotron, Game Your Game, Visualix and CXApp, which were acquired effective August 31, 2013, April 16, 2014, November 21, 2016, May 21, 2019, June 27, 2019, August 15, 2019, June 30, 2020, August 19, 2020, October 6, 2020, April 9, 2021, April 23, 2021 and April 30, 2021, respectively.
	370	Amortization of right of use asset
	7,149	Stock-based compensation expense attributable to warrants and options issued as part of Company operations
	30	Loss on exchange of debt for equity
	224	Amortization of debt discount
	(7,345)	Recovery for valuation allowance for held for sale loan
	(1,627)	Accrued interest income, related party
	(49,817)	Gain on settlement of related party note and receivable
	(4,507)	Income tax expense
	28,965	Unrealized loss on equity securities
	(433)	Other
\$	<u>(24,359)</u>	Total non-cash expenses

The net use of cash in the change in operating assets and liabilities aggregated approximately \$8.2 million and consisted primarily of the following (in thousands):

\$	532	Decrease in accounts receivable and other receivables
	(671)	Increase in inventory, other current assets and other assets
	(331)	Decrease in accounts payable
	2,590	Increase in accrued liabilities and other liabilities
	6,711	Increase in income tax liabilities
	(364)	Decrease in operating lease liabilities
	(238)	Decrease in deferred revenue
\$	<u>8,229</u>	Net use of cash used in the changes in operating assets and liabilities

Cash Flows from Investing Activities as of June 30, 2022 and 2021

Net cash flows provided by investing activities during the six months ended June 30, 2022 was approximately \$37.1 million compared to net cash flows used in investing activities during the six months ended June 30, 2021 of approximately \$53.8 million. Cash flows related to investing activities during the six months ended June 30, 2022 include \$0.1 million for the purchase of property and equipment, \$0.3 million for investment in capitalized software, \$5.5 million for the purchase of a convertible note, and \$43.0 million of sales of treasury bills. Cash flows related to investing activities during the six months ended June 30, 2021 include \$0.1 million for the purchase of property and equipment, \$0.4 million investment in capitalized software, \$63.4 million for the purchase of treasury bills, \$28.0 million from sales of treasury bills, \$15.2 million for the acquisition of CXApp, \$0.9 million for the purchase of the Systat licensing agreement, \$0.2 million for the purchase of Game Your Game, and \$0.1 million for acquisition of Visualix.

Cash Flows from Financing Activities as of June 30, 2022 and 2021

Net cash flows used in financing activities during the six months ended June 30, 2022 was \$4.2 million. Net cash flows provided by financing activities during the six months ended June 30, 2021 was \$74.9 million. During the six months ended June 30, 2022, the Company received incoming cash flows of \$46.9 million for the issuance of preferred stock and warrants, paid \$49.3 million for the redemption of preferred series 7 stock, paid \$1.8 million of the CXApp acquisition liability, received \$0.4 million net proceeds from promissory note, and paid \$0.3 million for the settlement of employee taxes on restricted stock. During the six months ended June 30, 2021, the Company received incoming cash flows of \$77.9 million from the issuance of common stock and warrants, loaned \$0.1 million to a related party, paid \$1.7 million of taxes related to the net share settlement of restricted stock units, paid a \$0.1 million liability related to the CXApp acquisition, paid a \$0.5 million acquisition liability to the pre-acquisition shareholders of Nanotron, and paid a \$0.5 million acquisition liability to the pre-acquisition shareholders of Locality.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet guarantees, interest rate swap transactions or foreign currency contracts. We do not engage in trading activities involving non-exchange traded contracts.

Recently Issued Accounting Standards

For a discussion of recently issued accounting pronouncements, please see Note 3 to our financial statements, which are included in this report beginning on page F-1.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Disclosure controls are procedures that are designed with the objective of ensuring that information required to be disclosed in our reports filed under the Exchange Act, such as this Form 10-Q, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls are also designed with the objective of ensuring that such information is accumulated and communicated to our management, including the Principal Executive Officer and Principal Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Internal controls are procedures which are designed with the objective of providing reasonable assurance that (1) our transactions are properly authorized, recorded and reported; and (2) our assets are safeguarded against unauthorized or improper use, to permit the preparation of our condensed consolidated financial statements in conformity with GAAP.

In connection with the preparation of this Form 10-Q, management, with the participation of our Principal Executive Officer and Principal Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e) and 15d-15(e)). Based upon that evaluation, our Principal Executive Officer and Principal Financial Officer concluded that, as of the end of the period covered by this Form 10-Q, our disclosure controls and procedures were effective.

Changes in Internal Controls

There have been no changes in our internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Rule 13a-15 or 15d-15 under the Exchange Act that occurred during the quarter ended June 30, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. The Company's management determined that there were no material changes needed to internal controls as a result of the COVID-19 pandemic.

Limitations of the Effectiveness of Control

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. Because of the inherent limitations of any control system, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

There are no material pending legal proceedings as defined by Item 103 of Regulation S-K, to which we are a party or of which any of our property is the subject, other than ordinary routine litigation incidental to the Company's business.

There are no proceedings in which any of the directors, officers or affiliates of the Company, or any registered or beneficial holder of more than 5% of the Company's voting securities, is an adverse party or has a material interest adverse to that of the Company.

Item 1A. Risk Factors

We face a number of significant risks and uncertainties in connection with our operations. Our business, results of operations and financial condition could be materially adversely affected by these risks. In addition to the risk factors set forth below and the other information set forth in this Form 10-Q, you should carefully consider the factors disclosed in Part I, Item 1A, "Risk Factors," in our [Annual Report on Form 10-K](#) for the year ended December 31, 2021, filed with the SEC on March 16, 2022, and Part II, Item 1A, "Risk Factors," in our [Quarterly Report on Form 10-Q](#) for the quarterly period ended March 31, 2022, filed with the SEC on May 16, 2022, which reports are incorporated by reference herein, all of which could materially affect our business, financial condition and future results.

Changes in the value of the Sysorex common stock we own may result in material fluctuations (increases or decreases) in our total asset value and net income on a quarterly basis.

We entered into a note purchase agreement with Sysorex, as amended from time to time, pursuant to which we agreed to loan Sysorex up to an aggregate principal amount of \$10,000,000 on a revolving credit basis (the "Sysorex Note").

On March 1, 2020, we agreed to extend the maturity date of the note from December 31, 2020 to December 31, 2022. On April 14, 2021, we entered into a Securities Settlement Agreement (the "SSA") and a Rights Letter Agreement (the "RLA"), with Sysorex, whereby it agreed to satisfy in full its outstanding debt, in the aggregate amount of \$9,088,176 as of March 31, 2021, owed to the Company, including but, not limited to, amounts outstanding under the Sysorex Note (the "Debt Settlement"). To effect the Debt Settlement, Sysorex agreed to issue to us (i) pursuant to the terms of the SSA, 12,972,189 shares of its common stock and (ii) rights to acquire 3,000,000 additional shares of its common stock pursuant to the terms of the RLA. The Debt Settlement was entered into in connection with Sysorex's closing of a reverse triangular merger with TTM Digital Assets & Technologies, Inc.

The Company recorded \$7.5 million benefit for the release of the previously recorded valuation allowance related to the Sysorex Note, \$1.6 million of interest income, and a gain on settlement of \$49.8 million equal to the difference in the carry value of the Sysorex Note, including interest, and the value of the common stock and rights to acquire additional shares received in the settlement. As of June 30, 2022, the value of these securities decreased to approximately \$0.6 million as a result of the corresponding decrease in Sysorex's common stock price. Accordingly, a \$1.3 million unrealized loss on the Sysorex note for the six months ended June 30, 2022 was included in the condensed consolidated statements of operations.

Consequently, the shares of common stock of Sysorex we own, which are inherently volatile. Accordingly, the value of our total assets and as a consequence, the price of our common stock may decline or increase regardless of our operating performance, which may result in losses for investors purchasing shares of our common stock. Further, to the extent that we experience unrealized losses in connection with such securities from declines in securities values that management determines to be other than temporary, the book value of those securities will be adjusted to their estimated recovery value and we will recognize a charge to earnings in the quarter during which we make that determination. Additionally, the Company has no control over the price the Company will eventually receive as a result of the disposition of such assets and may be unable to sell the aforementioned securities at favorable prices quickly or when desired.

We previously received a notice of failure to satisfy a continued listing rule from the Nasdaq which may ultimately result in delisting of our common stock.

In several instances in the past, including as recently as on October 25, 2021, we received written notification from Nasdaq informing us that because the closing bid price of our common stock was below \$1.00 for 30 consecutive trading days, our shares no longer complied with the minimum closing bid price requirement for continued listing on Nasdaq under the Nasdaq Listing Rules. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we were provided a period of 180 calendar days,

or until April 25, 2022, in which to regain compliance. In order to regain compliance with the minimum bid price requirement, the closing bid price of our common stock must be at least \$1.00 per share for a minimum of ten consecutive business days. We were not able to regain compliance within this 180-day period, and were eligible to seek an additional 180 calendar days to meet the minimum bid price requirement if we meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for the Nasdaq Capital Market, with the exception of the bid price requirement, and provide written notice to Nasdaq of our intent to cure the deficiency during this second compliance period, by effecting a reverse stock split, if necessary. We provided Nasdaq written notice of our intention to cure the bid price deficiency during the second compliance period and on April 26, 2022, we received notice from Nasdaq that we were granted an additional 180 days, or until October 24, 2022 to regain compliance with this requirement. If we are not able to cure the deficiency prior to October 24, 2022, Nasdaq will provide notice to us that our common stock will be subject to delisting.

Delisting could adversely affect our ability to raise additional capital through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our common stock. Delisting could also have other negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities.

The impact of the military conflict between Russia and Ukraine has resulted in an increase in the likelihood of supply chain constraints, contributed to inflation driving up the cost of material and labor required to make our products, the effects of which remains uncertain and may have a material adverse impact on our business, operations and financial condition.

The military conflict between Russia and Ukraine has increased the likelihood of supply interruptions which may hinder our ability to find the materials we need to make our products. Supply disruptions are making it harder for us to find favorable pricing and reliable sources for the materials we need, putting upward pressure on our costs and increasing the risk that we may be unable to acquire the materials and services we need to continue to make certain products. The wider implications of the conflict has contributed to inflation driving up the costs of labor and materials required to make our products. The fluidity and continuation of the conflict may result in additional economic sanctions and other impacts which could have a negative impact on the Company's financial condition, results of operations and cash flows, including decreased sales; supply chain and logistics disruptions; volatility in foreign exchange rates and interest rates; inflationary pressures on materials and labor; and heightened cybersecurity threats. The overall impact on our business of these events continues to remain uncertain and there are no assurances that we will be able to continue to experience the same growth or not be materially adversely affected.

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

a) Sales of Unregistered Securities

During the quarter ended June 30, 2022, the Company exchanged approximately \$0.5 million of the outstanding principal and interest under the March 2020 10% Note Purchase Agreement and Promissory Note for 2,629,606 shares of the Company's common stock at exchange rates between \$0.17 and \$0.22 per share, in each case calculated in accordance with Nasdaq's "minimum price" as defined by Nasdaq Listing Rule 5635(d).

