

REFINITIV

DELTA REPORT

10-Q

AYRO - AYRO, INC.

10-Q - SEPTEMBER 30, 2023 COMPARED TO 10-Q - JUNE 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 2122

■ CHANGES 209

■ DELETIONS 380

■ ADDITIONS 1533

**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** **September** 30, 2023

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: 001-34643

AYRO, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

98-0204758

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

**900 E. Old Settlers Boulevard, Suite 100
Round Rock, Texas**

(Address of principal executive offices)

78664

(Zip Code)

(512) 994-4917

(Registrant's telephone number, including area code)

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

Title of each Class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	AYRO	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 during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "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 type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

As of **August 11, 2023** **November 17, 2023**, the registrant had **37,732,530** **4,890,137** shares of common stock outstanding.

AYRO, Inc.
Quarter Ended June 30, 2023 September 30, 2023

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

AYRO, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS SHEET
(UNAUDITED)

	June 30, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash	\$ 13,569,265	\$ 39,096,562
Marketable securities	19,464,015	9,848,804
Accounts receivable, net	104,155	510,071
Inventory	3,049,972	970,381
Prepaid expenses and other current assets	3,269,831	1,478,845
Total current assets	<u>39,457,238</u>	<u>51,904,663</u>
Property and equipment, net	3,201,260	2,192,337
Operating lease – right-of-use asset	750,877	819,401
Deposits and other assets	84,595	73,683
Total assets	<u>\$ 43,493,970</u>	<u>\$ 54,990,084</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	716,236	1,107,215
Accrued expenses	910,114	964,937
Current portion lease obligation – operating lease	178,013	165,767
Total current liabilities	<u>1,804,363</u>	<u>2,237,919</u>
Lease obligation – operating lease, net of current portion	601,349	693,776
Total liabilities	<u>2,405,712</u>	<u>2,931,695</u>
Stockholders' equity:		
Preferred Stock, (authorized – 20,000,000 shares)	-	-
Convertible Preferred Stock Series H, (\$0.0001 par value; authorized – 8,500 shares; issued and outstanding – 8 shares as of June 30, 2023 and December 31, 2022, respectively)	-	-
Convertible Preferred Stock Series H-3, (\$0.0001 par value; authorized – 8,461 shares; issued and outstanding – 1,234 as of June 30, 2023 and December 31, 2022, respectively)	-	-
Convertible Preferred Stock Series H-6, (\$0.0001 par value; authorized – 50,000 shares; issued and outstanding – 50 as of June 30, 2023 and December 31, 2022, respectively)	-	-
Common Stock, (\$0.0001 par value; authorized – 100,000,000 shares; issued and outstanding – 37,536,101 and 37,241,642 as of June 30, 2023 and December 31, 2022, respectively)	3,753	3,724
Additional paid-in capital	133,733,091	133,224,249
Accumulated deficit	(92,648,586)	(81,169,584)
Total stockholders' equity	<u>41,088,258</u>	<u>52,058,389</u>
Total liabilities and stockholders' equity	<u>\$ 43,493,970</u>	<u>\$ 54,990,084</u>

	September 30, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 3,287,902	\$ 39,096,562
Restricted Cash	10,000,000	-
Marketable securities	34,627,782	9,848,804
Accounts receivable, net	143,990	510,071
Inventory, net	4,346,610	970,381
Prepaid expenses and other current assets	3,085,303	1,478,845
Total current assets	<u>55,491,588</u>	<u>51,904,663</u>
Property and equipment, net	3,499,299	2,192,337
Operating lease – right-of-use asset	716,957	819,401
Deposits and other assets	90,642	73,683
Total assets	<u>\$ 59,798,486</u>	<u>\$ 54,990,084</u>