The offer and sale of such shares was not registered under the Securities Act in reliance on an exemption from registration under Section 3(a)(9) of the Securities Act, in that (a) the shares of common stock were issued in exchange for a partitioned note which was another outstanding security of the Company; (b) there was no additional consideration of value delivered in connection with the exchange; and (c) there were no commissions or other remuneration paid by the Company in connection with the exchange.

c) Issuer Purchases of Equity Securities

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosure

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

See the Exhibit index following the signature page to this Form 10-Q for a list of exhibits filed or furnished with this report, which Exhibit Index is incorporated herein by reference.

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.

Date: August 15, 2022

INPIXON

By: /s/ Nadir Ali
Nadir Ali
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Wendy Loudermon
Wendy Loudermon
Chief Financial Officer
(Principal Financial Officer)

EXHIBIT INDEX

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
2.1†	Stock Purchase Agreement, dated as of April 30, 2021, among Inpixon, Design Reactor, Inc., dba The CXApp, the sellers set forth on the signature page thereto and each other person who owns outstanding capital stock of The CXApp and executes a Joinder to Stock Purchase Agreement, and Leon Papkoff, as Sellers' Representative	8-K	001-36404	2.1	May 6, 2021	
2.2†	Share Sale and Purchase Agreement, dated as of December 8, 2021, between Nanotron Technologies GmbH and the Shareholders of IntraNav GmbH.	8-K	001-36404	2.1	December 13, 2021	
2.3	Amendment to Stock Purchase Agreement, dated as of December 30, 2021, by and between Inpixon and Leon Papkoff, in his capacity as the Sellers' Representative.	8-K	001-36404	2.1	December 30, 2021	
3.1	Restated Articles of Incorporation.	S-1	333-190574	3.1	August 12, 2013	
3.2	Certificate of Amendment to Articles of Incorporation (Increase Authorized Shares).	S-1	333-218173	3.2	May 22, 2017	
3.3	Certificate of Amendment to Articles of Incorporation (Reverse Split).	8-K	001-36404	3.1	April 10, 2014	
3.4	Articles of Merger (renamed Sysorex Global).	8-K	001-36404	3.1	December 18, 2015	
3.5	Articles of Merger (renamed Inpixon).	8-K	001-36404	3.1	March 1, 2017	
3.6	Certificate of Amendment to Articles of Incorporation (Reverse Split).	8-K	001-36404	3.2	March 1, 2017	
3.7	Certificate of Amendment to Articles of Incorporation (authorized share increase).	8-K	001-36404	3.1	February 5, 2018	
3.8	Certificate of Amendment to Articles of Incorporation (Reverse Split).	8-K	001-36404	3.1	February 6, 2018	
3.9	Certificate of Amendment to Articles of Incorporation (Reverse Split).	8-K	001-36404	3.1	November 1, 2018	
3.10	Certificate of Amendment to Articles of Incorporation, effective as of January 7, 2020 (Reverse Split).	8-K	001-36404	3.1	January 7, 2020	

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Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
3.11	Certificate of Amendment to the Articles of Incorporation increasing the number of authorized shares of Common Stock from 250,000,000 to 2,000,000,000 filed with the Secretary of State of the State of Nevada on November 18, 2021	8-K	001-36404	3.1	November 19, 2021	
3.12	Bylaws, as amended.	S-1	333-190574	3.2	August 12, 2013	
3.13	Bylaws Amendment.	8-K	001-36404	3.2	September 13, 2021	
3.14	Form of Certificate of Designation of Preferences, Rights and Limitations of Series 4 Convertible Preferred Stock.	8-K	001-36404	3.1	April 24, 2018	
3.15	Certificate of Designation of Series 5 Convertible Preferred Stock, dated as of January 14, 2019.	8-K	001-36404	3.1	January 15, 2019	
3.16	Series 7 Convertible Preferred Stock Certificate of Designation, filed with the Secretary of State of the State of Nevada and effective September 13, 2021	8-K	001-36404	3.1	September 15, 2021	
3.17	Series 8 Convertible Preferred Stock Certificate of Designation, filed with the Secretary of State of the State of Nevada and effective March 22, 2022	8-K	001-36404	3.1	March 24, 2022	
10.1	Securities Purchase Agreement, dated as of April 27, 2022					X
10.2	10% Original Issue Discount Senior Convertible Debenture					X
10.3	Subsidiary Guarantee					X
31.1	Certification of the Company's Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, with respect to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2022.					X
31.2	Certification of the Company's Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, with respect to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30 2022.					X
32.1#	Certification of the Company's Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X

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Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101).					X

† Exhibits, schedules and similar attachments have been omitted pursuant to Item 601 of Regulation S-K and the registrant undertakes to furnish supplemental copies of any of the omitted exhibits and schedules upon request by the SEC.

This certification is deemed not filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

SECURITIES PURCHASE AGREEMENT***

This Securities Purchase Agreement (this “Agreement”) is dated as of April 27, 2022, between FOXO Technologies Inc., a Delaware corporation (the “Company”), and the purchaser identified on the signature page hereto (including its successors and assigns, the “Purchaser”).

WHEREAS, this Agreement is one of a series of substantially similar Securities Purchase Agreements, which the Company entered into as of February 23, 2022 to obtain bridge financing of at least the Minimum Amount (as defined below) in the Offering (as defined below), or will enter into to obtain additional bridge financing in the Offering, in each case, with other investors (the “Other Purchasers,” and, together with the Purchaser, the “Purchasers”); and

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 promulgated thereunder, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Debenture (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

“2021 Purchase Agreement” means the Securities Purchase Agreement, dated as of January 25, 2021, as amended from time to time, by and among the Company and the purchasers identified on the signature pages thereto.

“2021 Purchasers” means the purchasers identified on the signature pages of the 2021 Purchase Agreement.

“Acquiring Person” shall have the meaning ascribed to such term in Section 4.7.

“Action” shall have the meaning ascribed to such term in Section 3.1(j).

“Affiliate(s)” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be

*** Schedules, exhibits, and similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish copies of such omitted materials supplementally upon request by the U.S. Securities and Exchange Commission.

authorized or required by law to remain closed due to “stay at home,” “shelter-in-place,” “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally open for use by customers on such day.

“Buyout Transaction” means any capital raising transaction effectuated by the Company if the proceeds of such transaction are utilized by the Company to repay in full the total amount owed under the Debenture concurrently with the closing of such transaction.

“Closing” means the closing of the purchase and sale of the Debenture pursuant to this Agreement.

“Closing Date” means the Business Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchaser’s obligation to pay the Subscription Amount and (ii) the Company’s obligation to deliver the Securities, in each case, have been satisfied or waived.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Class A common stock of the Company, par value \$0.00001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Price” shall have the meaning ascribed to such term in the Debenture.

“Debenture” means the 10% Original Issue Discount Convertible Debenture, subject to the terms therein, which shall mature 12 months from its date of issuance unless extended pursuant to the terms thereunder, issued by the Company to the Purchaser hereunder, in the form of Exhibit A attached hereto.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulation promulgated thereunder.

“Exempt Issuance” means the issuance of (a) shares of Common Stock, restricted stock units or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise, exchange of or conversion of any Securities issued hereunder or in the Offering, and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in

connection with stock splits or combinations) or to extend the term of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as “restricted securities” (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith, and provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) restricted stock units, restricted stock and options to consultants and commercial partners of the Company provided, however, any such issuances to consultants and commercial partners shall not exceed, in the aggregate, 1,500,000 shares of Common Stock, (e) Securities pursuant to the Transaction Documents, and (f) securities in a Qualified Offering.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“GAAP” shall have the meaning ascribed to such term in Section 3.1(h).

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(y).

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(o).

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(c).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(m).

“Maximum Rate” shall have the meaning ascribed to such term in Section 5.17.

“Minimum Amount” means a minimum of \$11,000,000 in principal amount of 10% Original Issue Discount Convertible Debentures issued in the Offering, representing cash payments from the Purchasers of \$10,000,000 based on the ten percent (10%) Original Issue Discount provided therein.

“Offering” means the offering of 10% Original Issue Discount Convertible Debentures of at least the Minimum Amount.

“Offering Period” means the earlier of (i) the termination of the Offering as determined by the Company and (ii) the Outside Date (as defined in that certain Agreement and Plan of Merger, dated February 24, 2022, among the Company, Delwinds Insurance Acquisition Corp. (“Delwinds”), DWIN Merger Sub Inc., and DIAC Sponsor LLC, as representative of the stockholders of Delwinds (other than Company’s security holders)).

“Original Issue Discount” means the ten percent (10%) discount included in the Principal Amount.

“Participation Maximum” shall have the meaning ascribed to such term in Section 4.12(a).

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Pledged Securities” means any and all certificates and other instruments representing or evidencing all of the capital stock and other equity interests of the Subsidiaries.

“Pro Rata Portion” shall have the meaning ascribed to such term in Section 4.12(e).

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Principal Amount” means the amounts set forth below the Purchaser’s signature block on the signature pages hereto next to the heading “Principal Amount,” in United States Dollars, which shall equal the Purchaser’s Subscription Amount multiplied by 1.10.

“Public Information Failure” shall have the meaning ascribed to such term in Section 4.3(b).

“Public Information Failure Payments” shall have the meaning ascribed to such term in Section 4.3(b).

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.10.

“Qualified Offering” shall mean (i) an offering of Common Stock (or units consisting of Common Stock and warrants to purchase Common Stock) for an aggregate price of at least \$5,000,000 resulting in the listing for trading of the Common Stock on the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing) (each, a “National Exchange”) or (ii) any merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination by a special purpose acquisition company (“SPAC”) or similar entity of the Company or any other transaction pursuant to which the securities of any of the Company or any successor entity to the Company come to be listed for trading on the National Exchange or exchanged for securities listed on a National Exchange (“SPAC Transaction”).

“Qualified Offering Price” shall mean (i) in the case of an IPO, the price per share at which the Qualified Offering is made or (ii) in the case of a SPAC Transaction, the per share merger consideration received by the Company in the Qualified Offering.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Required Minimum” means two times (2x) the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon conversion in full of the Debenture (including Underlying Shares issuable as payment of interest on the Debenture), ignoring any conversion limits set forth therein.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time-to-time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time-to-time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Securities” means the Debenture and the Underlying Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include locating and/or borrowing shares of Common Stock).

“Subscription Amount” means the aggregate amount to be paid for the Debenture purchased hereunder as specified below the Purchaser’s name on the signature page of this Agreement and next to the heading “Subscription Amount,” in United States dollars and in immediately available funds.

“Subsequent Financing” shall have the meaning ascribed to such term in Section 4.12(a).

“Subsequent Financing Notice” shall have the meaning ascribed to such term in Section 4.12(b).

“Subsidiary” means any subsidiary of the Company as set forth in Schedule 3.1(a) and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Subsidiary Guarantee” means the Subsidiary Guarantee, dated as of the date hereof, by each direct subsidiary of the Company as set forth in Schedule 3.1(a), in favor of the Purchaser, in the form of Exhibit B attached hereto.

“Termination Date” means the date on which the Offering expires or is terminated.”

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the

Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Debenture, the Subsidiary Guarantee, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” a transfer agent to be hereafter determined by the Company and any successor transfer agent of the Company.

“Underlying Shares” means the shares of Common Stock issued and issuable pursuant to the terms of the Debenture, including without limitation, shares of Common Stock issued and issuable in lieu of the cash payment of interest on the Debenture in accordance with the terms of the Debenture, in each case without respect to any limitation or restriction on the conversion of the Debenture.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30a.m. (New York City time) to 4:02pm (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers holding a majority in principal amount outstanding of the 10% Original Issue Discount Convertible Debentures issued in the Offering and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

ARTICLE II PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchaser agrees to purchase, the Debenture as set forth on the Purchaser’s signature page hereto. The Company shall have discretion regarding whether to accept an investor and for such investor to become a Purchaser under this Agreement and may reject any proposed investor. On or before the Closing Date, the Company and the Purchaser shall deliver the items set forth in Section 2.2 deliverable at the Closing, and the Purchaser shall have delivered to the Company pursuant to the instructions contained on Schedule 2.1, via wire transfer or a certified check, immediately available funds equal to the Purchaser’s Subscription Amount as set forth on the signature page hereto executed by the Purchaser. Upon the Company’s receipt of the Minimum Amount from the Purchasers and the exchange of items set forth in Section 2.2, the Company shall deliver to the Debenture to the Purchaser, as determined pursuant to Section 2.2(a). Following the Closing where at least the Minimum Amount is sold, subsequent closings may be held in the Offering. Upon satisfaction of the applicable covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur on such date and at such location as the parties shall mutually agree upon, including by the electronic

exchange of Transaction Documents. Closings shall only be held during the Offering Period and in no event shall any Closing occur after the Termination Date.

2.2 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to the Purchaser the following:

- (i) this Agreement duly executed by the Company;
- (ii) the Debenture with a principal amount equal to the Purchaser's Principal Amount, registered in the name of the Purchaser;
- (iii) the Subsidiary Guarantee, duly executed by the parties thereto; and
- (iv) any other required Transaction Documents.

(b) On or prior to the Closing Date, the Purchaser shall deliver or cause to be delivered to the Company the following:

- (i) this Agreement duly executed by the Purchaser;
- (ii) the Purchaser's Subscription Amount as to the Closing by wire transfer to the Company to the account specified in Schedule 2.1 hereto;
- (iii) a completed Purchaser Questionnaire in the form of Exhibit C hereto; and
- (iv) any other required Transaction Documents.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

- (i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Purchaser contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);
- (ii) all obligations, covenants and agreements of the Purchaser required to be performed at or prior to the Closing Date shall have been performed; and
- (iii) the delivery by the Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The obligations of the Purchaser hereunder in connection with the Closing are subject to the following conditions being met, unless otherwise waived:

- (i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on

the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

(iii) the Company shall have entered into a definitive merger agreement providing for its anticipated SPAC Transaction, which agreement shall be reasonably satisfactory in form and substance to the Purchaser;

(iv) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement; and

(v) there shall have been no Material Adverse Effect with respect to the Company since the date hereof.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby makes the following representations and warranties to the Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a). Except as set forth on Schedule 3.1(a), the Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents, except as disclosed on Schedule 3.1(b). Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement.

(i) The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(ii) With respect to the Subsidiary Guarantee, each of the Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by such agreement and otherwise to carry out its obligations thereunder. The execution and delivery of the Subsidiary Guarantee and the consummation by the Company of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company, and no further action is required by the respective Subsidiary, its managers or its members in connection therewith. The Subsidiary Guarantee has been (or upon delivery will have been) duly executed by the respective Subsidiaries and, when delivered in accordance with the terms thereof, will constitute the valid and binding obligation of the respective Subsidiary enforceable against such Subsidiary in accordance with its terms, except (A) as listed by general equitable principals and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (B) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (C) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not: (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected except as disclosed on Schedule 3.1(d), or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. Except as disclosed on Schedule 3.1(e), the Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, and (ii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws (collectively, the “Required Approvals”).

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. On or before the Closing Date, the Company will reserve from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The capitalization of the Company as of the date hereof is as set forth on Schedule 3.1(g). No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents, except as disclosed on Schedule 3.1(g). Except as disclosed on Schedule 3.1(g), there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. Except as set forth on Schedule 3.1(g), the issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchaser). Except as set forth on Schedule 3.1(g), there are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. Except as set forth on Schedule 3.1(g), the Company does not have any stock appreciation rights or “phantom stock” plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. Except as set forth on Schedule 3.1(g), there are no stockholders agreements, voting agreements or other similar agreements with respect to the Company’s capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company’s stockholders.

(h) Financial Statements. Except as set forth on Schedule 3.1(h), the Company’s financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial

statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Except as disclosed on Schedule 3.1(i), since the date of the latest audited financial statements (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. Except for the issuance of the Securities contemplated by this Agreement or as set forth herein, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been disclosed in this Agreement at least one (1) calendar day prior to the date that such representation is made.

(j) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Except as disclosed on Schedule 3.1(l) neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. Except as set forth on Schedule 3.1(o), the Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(p) Intellectual Property. Except as set forth on Schedule 3.1(p), the Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary

has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(r) Transactions with Affiliates and Employees. Except as set forth in Schedule 3.1(r), none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and other employee benefits, including stock option agreements under any stock option plan of the Company.

(s) Certain Fees. No brokerage or finder's fees or commissions or other remuneration are or will be payable by the Company or any Subsidiaries directly or indirectly to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchaser shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(t) Private Placement. Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchaser as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(u) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(v) Registration Rights. Except as set forth in Schedule 3.1(v), no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(w) Disclosure. The Company understands and confirms that the Purchaser will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchaser regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Transaction Documents and disclosure schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve (12) months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that the Purchaser does not make and has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(x) No Integrated Offering. Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(y) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Minimum Amount of Securities hereunder, the Company will have sufficient cash to operate its business as currently operated for a period of three (3) months from the Closing Date. The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. Schedule 3.1(y) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. Except as disclosed on Schedule 3.1(y), neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(z) Tax Status. Except as disclosed on Schedule 3.1(z), and except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and

charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(aa) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising.

(bb) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(cc) Seniority. As of the Closing Date, except as provided in Schedule 3.1(cc), no Indebtedness or other claim against the Company is senior to the Debenture in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(dd) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(ee) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by the Purchaser or any of its respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchaser's purchase of the Securities. The Company further represents to the Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ff) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(gg) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(hh) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(ii) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(jj) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of twenty percent (20%) or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchaser a copy of any disclosures provided thereunder.

(kk) Other Covered Persons. The Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of the Purchaser in connection with the sale of any Securities.

(ll) Notice of Disqualification Events. The Company will notify the Purchaser in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

3.2 Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. The Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its

incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by the Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of the Purchaser. Each Transaction Document to which it is a party has been duly executed by the Purchaser, and when delivered by the Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Purchaser, enforceable against it in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. The Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting the Purchaser's right to sell the Securities pursuant to a registration statement covering the resale of such security or otherwise in compliance with applicable federal and state securities laws). The Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time the Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it converts the Debenture it will be either an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act.

(d) Experience of the Purchaser. The Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. The Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. The Purchaser is not, to the Purchaser's knowledge, purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the knowledge of the Purchaser, any other general solicitation or general advertisement.

(f) Access to Information. The Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and has been afforded: (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and

prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect the Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to locating or borrowing shares in order to effect Short Sales or similar transactions in the future.

ARTICLE IV OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights and obligations of a Purchaser under this Agreement.

(b) The Purchaser agrees to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities substantially in the following form:

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAS BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED

INVESTOR” AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time-to-time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an “accredited investor” as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, the Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the Purchaser’s expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities have been registered for resale pursuant to a registration statement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

(c) Certificates (or book statements) evidencing the Underlying Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144, or (iii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall, at its expense, cause its counsel, or at the option of a Purchaser, counsel determined by the Purchaser, to issue a legal opinion to the Transfer Agent or the Purchaser promptly if required by the Transfer Agent to affect the removal of the legend hereunder, or if requested by a Purchaser, respectively subject to compliance with the Securities Act and/or Rule 144 (for the avoidance of doubt, the Company shall pay all costs associated with such opinions). If all or any portion of a Debenture is converted at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that at such time as such legend is no longer required under this Section 4.1(c), it will, no later than the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such date, the “Legend Removal Date”), deliver or cause to be delivered to the Purchaser a certificate representing such Underlying Shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser’s prime broker with the Depository Trust Company System as directed by the Purchaser. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend.

(d) In addition to the Purchaser's other available remedies, the Company shall pay to the Purchaser, in cash, (i) as partial liquidated damages and not as a penalty, for each \$1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), \$5 per Trading Day (increasing to \$10 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate (or book statement) is delivered without a legend and (ii) if the Company fails to (a) issue and deliver (or cause to be delivered) to a Purchaser by the Legend Removal Date a certificate (or book statement) representing the Securities so delivered to the Company by the Purchaser that is free from all restrictive and other legends and (b) if after the Legend Removal Date the Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that the Purchaser anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of the Purchaser's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "Buy-In Price") over the product of (A) such number of Underlying Shares that the Company was required to deliver to the Purchaser by the Legend Removal Date multiplied by (B) the lowest adjusted closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by the Purchaser to the Company of the applicable Underlying Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).

(e) The Purchaser agrees with the Company that the Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in substantial dilution of the outstanding shares of Common Stock depending on market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against the Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) Until the time that no Purchaser owns Securities, the Company covenants, upon consummation of the Qualified Offering, to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the six (6) month anniversary of the date of the Qualified Offering and ending at such time that all of the Underlying Shares may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company: (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has ever been an issuer described in Rule 144(i)(1)(i) or becomes an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a “Public Information Failure”) then, in addition to the Purchaser’s other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Underlying Shares, an amount in cash equal to two percent (2%) of the aggregate Subscription Amount of the Purchaser’s Securities on the day of a Public Information Failure and on every thirtieth (30th) day (prorated for periods totaling less than thirty (30) days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchaser to transfer the Underlying Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as “Public Information Failure Payments.” Public Information Failure Payments shall be paid on the earlier of: (i) the last day of the calendar month during which such Public Information Failure Payments are incurred or (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial months) until paid in full. Nothing herein shall limit the Purchaser’s right to pursue actual damages for the Public Information Failure, and the Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4.4 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.5 Conversion Procedures. The form of Notice of Conversion included in the Debenture set forth the totality of the procedures required of the Purchaser in order to convert the Debenture. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert the Debenture. No additional legal opinion, other information or instructions shall be required of the Purchaser to convert its Debenture. The Company shall honor conversions of the Debenture and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Publicity. On or before the Closing, the Company represents to the Purchaser that it shall have publicly disclosed all material, non-public information delivered to the Purchaser by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, with effect on or before the Closing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and the Purchaser or any of their Affiliates on the other hand, shall terminate. The Company and the Purchaser shall consult with each other in issuing any other press releases with respect to the transactions

contemplated hereby, and neither the Company nor the Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of the Purchaser, or without the prior consent of the Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Purchaser, or include the name of the Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of the Purchaser, except (a) as required by federal securities law in connection with the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchaser with prior notice of such disclosure permitted under this clause.