LIABILITIES, MEZZANINE EQUITY AND STOCKHOLDERS' EQUITY			
Current liabilities:			
Accounts payable	\$	826,924	\$ 1,107,215
Accrued expenses		992,966	964,937
Current portion lease obligation – operating lease		192,170	165,767
Total current liabilities		2,012,060	2,237,919
Derivative liability		1,931,000	-
Warrant liability		20,065,440	-
Lease obligation - operating lease, net of current portion		552,728	693,776
Total liabilities		24,561,228	2,931,695
Commitments and contingencies			
MEZZANINE EQUITY			
Series H-7 Convertible redeemable preferred stock, (\$0.0001 par value and \$1,000 face value, 22,000 shares authorized; 22,000 shares issued and outstanding at September 30, 2023, and 0 shares at December 31, 2022, respectively). Liquidation preference of \$22,244,000 as of September 30, 2023		7,925,309	-
STOCKHOLDERS' EQUITY			
Preferred Stock, (authorized – 20,000,000 shares)		-	-
Convertible Preferred Stock Series H, (\$0.0001 par value; authorized – 8,500 shares; issued and outstanding – 8 shares as of September 30, 2023, and December 31, 2022, respectively)		-	-
Convertible Preferred Stock Series H-3, (\$0.0001 par value; authorized – 8,461 shares; issued and outstanding – 1,234 shares as of September 30, 2023, and December 31, 2022, respectively)		-	-
Convertible Preferred Stock Series H-6, (\$0.0001 par value; authorized – 50,000 shares; issued and outstanding – 50 shares as of September 30, 2023, and December 31, 2022, respectively)		-	-
Common Stock, \$0.0001 par value; authorized – 200,000,000 shares; issued and outstanding – 4,890,137 and 4,655,205 as of September 30, 2023 and December 31, 2022, respectively)		489	466
Additional paid-in capital		132,549,618	133,227,507
Accumulated deficit		(105,238,158)	(81,169,584)
Total stockholders' equity		27,311,949	52,058,389
Total liabilities, mezzanine equity and stockholders' equity	\$	59,798,486	\$ 54,990,084

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

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AYRO, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
Revenue	\$ 139,544	\$ 981,560	\$ 252,628	\$ 2,008,405
Cost of goods sold	332,027	2,827,512	551,820	4,004,657
Gross loss	<u>(192,483)</u>	<u>(1,845,952)</u>	<u>(299,192)</u>	<u>(1,996,252)</u>
Operating expenses:				
Research and development	2,405,398	1,046,797	4,535,388	1,912,204
Sales and marketing	420,861	337,226	1,138,953	1,182,042
General and administrative	3,247,731	2,741,700	6,091,047	5,446,627
Total operating expenses	<u>6,073,990</u>	<u>4,125,723</u>	<u>11,765,388</u>	<u>8,540,873</u>
Loss from operations	(6,266,473)	(5,971,675)	(12,064,580)	(10,537,125)
Other income (expense):				
Other income (expense), net	(9,166)	10,706	52,532	19,597
Interest income	117,278	-	261,638	-
Unrealized gain (loss) on marketable securities	146,935	(13,479)	198,215	(35,580)
Realized gain on marketable securities	8,193	-	73,193	-
Other income (expense), net	<u>263,240</u>	<u>(2,773)</u>	<u>585,578</u>	<u>(15,983)</u>
Net loss	<u>\$ (6,003,233)</u>	<u>\$ (5,974,448)</u>	<u>\$ (11,479,002)</u>	<u>\$ (10,553,108)</u>
Net loss per share, basic and diluted	<u>\$ (0.16)</u>	<u>\$ (0.16)</u>	<u>\$ (0.31)</u>	<u>\$ (0.29)</u>
Basic and diluted weighted average Common Stock outstanding	<u>37,476,845</u>	<u>36,982,436</u>	<u>37,398,555</u>	<u>36,945,240</u>

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

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AYRO, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(UNAUDITED)