4.7 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that the Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that the Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchaser.

4.8 Material Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.6, the Company covenants and agrees that as of the Closing, neither it, nor any other Person acting on its behalf will provide the Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto the Purchaser shall have consented in writing to the receipt of such information and agreed with the Company in writing to keep such information confidential. The Company understands and confirms that the Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company delivers any material non-public information to a Purchaser without the Purchaser’s consent, the Company hereby covenants and agrees that the Purchaser shall not have any duty of confidentiality to the Company, any of its Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material non-public information, provided that the Purchaser shall remain subject to applicable law. The Company understands and confirms that the Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.9 Use of Proceeds. Except as set forth on Schedule 4.9, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company’s debt (other than payment of trade payables in the ordinary course of the Company’s business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation, (d) in violation of FCPA or OFAC regulations, or (e) to lend, give credit or make advances to any officers, directors, employees or affiliates of the Company other than loans or advances to Subsidiaries.

4.10 Indemnification of Purchaser. Subject to the provisions of this Section 4.10, the Company will indemnify and hold the Purchaser and its directors, officers, shareholders, members, managers, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title or role), each Person who controls the Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the

Exchange Act), and the directors, officers, shareholders, agents, members, managers, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title or role) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon a material breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.11 Reservation and Listing of Securities.

(a) Subject to Section 4.11(b), the Company shall maintain a reserve of the Required Minimum from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than ninety (90) days after such date.

(c) Upon consummation of the Qualified Offering, the Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, provide to the Purchaser evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees, upon consummation of the Qualified Offering, to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust & Clearing Corporation (“DTCC”) or another established clearing corporation, including, without limitation, by timely payment of fees to DTCC or such other established clearing corporation in connection with such electronic transfer.

4.12 Participation in Future Financing.

(a) From the date hereof until the date that is the 12-month anniversary of the Closing Date, upon any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents for consideration (a “Subsequent Financing”), the Purchaser shall have the right to participate in up to an amount of the Subsequent Financing equal to thirty-three percent (33%) of the Subsequent Financing (the “Participation Maximum”) on the same terms, conditions and price provided for in the Subsequent Financing, provided, however, that this Section 4.12 does not apply to any securities offerings of the Company with a broker-dealer acting either as principal or agent. Notwithstanding the foregoing, in the event that the Purchaser shall remain a shareholder of record the Company, on or after the 12-month anniversary of the Closing Date, the participation rights provided in this Section 4.12 shall survive for an additional 12-month period. This provision shall not apply to a Qualified Offering.

(b) Between the time period of 4:00pm (New York City time) and 6:00pm (New York City time) on the Trading Day immediately prior to the Trading Day of the expected announcement of the Subsequent Financing (or, if the Trading Day of the expected announcement of the Subsequent Financing is the first (1st) Trading Day following a holiday or a weekend (including a holiday weekend), between the time period of 4:00pm (New York City time) on the Trading Day immediately prior to such holiday or weekend and 2:00pm (New York City time) on the day immediately prior to the Trading Day of the expected announcement of the Subsequent Financing), the Company shall deliver to the Purchaser a written notice of the Company’s intention to effect a Subsequent Financing (a “Subsequent Financing Notice”), which notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet and transaction documents relating thereto as an attachment.

(c) If the Purchaser desires to participate in such Subsequent Financing, the Purchaser must provide written notice to the Company by 6:30am (New York City time) on the Trading Day following the date on which the Subsequent Financing Notice is delivered to the Purchaser (the “Notice Termination Time”) that the Purchaser is willing to participate in the Subsequent Financing, the amount of the Purchaser’s participation, and representing and warranting that the Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from the Purchaser as of such Notice Termination Time, the Purchaser shall be deemed to have notified the Company that it does not elect to participate in such Subsequent Financing.

(d) If, by the Notice Termination Time, notifications by the Purchasers of their willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the total amount of the Subsequent Financing, then the Company may affect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) If, by the Notice Termination Time, the Company receives responses to a Subsequent Financing Notice from the Purchaser and Other Purchasers seeking to purchase more than the aggregate amount of the Participation Maximum, then the Purchaser shall have the right to purchase its Pro Rata Portion (as defined below) of the Participation Maximum. “Pro Rata Portion” means the ratio of (x) the Subscription Amount of Securities purchased on the Closing Date by the Purchaser participating under this [Section 4.12](#) and (y) the sum of the aggregate Subscription Amounts of Securities purchased on the Closing Date by all Purchasers participating under this [Section 4.12](#).

(f) The Company must provide the Purchaser with a second (2nd) Subsequent Financing Notice, and the Purchaser will again have the right of participation set forth above in this [Section 4.12](#), if the definitive agreement related to the initial Subsequent Financing Notice is not entered into for any reason on the terms set forth in such Subsequent Financing Notice within two (2) Trading Days after the date of delivery of the initial Subsequent Financing Notice.

(g) The Company and the Purchaser agree that, if any of the Purchasers elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision that, directly or indirectly, will, or is intended to, exclude the Purchaser from participating in a Subsequent Financing, including, but not limited to, provisions whereby the Purchaser shall be required to agree to any restrictions on trading as to any of the Securities purchased hereunder or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of the Purchaser. In addition, if a Qualified Financing has been consummated prior to the Subsequent Financing, the Company and the Purchaser agree that, in connection with a Subsequent Financing, the transaction documents related to the Subsequent Financing shall include a requirement for the Company to issue a widely disseminated press release by 9:30am (New York City time) on the Trading Day of execution of the transaction documents in such Subsequent Financing (or, if the date of execution is not a Trading Day, on the immediately following Trading Day) that discloses the material terms of the transactions contemplated by the transaction documents in such Subsequent Financing.

(h) Notwithstanding anything to the contrary in this [Section 4.12](#) and unless otherwise agreed to by the Purchaser, if a Qualified Financing has been consummated prior to the Subsequent Financing, the Company shall either confirm in writing to the Purchaser that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that the Purchaser will not be in possession of any material non-public information, by 9:30am (New York City time) on the second (2nd) Trading Day following date of delivery of the Subsequent Financing Notice. If by 9:30am (New York City time) on such second (2nd) Trading Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by the Purchaser, such transaction shall be deemed to have been abandoned and the Purchaser shall not be deemed to be in possession of any material non-public information with respect to the Company or any of its Subsidiaries.

(i) Notwithstanding the foregoing, this [Section 4.12](#) shall not apply in respect of an Exempt Issuance, a Qualified Offering or any other public offering of Common Stock pursuant to a

Registration Statement on Form S-1 or Form S-3 or in connection with the issuance of the Securities hereunder.

4.13 Subsequent Equity Sales.

(a) From the date hereof until one hundred eighty (180) days after the Closing Date, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents, except as set forth in subsection 4.13(b) below.

(b) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of a Qualified Offering or an Exempt Issuance or in connection with the issuance of the Securities hereunder.

4.14 [Intentionally Omitted.]

4.15 Certain Transactions and Confidentiality. The Purchaser covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6. The Purchaser covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.6, the Purchaser will maintain the confidentiality of the existence and terms of this transaction. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 4.6. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of the Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of the Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.16 Form D: Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D Rule 506 and to provide a copy thereof, promptly upon request of the Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of the Purchaser.

4.17 Capital Changes. Except in connection with the Qualified Offering, until the 18-month anniversary of the Closing Date, the Company shall not undertake a reverse or forward stock split or reclassification of the Common Stock without the prior written consent of the Purchasers holding a

majority in principal amount outstanding of the 10% Original Issue Discount Convertible Debentures issued in the Offering, except in connection with a Qualified Offering.

4.18 No Purchaser Lock-Up. Notwithstanding anything to the contrary contained in the definitive material agreements to be entered into by the Company in connection with its anticipated SPAC Transaction, in no event will the Purchaser be required to enter into any lock-up or similar agreement with respect to the Securities, and to the extent (a) the Purchaser owns, as of the date hereof, any securities of the SPAC that is party to such SPAC Transaction, the Company shall ensure that such securities do not become subject to any lock-up or similar agreement in connection with the closing of a Qualified Offering.

4.19 Buyout Transaction. Notwithstanding anything in this Agreement or the Transaction Documents to the contrary, the Company shall be permitted to effectuate a Buyout Transaction without the consent of the Purchaser and such Buyout Transaction shall not be deemed a breach of any provision, covenant or term contained in this Agreement.

ARTICLE V MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by the Purchaser, as to the Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the Other Purchasers, by written notice to the Company, if the Closing has not been consummated on or before the end of the Offering Period, provided, however, that no such termination will affect the right of the Purchaser or the Company to sue for any breach under this Agreement or the Transaction Documents.

5.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, the Company and the Purchaser shall be responsible for the fees and expenses of their respective advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such parties incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchaser.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into the Transaction Documents.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto at or prior to 5:30pm (New York City time) on a Trading Day, (b) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30pm (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and

communications shall be as set forth on the signature pages attached hereto. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K if the Company is then an Exchange Act reporting company.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchaser or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought. For the avoidance of doubt, no amendment or modification to, or waiver of, the rights of the Purchaser set forth in Section 4.18 of this Agreement shall be binding without the prior written consent of the Purchaser. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any amendment effected in accordance with this Section 5.5 shall be binding upon the Purchaser and holder of Securities and the Company.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchaser (other than by merger). The Purchaser may assign any or all of its rights under this Agreement to any Person to whom the Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchaser."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to

limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two (2) or more counterparts, all of which when taken together shall be considered one (1) and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever the Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then the Purchaser may rescind or withdraw, in its sole discretion from time-to-time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that, in the case of a rescission of a conversion of a Debenture, the terms of the Debenture will control.

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchaser and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in

the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to the Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.17 Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Action or Proceeding that may be brought by the Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to the Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by the Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at the Purchaser's election.

5.18 Independent Nature of Purchaser's Obligations and Rights. The obligations of the Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by the Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchaser as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchaser in in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. The Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. The Purchaser has been represented by its respective legal counsel in its review and negotiation of the Transaction Documents and has not been represented by counsel to the Company. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

5.19 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.22 WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

FOXO TECHNOLOGIES INC.

By: /s/ Jon R. Sabes
Name: Jon R. Sabes
Title: Chief Executive Officer

Address for Notice:

FOXO Technologies Inc.
220 S. 6th Street, Suite 1200
Minneapolis, Minnesota 55402
Attention: Jon R. Sabes

With copy to:

Mitchell Silberberg & Knupp LLP
Century Park East, 18th Floor
Los Angeles, California 90067
Attention: Nimish Patel
Email: nxp@msk.com

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOR PURCHASER FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: Inpixon

Signature of Authorized Signatory of Purchaser: /s/ Nadir Ali

Name of Authorized Signatory: Nadir Ali

Title of Authorized Signatory: Chief Executive Officer

Email Address of Authorized Signatory: _____

Mailing Address for Notice to Purchaser: _____

Mailing Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: \$5,500,000

Principal Amount (*1.10 x Subscription Amount*): \$6,050,000

Tax Identification Number: _____

[PURCHASER SIGNATURE PAGE TO SECURITIES PURCHASE AGREEMENT]

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

Original Issue Date: April 27, 2022

\$6,050,000

TEN PERCENT (10%) ORIGINAL ISSUE DISCOUNT CONVERTIBLE DEBENTURE

THIS 10% ORIGINAL ISSUE DISCOUNT CONVERTIBLE DEBENTURE is one of a series of duly authorized and validly issued ten percent (10%) Original Issue Discount Convertible Debentures of FOXO Technologies Inc., a Delaware corporation (the "Company"), having its principal place of business at 220 S. 6th Street, Suite 1200, Minneapolis, MN 55402, designated as its Ten Percent (10%) Original Issue Discount Secured Convertible Debenture (the "Debenture" and, collectively with the other debentures of such series, the "Debentures").

FOR VALUE RECEIVED, the Company promises to pay to Inpixon or its registered assigns (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of \$6,050,000 ("Principal Amount") on the date that is twelve (12) calendar months following the Original Issue Date (subject to extension or acceleration as provided herein, the "Maturity Date") or such earlier date as this Debenture is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate unconverted and then outstanding Principal Amount plus accrued Interest (and any accrued fees and expenses) of this Debenture in accordance with the provisions hereof. The Company will, at least ten (10) calendar days prior to the Maturity Date, send written notice to the Holder reminding the Holder of the pending Maturity Date of this Debenture. Notwithstanding the foregoing, the failure of the Company to provide ten (10) days' advance written notice of the Maturity Date will not alleviate the Company's obligation to repay all amounts due under this Debenture. This Debenture is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Debenture, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

"2021 Purchase Agreement" means the Securities Purchase Agreement, dated as of January 25, 2021, by and among the Company and the purchasers identified on the signature pages thereto.

"2021 Debentures" means the 12.5% Original Issue Discount Convertible Debentures issued pursuant to the 2021 Purchase Agreement.

"Alternate Consideration" shall have the meaning set forth in Section 5(e).

“Bankruptcy Event” means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within sixty (60) days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within sixty (60) calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, (g) the Company or any Significant Subsidiary thereof admits in writing that it is generally unable to pay its debts as they become due, (h) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Base Conversion Price” shall have the meaning set forth in Section 5(b).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 4(d).

“Buy-In” shall have the meaning set forth in Section 4(d)(v).

“Change of Control Transaction” means the occurrence after the date hereof of any of: (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of fifty percent (50%) of the voting securities of the Company (other than by means of conversion of the Debentures), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than sixty-six percent (66%) of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company (and all of its Subsidiaries, taken as a whole) sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than sixty-six percent (66%) of the aggregate voting power of the acquiring entity immediately after the transaction, or (d) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (c) above.

“Conversion” shall have the meaning ascribed to such term in Section 4.

“Conversion Date” shall have the meaning set forth in Section 4(a).

“Conversion Price” shall have the meaning set forth in Section 4(c).

“Conversion Schedule” means the Conversion Schedule in the form of Schedule 1 attached hereto.

“Conversion Share(s)” means, collectively, the shares of Class A Common Stock issuable upon conversion of this Debenture in accordance with the terms hereof.

“Debenture Register” shall have the meaning set forth in Section 2(b).

“Dilutive Issuance” shall have the meaning set forth in Section 5(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 5(b).

“Extension Amount” means one hundred thirty percent (130%) of the sum of (a) the outstanding Principal Amount of this Debenture at the expiration of the Original Maturity Date, plus (b) accrued and unpaid interest thereon at the expiration of the Original Maturity Date, plus (c) all other amounts, costs, expenses and liquidated damages due in respect of this Debenture at the expiration of the Original Maturity Date.

“Event of Default” shall have the meaning set forth in Section 7(a).

“Fundamental Transaction” shall have the meaning set forth in Section 5(e).

“Late Fees” shall have the meaning set forth in Section 2(c).

“Mandatory Default Amount” means the sum of (a) one hundred thirty percent (130%) of the outstanding Principal Amount of this Debenture, plus (b) one hundred thirty (130%) of accrued and unpaid interest hereon, and (c) one hundred thirty percent (130%) of all other amounts, costs, fees, expenses and liquidated damages due in respect of this Debenture.

“New York Courts” shall have the meaning set forth in Section 9(d).

“Notice of Conversion” shall have the meaning set forth in Section 4(a).

“Original Issue Date” means the date of the first issuance of the Debentures, regardless of any transfers of any Debenture and regardless of the number of instruments which may be issued to evidence such Debentures.

“Permitted Indebtedness” means: (a) the indebtedness evidenced by the Debentures, (b) the Indebtedness existing on the Original Issue Date and set forth on Schedule 3.1(y) attached to the Purchase Agreement, (c) indebtedness of up to an aggregate of \$250,000, inclusive of any interest, fees, penalties or other amounts due or payable thereunder, (d) indebtedness under agreements or arrangements with respect to refinancing the Indebtedness set forth on Schedule 3.1(y) to the Purchase Agreement, provided that the terms of such refinancing are more favorable to the Company and are no more favorable to the holders of such Indebtedness than the terms of the Debentures, (e) indebtedness supported by the U.S. Small Business Administration (the “SBA”) under the Payroll Protection Program and any future similar relief programs pursuant to the (i) Coronavirus Aid, Relief, and Economic Security Act of 2020, as supplemented by regulations promulgated by the SBA, and (ii) future Congressional legislation which is enacted into law and contains forgiveness of indebtedness provisions, (f) indebtedness incurred in the ordinary course of business pursuant to corporate credit cards, and (g) unsecured indebtedness consisting of intercompany advances (i) of the Company to any Subsidiary of the Company, (ii) of any Subsidiary of the Company to another Subsidiary of the Company and (iii) of any Subsidiary to the Company.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Company’s business, and which (i) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business

of the Company and its consolidated Subsidiaries or (ii) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a) and (b) thereunder, (d) Liens incurred in connection with Permitted Indebtedness under clause (f) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets acquired or leased, and (e) Liens for any interest or title of a lessor or sublessor, licensor or sub-licensor under any lease or license permitted hereunder that is granted or entered into in the ordinary course of business and does not interfere in any material respect with the ordinary conduct of business of the Company and their Subsidiaries taken as a whole.

“Prepayment Amount” means the product of the sum of (a) the outstanding Principal Amount of this Debenture (including any Original Issue Discount) to be prepaid, plus (b) accrued and unpaid Interest thereon to the date of prepayment, plus (c) all other amounts, costs, fees, expenses and liquidated damages due in respect of this Debenture on the date of prepayment, multiplied by 1.20, if the Company prepays all or any portion of this Debenture within three hundred sixty-five (365) calendar days after the Original Issue Date, or multiplied by 1.30 if the Debenture is extended pursuant to the terms of Section 2(e) and the Company prepays all or any portion this Debenture prior to the end of such extended term.

“Purchase Agreement” means the Securities Purchase Agreement, dated as of April __, 2022, by and among the Company and the original Holder, as amended, modified or supplemented from time to time in accordance with its terms.

“Share Delivery Date” shall have the meaning set forth in Section 4(d)(ii).

“Successor Entity” shall have the meaning set forth in Section 5(e).

Section 2. Interest.

(a) Payment of Interest. The Company shall pay interest to the Holder on the aggregate unconverted and then outstanding Principal Amount of this Debenture at the rate of twelve percent (12%) per annum, of which 12 months shall be guaranteed (“Interest”). Interest shall be payable on each Conversion Date (as to the Principal Amount then being converted) and on the Maturity Date, in cash (subject to the conversion of any accrued but unpaid interest into shares of Common Stock in accordance with Section 4).

(b) Interest Calculations. Subject to Section 2(a), Interest shall be calculated on the basis of an actual 360-day year, consisting of twelve (12), thirty (30) calendar day periods, and shall accrue daily commencing on the Original Issue Date until payment in full of the outstanding Principal Amount, together with all accrued and unpaid Interest, liquidated damages and other amounts which may become due hereunder has been made. Interest shall cease to accrue with respect to any Principal Amount or Interest converted, provided that, the Company actually delivers the Conversion Shares within the time period required by Section 4(d)(ii). Interest hereunder will be paid to the Person in whose name this Debenture is registered on the records of the Company regarding registration and transfers of this Debenture (the “Debenture Register”).

(c) Late Fee. All overdue accrued and unpaid interest to be paid hereunder shall incur a late fee at an interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by applicable law (the “Late Fees”) which shall accrue daily from the date such Late Fee is due hereunder through and including the date of actual payment of the outstanding Principal Amount plus accrued Interest, fees, expenses and Late Fees.

(d) Prepayment. The Company shall have the option, upon at least ten (10) days' prior notice to the Holder, to prepay this Debenture in full or in part, at any time after the Original Issue Date, at an amount equal to the Prepayment Amount; provided that any prepayment of this Debenture may only be made in connection with the prepayment of all 10% Original Issue Discount Convertible Debentures issued in the Offering, on a pro rata basis, based on the respective outstanding principal amounts of each such 10% Original Issue Discount Convertible Debenture.

(e) Extension of Maturity Date. In the event that any portion of this Debenture remains outstanding on the date that is twelve (12) calendar months following the Original Issue Date (the "Original Maturity Date"), the Company, at its sole discretion and with no further action of the Holder, will have the right to extend the Maturity Date of this Debenture for an additional three (3) month period such that the Debenture shall be due and payable on the date that is fifteen (15) calendar months following the Original Issue Date (the "Extended Maturity Date"); provided, however, that immediately after the expiration of the Original Maturity Date, all amounts due and payable on the Debenture shall be increased by the Extension Amount. By way of example, if immediately prior to the Original Maturity Date, the amount due and payable to the Holder on the Debenture is an aggregate of \$1,000,000 (including all accrued but unpaid Interest and all other amounts, costs, fees, expenses and liquidated damages due in respect of this Debenture), then immediately following the Original Maturity Date, with no further action by the Company or the Holder except as provided in this Section 2(e), the Principal Amount due and payable on this Debenture shall be increased to \$1,300,000 (for the avoidance of doubt, if immediately thereafter and prior to the Extended Maturity Date, the Company then determined to prepay the Debenture in full, the Holder would be due the Prepayment Amount which would be \$1,690,000).

(f) Acceleration of Maturity Date. Notwithstanding anything contained in this Debenture to the contrary, in the event any one or more of the 2021 Debentures or other Debentures become due and payable in full while any portion of this Debenture remains outstanding, the Maturity Date shall automatically be accelerated to the date on which such 2021 Debentures or other Debentures become due and payable in full.

Section 3. Registration of Transfers and Exchanges.

(a) Different Denominations. This Debenture is exchangeable for an equal aggregate Principal Amount of Debentures of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

(b) Investment Representations. This Debenture has been issued subject to certain investment representations of the original Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the Purchase Agreement and applicable federal and state securities laws and regulations.

(c) Reliance on Debenture Register. Prior to due presentment for transfer to the Company of this Debenture, the Company and any agent of the Company may treat the Person in whose name this Debenture is duly registered on the Debenture Register as the owner hereof for all purposes.

Section 4. Conversion.

(a) Voluntary Conversion. At any time after two hundred seventy (270) days following the Original Issue Date until this Debenture is no longer outstanding, this Debenture (including all accrued but unpaid Interest and all other amounts, costs, fees, expenses and liquidated damages due in respect of this Debenture) shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, at any time and from time-to-time (subject to the conversion limitations set forth in Section 4(d) hereof) at a price per share equal to the Voluntary Conversion Price determined pursuant to Section 4(c)(i) (each conversion, a "Voluntary Conversion"). The Holder shall affect conversions by delivering to the

Company a Notice of Conversion, the form of which is attached hereto as Annex A (each, a “Notice of Conversion”), specifying therein the Principal Amount of this Debenture to be converted and the date on which such conversion shall be affected (such date, the “Conversion Date”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions hereunder, the Holder shall not be required to physically surrender this Debenture to the Company unless the entire Principal Amount of this Debenture, plus all accrued and unpaid Interest thereon, has been so converted in which case the Holder shall surrender this Debenture as promptly as is reasonably practicable after such conversion without delaying the Company’s obligation to deliver the shares on the Share Delivery Date. Conversions hereunder shall have the effect of lowering the outstanding Principal Amount of this Debenture in an amount equal to the applicable conversion. The Holder and the Company shall maintain records showing the Principal Amount(s) converted and the date of such conversion(s). The Company may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. The Holder, and any assignee by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Debenture, the unpaid and unconverted Principal Amount of this Debenture may be less than the amount stated on the face hereof.

(b) Mandatory Conversion. At any time after the Original Issue Date, if the Company consummates a Qualified Offering on or before the date of the repayment in full of this Debenture, then the outstanding Principal Amount of this Debenture, along with any unpaid accrued Interest and all other amounts, costs, fees, expenses and liquidated damages due in respect of this Debenture, will automatically be converted, with no further action of the Holder, immediately prior to the closing of such Qualified Offering, into shares of Common Stock (or units of Common Stock and warrants to purchase Common Stock, if units are offered to the public in the Qualified Offering) at the Mandatory Conversion Price (a “Mandatory Conversion”).

(c) Conversion Price.

(i) Upon any Voluntary Conversion, the conversion price in effect on any Conversion Date shall be equal to \$5.00 per share of Common Stock, except that if there has been no Mandatory Conversion within three hundred sixty (360) days following the Original Issue Date or an Event of Default occurs, the conversion price following such three hundred sixty-day (360-day) period or such Event of Default shall be equal to \$4.00 per share of Common Stock (the “Voluntary Conversion Price”).

(ii) Upon Mandatory Conversion, the conversion price shall be equal to seventy-five percent (75%) of the Qualified Offering Price (the “Mandatory Conversion Price”).

(iii) The applicable conversion price provided hereby, as adjusted, shall be referred to herein as the “Conversion Price.”

(d) Mechanics of Conversion.

(i) Conversion Shares Issuable Upon Conversion of Principal Amount. The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the outstanding Principal Amount of this Debenture along with any unpaid accrued Interest and all other amounts, costs, fees, expenses and liquidated damages due to be converted by (y) the Conversion Price.

(ii) Delivery of Conversion Shares Upon Conversion. Not later than three (3) Trading Days after each Conversion Date (the “Share Delivery Date”), the Company shall deliver, or cause to be delivered, to the Holder (A) the Conversion Shares representing the number of Conversion

Shares being acquired upon the conversion of this Debenture and (B) a bank check or wire transfer in the amount of accrued and unpaid Interest.

(iii) Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Debenture delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

(iv) Obligation Absolute; Partial Liquidated Damages. The Company's obligations to issue and deliver the Conversion Shares upon conversion of this Debenture in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action the Company may have against the Holder. In the event the Holder of this Debenture shall elect to convert any or all of the outstanding Principal Amount hereof, the Company may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Debenture shall have been sought and obtained, and the Company posts a surety bond for the benefit of the Holder in the amount of one hundred fifty percent (150%) of the outstanding Principal Amount of this Debenture, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Holder to the extent it obtains judgment. In the absence of such injunction, the Company shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If the Company fails for any reason to deliver to the Holder such Conversion Shares pursuant to Section 4(d)(ii) by the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of principal amount being converted, \$5 per Trading Day (increasing to \$10 per Trading Day on the fifth (5th) Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section 7 hereof for the Company's failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(v) Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to the Holder such Conversion Shares by the Share Delivery Date pursuant to Section 4(d)(ii), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Company shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds

(y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) this Debenture in a principal amount equal to the Principal Amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 4(d)(ii). For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of this Debenture with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon conversion of this Debenture as required pursuant to the terms hereof.

(vi) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of this Debenture and payment of Interest on this Debenture, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Debentures), not less than two hundred percent (200%) of such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding Principal Amount of this Debenture and payment of Interest hereunder. The Company covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, except as otherwise restricted by the Transaction Documents, if a registration statement covering the resale of the Conversion Shares is then effective under the Securities Act, shall be registered for public resale in accordance with such registration statement.

(vii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Debenture. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

(viii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Debenture shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holder of this Debenture so converted and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares. The Company shall (i) pay all reasonable attorney fees required for the issuance of attorney legal opinions for removal of restrictive legends on Conversion Shares or (ii) provide an attorney legal opinion from counsel to the Company to Holder for removal of restrictive legends on Conversion Shares, in each case so long as the disposition of the Conversion Shares complies with Section 4.1 of the Purchase Agreement.

(e) Holder's Conversion Limitations. The Company shall not affect any conversion of this Debenture, and a Holder shall not have the right to convert any portion of this Debenture, to the extent that after giving effect to the conversion set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of this Debenture with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Principal Amount of this Debenture beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, any other Debentures) beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 4(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 4(d) applies, the determination of whether this Debenture is convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which Principal Amount of this Debenture is convertible shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Debenture may be converted (in relation to other securities owned by the Holder together with any Affiliates or Attribution Parties) and which Principal Amount of this Debenture is convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, the Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4(d), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company, or (iii) a more recent written notice by the Company or the Company's transfer agent or its Trading Market setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Debenture, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be four point nine-nine percent (4.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of this Debenture held by the Holder. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 4(d), provided that the Beneficial Ownership Limitation in no event exceeds nine point nine-nine percent (9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Debenture held by the Holder and the Beneficial Ownership Limitation provisions of this Section 4(d) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the sixty first (61st) day after such notice is delivered to the Company. The Beneficial Ownership Limitation provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Debenture.

Section 5. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Company, at any time while this Debenture is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of, or payment of Interest on, the Debentures), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 5(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Equity Sales. If, at any time while this Debenture is outstanding, the Company or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "Base Conversion Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then simultaneously with the consummation (or, if earlier, the announcement) of each Dilutive Issuance the Conversion Price shall be reduced to equal the Base Conversion Price (subject to adjustment for reverse and forward stock splits, recapitalizations and similar transactions following the date of the Purchase Agreement). Notwithstanding the foregoing, no adjustment will be made under this Section 5(b) in respect of an Exempt Issuance. The Company shall notify the Holder in writing, no later than two (2) Business Days following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 5(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 5(a) and 5(b) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Right(s)"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder

until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Pro Rata Distributions. During such time as this Debenture is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to its shareholders, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Debenture, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of acquirable upon complete conversion of this Debenture (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) Fundamental Transaction. If, at any time while this Debenture is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of greater than fifty percent (>50%) of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires greater than fifty percent (>50%) of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Debenture, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Debenture is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Debenture following such Fundamental Transaction. The Company shall cause any

successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Debenture and the other Transaction Documents in accordance with the provisions of this Section 5(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Debenture, deliver to the Holder in exchange for this Debenture a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Debenture which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Debenture (without regard to any limitations on the conversion of this Debenture) prior to such Fundamental Transaction, and with a conversion price which applies the Conversion Price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such Conversion Price being for the purpose of protecting the economic value of this Debenture immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Debenture and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(f) Calculations. All calculations under this Section 5 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 5, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

(g) Notice to the Holder.

(ix) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(x) Notice to Allow Conversion by Holder. If, (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special non-recurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company (and all of its Subsidiaries, taken as a whole) is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Debenture, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Debenture Register, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for

securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K if the Company is then an Exchange Act reporting company. The Holder shall remain entitled to convert this Debenture during the twenty-day (20-day) period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 6. Negative Covenants. As long as any portion of this Debenture remains outstanding, unless the holders of at least a majority in Principal Amount of the then outstanding Debentures shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

- (a) other than Permitted Indebtedness, except with ten (10) calendar days' prior written notice to the Holder, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- (b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- (c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;
- (d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a *de minimis* number of shares of its Common Stock or Common Stock Equivalents other than as to: (i) the Conversion Shares as permitted or required under the Transaction Documents, (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of \$250,000 for all officers and directors during the term of this Debenture, or (iii) shares of Common Stock and Common Stock Equivalents which do not vest or are otherwise forfeited, provided (in case of forfeiture) that, such Common Stock and Common Stock Equivalents are not acquired for cash;
- (e) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than Permitted Indebtedness and the Debentures if on a pro-rata basis, other than regularly scheduled Principal Amount and Interest payments as such terms are in effect as of the Original Issue Date, provided that such payments shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exist or occur;
- (f) pay cash dividends or distributions on any equity securities of the Company;
- (g) enter into any material transaction with any Affiliate of the Company, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or
- (h) enter into any agreement with respect to any of the foregoing.

Section 7. Events of Default.

(a) “Event of Default” means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

(i) any default in the payment of: (A) the Principal Amount of any Debenture, or (B) Interest, liquidated damages, fees, expenses, charges and other amounts owing to a Holder on any Debenture, as and when the same shall become due and payable (whether on a Conversion Date or the Maturity Date or by acceleration or otherwise) which default, solely in the case of an Interest payment or other default under clause (B) above, is not cured within three (3) Trading Days;

(ii) the Company shall fail to observe or perform any other covenant or agreement contained in the Debentures (other than a breach by the Company of its obligations to deliver shares of Common Stock to the Holder upon conversion, which breach is addressed in clause (x) below) or in any Transaction Document, which failure is not cured, if possible to cure, within the earlier to occur of (A) three (3) Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) five (5) Trading Days after the Company has become or should have become aware of such failure;

(iii) a default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under (A) any of the Transaction Documents or (B) any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below);

(iv) any material representation or warranty made in this Debenture, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

(v) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

(vi) the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$250,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

(vii) the Company (and all of its Subsidiaries, taken as a whole) shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of thirty-three percent (33%) of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction), unless such Change of Control, Fundamental Transaction, or sale or disposition of assets result from a Qualified Offering;

(viii) the Company shall fail for any reason to deliver Conversion Shares to a Holder prior to the tenth Trading Day after a Conversion Date pursuant to Section 4(d) or the Company shall provide at any time notice to the Holder, including by way of public announcement, of the Company’s intention to not honor requests for conversions of any Debentures in accordance with the terms hereof;

(ix) any Person shall breach any agreement delivered to the initial Holders pursuant to Section 2.2 of the Purchase Agreement; or

(x) any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than \$250,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of forty-five (45) calendar days.

(b) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding Principal Amount of this Debenture, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. Commencing upon the occurrence of any Event of Default, the interest rate on this Debenture shall accrue at an interest rate equal to the lesser of eighteen percent (18%) per annum and the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Debenture to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Debenture until such time, if any, as the Holder receives full payment pursuant to this Section 7(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, by email attachment, or sent by a nationally recognized overnight courier service, addressed to the Company, at the address set forth above, or such other facsimile number, email address, or address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 8(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by email attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the email address or address of the Holder appearing on the books of the Company, or if no such facsimile number or email attachment or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email attachment to the email address set forth on the signature pages attached hereto prior to 5:30pm (New York City time) on any date, (ii) the next Business Day after the date of transmission, if such notice or communication is delivered via email attachment to the email address set forth on the signature pages attached hereto on a day that is not a Business Day or later than 5:30pm (New York City time) on any Business Day, (iii) the second Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount of, liquidated damages and accrued Interest, as applicable, on this Debenture at the time, place, and rate, and in the coin or currency, herein prescribed. This Debenture is a direct debt obligation of the Company. This Debenture ranks *pari passu* with all other Debentures now or hereafter issued under the terms set forth herein.

(c) Lost or Mutilated Debenture. If this Debenture shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon

cancellation of a mutilated Debenture, or in lieu of or in substitution for a lost, stolen or destroyed Debenture, a new Debenture for the Principal Amount of this Debenture so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Debenture, and of the ownership hereof, reasonably satisfactory to the Company.

(d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Debenture shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, managers, members, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Debenture and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Debenture or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Debenture, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Company or the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture on any other occasion. Any waiver by the Company or the Holder must be in writing.

(f) Severability. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any Interest rate or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of Interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the Principal Amount of or accrued Interest on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

(g) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Debenture. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Debenture.

(h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Debenture and shall not be deemed to limit or affect any of the provisions hereof.

Section 9. Amendments; Waivers. Any modifications, amendments or waivers of the provisions hereof shall be subject to Section 5.5 of the Purchase Agreement.

Section 10. Buyout Transaction. Notwithstanding anything in this Debenture or the Transaction Documents to the contrary, the Company shall be permitted to effectuate a Buyout Transaction without the consent of the Purchasers (including the Holder) and such Buyout Transaction shall not be deemed a breach of any covenant or term contained in this Debenture.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Debenture to be duly executed by a duly authorized officer as of the date first above indicated.

FOXO TECHNOLOGIES INC.

By: /s/ Jon R. Sabes
Name: Jon R. Sabes
Title: Chief Executive Officer

14136925.3/51789-00003

**ANNEX A
NOTICE OF CONVERSION**

The undersigned hereby elects to convert principal under the ten percent (10%) Original Issue Discount Convertible Debenture of FOXO Technologies Inc., a Delaware corporation (the "Company"), into shares of common stock (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that its ownership of the Common Stock does not exceed the amounts specified under Section 4 of this Debenture, as determined in accordance with Section 13(d) of the Exchange Act.

The undersigned agrees to comply with the prospectus delivery requirements under the applicable securities laws in connection with any transfer of the aforesaid shares of Common Stock.

Conversion calculations:

Date to Effect Conversion:

Principal Amount of Debenture to be Converted:

Interest Amount of Debenture to be Converted (if applicable):

Number of shares of Common Stock to be issued:

Conversion Price:

Principal Remaining:

Signature:

Name:

Address for Delivery of Common Stock Certificates:

Or

DWAC Instructions:

Broker No: _____

Account No: _____

SCHEDULE 1

CONVERSION SCHEDULE

The ten percent (10%) Original Issue Discount Convertible Debentures in the aggregate Principal Amount of \$_____ are issued by FOXO Technologies Inc., a Delaware corporation. This Conversion Schedule reflects conversions made under Section 4 of the above referenced Debenture.

Dated:

Date of Conversion (or for first entry, Original Issue Date)	Amount of Conversion (Principal Amount and Interest)	Aggregate Principal Amount Remaining Subsequent to Conversion (or original Principal Amount)	Company Attest

SUBSIDIARY GUARANTEE

SUBSIDIARY GUARANTEE, dated as of April 27, 2022 (this "Guarantee"), made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Guarantors"), in favor of the purchaser (together with its permitted assigns, the "Purchaser") signatory to that certain Securities Purchase Agreement, dated as April 27, 2022 (the "Purchase Agreement"), by and among FOXO Technologies Inc., a Delaware corporation (the "Company") and the Purchaser.

WITNESSETH:

WHEREAS, pursuant to the Purchase Agreement, the Purchaser has agreed to purchase from the Company the Debenture, subject to the terms and conditions set forth therein; and

WHEREAS, each Guarantor will directly benefit from the extension of credit to the Company represented by the issuance of the Debenture.

NOW, THEREFORE, IN CONSIDERATION of the premises and to induce the Purchaser to enter into the Purchase Agreement and to carry out the transactions contemplated thereby, each Guarantor hereby agrees with the Purchaser as follows:

1. Definitions. Unless otherwise defined herein, terms defined in the Purchase Agreement and used herein shall have the meanings given to them in the Purchase Agreement or the Debenture. The words "hereof," "herein," "hereto" and "hereunder" and words of similar import when used in this Guarantee shall refer to this Guarantee as a whole and not to any particular provision of this Guarantee, and Section and Schedule references are to this Guarantee unless otherwise specified. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The following terms shall have the following meanings:

"Guarantee" means this Subsidiary Guarantee, as the same may be amended, supplemented or otherwise modified from time to time.

"Obligations" means, in addition to all other costs and expenses of collection incurred by Purchaser in enforcing any of such Obligations and/or this Guarantee, all of the liabilities and obligations (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that are now or may be hereafter contracted or acquired, or owing to, of the Company or any Guarantor to the Purchaser, including, without limitation, all obligations under this Guarantee, the Debentures and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith, in each case, whether now or

hereafter existing, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time-to-time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from the Purchaser as a preference, fraudulent transfer or otherwise as such obligations may be amended, supplemented, converted, extended or modified from time-to-time. Without limiting the generality of the foregoing, the term “Obligations” shall include, without limitation: (i) Principal Amount of, and Interest on the Debenture and the loans extended pursuant thereto; (ii) any and all other fees, indemnities, costs, obligations and liabilities of the Company or any Guarantor from time-to-time under or in connection with this Guarantee, the Debenture and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith; and (iii) all amounts (including but not limited to, post-petition interest) in respect of the foregoing that would be payable but for the fact that the obligations to pay such amounts are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Company or any Guarantor.

2. Guarantee.

(a) Guarantee.

(i) The Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantee to the Purchaser and its respective successors, endorsees, transferees and assigns, the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

(ii) Anything herein or in any other Transaction Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Transaction Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws, including laws relating to the insolvency of debtors, fraudulent conveyance or transfer or laws affecting the rights of creditors generally (after giving effect to the right of contribution established in Section 2(b)).

(iii) Each Guarantor agrees that the Obligations may at any time and from time-to-time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Purchaser hereunder.

(iv) The guarantee contained in this Section 2 shall remain in full force and effect until all the Obligations and the obligations of each Guarantor under the guarantee contained in this Section 2 shall have been satisfied by indefeasible payment in full.

(v) No payment made by the Company, any of the Guarantors, any other guarantor or any other Person or received or collected by the Purchaser from the Company, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time-to-time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any

such payment (other than any payment made by such Guarantor in respect of the Obligations or any payment received or collected from such Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the Obligations are indefeasibly paid in full.

(vi) Notwithstanding anything to the contrary in this Guarantee, with respect to any defaulted non-monetary Obligations the specific performance of which by the Guarantors is not reasonably possible (e.g., the issuance of the Company's Common Stock), the Guarantors shall only be liable for making the Purchaser whole on a monetary basis for the Company's failure to perform such Obligations in accordance with the Transaction Documents.

(b) Right of Contribution. Subject to Section 2(c), each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder that has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2(c). The provisions of this Section 2(b) shall in no respect limit the obligations and liabilities of any Guarantor to the Purchaser and each Guarantor shall remain liable to the Purchaser for the full amount guaranteed by such Guarantor hereunder.

(c) No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Purchaser, no Guarantor shall be entitled to be subrogated to any of the rights of the Purchaser against the Company or any other Guarantor or any collateral security or guarantee or right of offset held by the Purchaser for the payment of the Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Company or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Purchaser by the Company on account of the Obligations are indefeasibly paid in full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Purchaser, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Purchaser in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Purchaser, if required), to be applied against the Obligations, whether matured or unmatured, in such order as the Purchaser may determine.

(d) Amendments With Respect to the Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Obligations made by the Purchaser may be rescinded by the Purchaser and any of the Obligations continued, and the Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time-to-time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Purchaser, and the Purchase Agreement and the other Transaction Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Purchaser may deem advisable from time-to-time, and any collateral security, guarantee or right of offset at any time held by the Purchaser for the payment of the Obligations may be sold, exchanged, waived,

surrendered or released. The Purchaser shall have no obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Obligations or for the Guarantee contained in this Section 2 or any property subject thereto.

(e) Guarantee Absolute and Unconditional. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by the Purchaser upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2. The Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2 and all dealings between the Company and any of the Guarantors, on the one hand, and the Purchaser, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives to the extent permitted by law diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Company or any of the Guarantors with respect to the Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Purchase Agreement or any other Transaction Document, any of the Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time-to-time held by the Purchaser, (b) any defense, set-off or counterclaim (other than a defense of payment or performance or fraud by the Purchaser) which may at any time be available to or be asserted by the Company or any other Person against the Purchaser, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Company or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Company for the Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Purchaser may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as they may have against the Company, any other Guarantor or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by the Purchaser to make any such demand, to pursue such other rights or remedies or to collect any payments from the Company, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Company, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Purchaser against any Guarantor. For the purposes hereof, "demand" shall include the commencement and continuance of any legal proceedings.

(f) Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Purchaser upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Company or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

(g) Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Purchaser without set-off or counterclaim in United States Dollars at the address set forth or referred to in the Signature Pages to the Purchase Agreement.

3. Representations and Warranties. Each Guarantor hereby makes the following representations and warranties to the Purchaser as of the date hereof:

(a) Organization and Qualification. The Guarantor is duly organized, validly existing and in good standing under the laws of the applicable jurisdiction set forth on Schedule 1, with the requisite corporate power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Guarantor has no subsidiaries other than those identified as such on the disclosure schedules to the Purchase Agreement. The Guarantor is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not, individually or in the aggregate, (x) adversely affect the legality, validity or enforceability of any of this Guaranty in any material respect, (y) have a material adverse effect on the results of operations, assets, prospects, or financial condition of the Guarantor or (z) adversely impair in any material respect the Guarantor's ability to perform fully on a timely basis its obligations under this Guaranty (a "Material Adverse Effect").

(b) Authorization; Enforcement. The Guarantor has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Guaranty, and otherwise to carry out its obligations hereunder. The execution and delivery of this Guaranty by the Guarantor and the consummation by it of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Guarantor. This Guaranty has been duly executed and delivered by the Guarantor and constitutes the valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(c) No Conflicts. Except as disclosed in the Disclosure Schedules to the Purchase Agreement, the execution, delivery and performance of this Guaranty by the Guarantor and the consummation by the Guarantor of the transactions contemplated thereby do not and will not: (i) conflict with or violate any provision of its Certificate of Incorporation or Bylaws or (ii) conflict with, constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Guarantor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Guarantor is subject (including federal and state securities laws and regulations), or by which any material property or asset of the Guarantor is bound or affected, except in the case of each of clauses (ii) and (iii), such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as could not, individually or in the aggregate, have or result in a Material Adverse Effect. The business of the Guarantor is not being conducted in violation of any law, ordinance or regulation of any governmental authority, except for violations which, individually or in the aggregate, do not have a Material Adverse Effect.

(d) Consents and Approvals. Except as disclosed in the Disclosure Schedules to the Purchase Agreement, the Guarantor is not required to obtain any consent, waiver, authorization or order of, or make any filing or registration with, any court or other federal, state, local, foreign or other governmental authority or other person in connection with the execution, delivery and performance by the Guarantor of this Guaranty.

(e) Purchase Agreement. The representations and warranties of the Company set forth in the Purchase Agreement as they relate to such Guarantor, each of which is hereby incorporated herein by reference, are true and correct as of each time such representations are deemed to be made pursuant to such Purchase Agreement, and the Purchaser shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Company's knowledge shall, for the purposes of this Section 3, be deemed to be a reference to such Guarantor's knowledge.

4. Covenants.

(a) Each Guarantor covenants and agrees with the Purchaser that, from and after the date of this Guarantee until the Obligations shall have been indefeasibly paid in full, such Guarantor shall take, and/or shall refrain from taking, as the case may be, each commercially reasonable action that is necessary to be taken or not taken, as the case may be, so that no Event of Default (as defined in the Debentures) is caused by the failure to take such action or to refrain from taking such action by such Guarantor.

(b) So long as any of the Obligations are outstanding, unless the Purchasers holding at least a majority in principal amount outstanding of the 10% Original Issue Discount Convertible Debentures issued in the Offering shall otherwise consent to in writing, each Guarantor will not directly or indirectly on or after the date of this Guarantee:

i. other than Permitted Indebtedness (as defined in the Debenture), enter into, create, incur, assume or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

ii. other than Permitted Liens (as defined in the Debenture), enter into, create, incur, assume or suffer to exist any liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

iii. amend its Certificate of Incorporation, Bylaws or other charter documents so as to adversely affect any rights of any Purchaser;

iv. repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its securities or debt obligations;

v. pay cash dividends on any equity securities of the Company;

vi. enter into any transaction with any Affiliate of the Guarantor, which would be required to be disclosed in any public filing of the Company with the Commission, unless such transaction is made on an arm's-length basis

and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

vii. enter into any agreement with respect to any of the foregoing.

5. Miscellaneous.

(a) Amendments in Writing. None of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except in writing by the Purchaser and the Guarantors.

(b) Notices. All notices, requests and demands to or upon the Purchaser or any Guarantor hereunder shall be effected in the manner provided for in the Purchase Agreement, provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 5(b).

(c) No Waiver by Course Of Conduct; Cumulative Remedies. The Purchaser shall not by any act (except by a written instrument pursuant to Section 5(a)), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default under the Transaction Documents or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Purchaser, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Purchaser of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Purchaser would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

(d) Enforcement Expenses; Indemnification.

(i) Each Guarantor agrees to pay, or reimburse the Purchaser for, all its costs and expenses incurred in collecting against such Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Guarantee and the other Transaction Documents to which such Guarantor is a party, including, without limitation, the reasonable fees and disbursements of counsel to the Purchaser.

(ii) Each Guarantor agrees to pay, and to save the Purchaser harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with any of the transactions contemplated by this Guarantee.

(iii) Each Guarantor agrees to pay, and to save the Purchaser harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Guarantee to the extent the Company would be required to do so pursuant to the Purchase Agreement.

(iv) The agreements in this Section shall survive repayment of the Obligations and all other amounts payable under the Purchase Agreement and the other Transaction Documents.

(e) Successor and Assigns. This Guarantee shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the Purchaser and its respective successors and assigns; provided that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Purchaser.

(f) Set-Off. Each Guarantor hereby irrevocably authorizes the Purchaser at any time and from time-to-time while an Event of Default under any of the Transaction Documents shall have occurred and be continuing, without notice to such Guarantor or any other Guarantor, any such notice being expressly waived by each Guarantor, to set-off and appropriate and apply any and all deposits, credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Purchaser to or for the credit or the account of such Guarantor, or any part thereof in such amounts as the Purchaser may elect, against and on account of the obligations and liabilities of such Guarantor to the Purchaser hereunder and claims of every nature and description of the Purchaser against such Guarantor, in any currency, whether arising hereunder, under the Purchase Agreement, any other Transaction Document or otherwise, as the Purchaser may elect, whether or not the Purchaser has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The Purchaser shall notify such Guarantor promptly of any such set-off and the application made by the Purchaser of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Purchaser under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Purchaser may have.

(g) Counterparts. This Guarantee may be executed by one or more of the parties to this Guarantee on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

(h) Severability. Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(i) Headings. The headings used in this Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

(j) Integration. This Guarantee and the other Transaction Documents represent the agreement of the Guarantors and the Purchaser with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Purchaser relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Transaction Documents.

(k) Governing Laws. All questions concerning the construction, validity, enforcement and interpretation of this Guarantee shall be governed by and construed and

enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each of the Company and the Guarantors agree that all proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Guarantee (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. Each of the Company and the Guarantors hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Guarantee and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Guarantee or the transactions contemplated hereby.

(l) Acknowledgements. Each Guarantor hereby acknowledges that:

(i) it has been advised by its counsel in the negotiation, execution and delivery of this Guarantee and the other Transaction Documents to which it is a party;

(ii) the Purchaser has no fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Guarantee or any of the other Transaction Documents, and the relationship between the Guarantors, on the one hand, and the Purchaser, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(iii) no joint venture is created hereby or by the other Transaction Documents or otherwise exists by virtue of the transactions contemplated hereby among the Guarantors and the Purchaser.

(m) Additional Guarantors. The Company shall cause each of its subsidiaries formed or acquired on or subsequent to the date hereof to become a Guarantor for all purposes of this Guarantee by executing and delivering an Assumption Agreement in the form of Annex 1 hereto.

(n) Release of Guarantors. Each Guarantor will be released from all liability hereunder concurrently with the indefeasible repayment in full of all amounts owed under the Purchase Agreement, the Debentures and the other Transaction Documents.

(o) Seniority. The Obligations of each of the Guarantors hereunder rank senior in priority to any other Indebtedness (as defined in the Purchase Agreement) of such Guarantor, except for any obligations of the Guarantors under that certain Subsidiary Guarantee, dated as of January 25, 2021.

(p) WAIVER OF JURY TRIAL. **EACH GUARANTOR AND, BY ACCEPTANCE OF THE BENEFITS HEREOF, THE PURCHASER, HEREBY**

IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE AND FOR ANY COUNTERCLAIM THEREIN.

(Signature Pages Follow)

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee to be duly executed and delivered as of the date first above written.

FOXO LIFE, LLC

By: /s/ Jon Sabes

Name: Jon Sabes

Title: Manager

FOXO LABS INC.

By: /s/ Jon Sabes

Name: Jon Sabes

Title: Chief Executive Officer

[Signature Page to Subsidiary Guarantee]

SCHEDULE 1 GUARANTORS

The following are the names, notice addresses and jurisdiction of organization of each Guarantor.

FOXO Life, LLC, a Delaware limited liability company with its address at 220 S. 6th Street, Suite 1200, Minneapolis, MN 55402.

FOXO Labs Inc., a Delaware corporation with its address at 220 S. 6th Street, Suite 1200, Minneapolis, MN 55402.

Annex 1 to
SUBSIDIARY GUARANTEE

ASSUMPTION AGREEMENT, dated as of _____, 202_, made by _____, a _____ corporation (this “Additional Guarantor”), in favor of the Purchaser pursuant to the Purchase Agreement referred to below. All capitalized terms not defined herein shall have the meaning ascribed to them in such Purchase Agreement.

W I T N E S S E T H:

WHEREAS, FOXO Technologies, Inc., a Delaware corporation (the “Company”) and the Purchaser have entered into a Securities Purchase Agreement, dated as of _____, 2022 (as amended, supplemented or otherwise modified from time to time, the “Purchase Agreement”);

WHEREAS, in connection with the Purchase Agreement, the Subsidiaries of the Company (other than the Additional Guarantor) have entered into the Subsidiary Guarantee, dated as of _____, 2022 (as amended, supplemented or otherwise modified from time to time, the “Guarantee”) in favor of the Purchaser;

WHEREAS, the Purchase Agreement requires the Additional Guarantor to become a party to the Guarantee; and

WHEREAS, the Additional Guarantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee;

NOW, THEREFORE, IT IS AGREED:

1. Guarantee. By executing and delivering this Assumption Agreement, the Additional Guarantor, as provided in Section 5(m) of the Guarantee, hereby becomes a party to the Guarantee as a Guarantor thereunder with the same force and effect as if originally named therein as a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor thereunder. The information set forth in Annex 1 hereto is hereby added to the information set forth in Schedule 1 to the Guarantee. The Additional Guarantor hereby represents and warrants that each of the representations and warranties contained in Section 3 of the Guarantee is true and correct on and as the date hereof as to such Additional Guarantor (after giving effect to this Assumption Agreement) as if made on and as of such date.

2. Governing Law. THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

CERTIFICATION

I, Nadir Ali, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Impixon;
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 15-d-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: August 15, 2022

/s/ Nadir Ali

Nadir Ali
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Wendy Loundermon, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Impixon;
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 15-d-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: August 15, 2022

/s/ Wendy Loundermon

Wendy Loundermon
Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATION

In connection with the periodic report of Inpixon (the “Company”) on Form 10-Q for the period ended June 30, 2022 as filed with the Securities and Exchange Commission (the “Report”), we, Nadir Ali, Chief Executive Officer (Principal Executive Officer) and Wendy Loundermon, Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, hereby certify as of the date hereof, solely for purposes of Title 18, Chapter 63, Section 1350 of the United States Code, that to the best of our knowledge:

- (1). The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, and
- (2). The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

Date: August 15, 2022

/s/ Nadir Ali

Nadir Ali
Chief Executive Officer
(Principal Executive Officer)

/s/ Wendy Loundermon

Wendy Loundermon
Chief Financial Officer
(Principal Financial and Accounting Officer)