Three and Six Months Ended June 30, 2023											
	Series H Preferred Stock		Series H-3 Preferred Stock		Series H-6 Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated (Deficit)	Total
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, January 1, 2023	8	\$ -	1,234	\$ -	50	\$ -	37,241,642	\$ 3,724	\$ 133,224,249	\$ (81,169,584)	\$ 52,058,389
Stock Based Compensation									20,116		20,116
Vesting of Restricted Stock							110,562	11	246,614		246,625
Net Loss										(5,475,769)	(5,475,769)
Balance, March 31, 2023	8	-	1,234	-	50	-	37,352,204	3,735	133,490,979	(86,645,353)	46,849,361
Stock Based Compensation									11,417		11,417
Vesting of Restricted Stock							183,897	18	230,695		230,713
Net Loss										(6,003,233)	(6,003,233)
Balance, June 30, 2023	8	-	1,234	-	50	-	37,536,101	\$ 3,753	\$ 133,733,091	\$ (92,648,586)	\$ 41,088,258
Three and Six Months Ended June 30, 2022											
	Series H Preferred Stock		Series H-3 Preferred Stock		Series H-6 Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated (Deficit)	Total
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, January 1, 2022	8	\$ -	1,234	\$ -	50	\$ -	36,866,956	\$ 3,687	\$ 131,654,776	\$ (58,234,231)	\$ 73,424,232
Stock Based Compensation									288,110		288,110
Vesting of Restricted Stock							43,000	4	329,377		329,381
Net Loss										(4,578,660)	(4,578,660)
Balance, March 31, 2022	8	-	1,234	-	50	-	36,909,956	3,691	132,272,263	(62,812,891)	69,463,063
Stock Based Compensation									303,553		303,553
Vesting of Restricted Stock							110,562	11	(11)		-
Net Loss										(5,974,448)	(5,974,448)
Balance, June 30, 2022	8	\$ -	1,234	\$ -	50	\$ -	37,020,518	\$ 3,702	\$ 132,575,805	\$ (68,787,339)	\$ 63,792,168

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

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AYRO, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

	Six Months Ended	
	June 30,	
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (11,479,002)	\$ (10,553,108)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	452,848	257,791
Loss on disposal of fixed asset	11,666	-
Stock-based compensation	508,869	591,663
Amortization of right-of-use asset	81,524	118,092
Bad debt expense	292,010	2,069
Unrealized (gain) loss on marketable securities	(198,215)	35,580
Realized (gain) on marketable securities	(73,193)	-
Impairment of inventory and prepaid	-	1,938,386
Change in operating assets and liabilities:		
Accounts receivable	113,906	(955,609)
Inventory	(2,079,590)	325,282
Prepaid expenses and other current assets	(1,790,987)	(785,762)
Accounts payable	(405,979)	164,809
Accrued expenses	(234,155)	(838,304)
Lease obligations - operating leases	(93,181)	(132,403)
Net cash used in operating activities	<u>(14,893,479)</u>	<u>(9,831,514)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(1,271,311)	(414,197)
Purchase of marketable securities, net	(9,343,804)	(18,006,486)
Purchase of intangible assets	(18,703)	(17,500)
Net cash used in investing activities	<u>(10,633,818)</u>	<u>(18,438,183)</u>
Net change in cash	(25,527,297)	(28,269,697)
Cash, beginning of period	<u>39,096,562</u>	<u>69,160,466</u>
Cash, end of period	<u>\$ 13,569,265</u>	<u>\$ 40,890,769</u>
Supplemental disclosure of cash and non-cash transactions:		
Accrued Fixed Assets	\$ 194,335	\$ -
Restricted Stock issued, previously accrued	\$ -	\$ 329,381

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Revenue	\$ 88,395	\$ 373,186	\$ 341,023	\$ 2,381,592
Cost of goods sold	231,837	955,003	783,656	4,959,660
Gross loss	<u>(143,441)</u>	<u>(581,817)</u>	<u>(442,633)</u>	<u>(2,578,068)</u>
Operating expenses:				
Research and development	1,335,167	1,837,510	5,870,555	3,749,714
Sales and marketing	390,684	384,748	1,529,637	1,566,790
General and administrative	4,370,684	3,000,156	10,461,733	8,446,785
Total operating expenses	<u>6,096,535</u>	<u>5,222,414</u>	<u>17,861,925</u>	<u>13,763,289</u>
Loss from operations	(6,239,976)	(5,804,231)	(18,304,558)	(16,341,357)
Other income(expense):				
Interest Income	35,557	51,792	370,387	71,389
Change in FV-Warrant Liability	(10,095,960)	-	(10,095,960)	-
Change in FV-Derivative Liability	3,216,000	-	3,216,000	-
Unrealized gain (loss) on marketable securities	403,996	(32,135)	602,211	(75,204)
Realized gain on marketable securities	90,812	103,000	143,344	110,490

Other income (expense), net	(6,349,596)	122,657	(5,764,018)	106,675
Net loss	(12,589,572)	(5,681,574)	(24,068,576)	(16,234,682)
Preferred stock dividends	(244,000)	-	(244,000)	-
Accretion of discounts to redemption value of H-7 convertible preferred stock	(1,165,635)	-	(1,165,635)	-
Deemed Dividend (Series H-5 warrants)	(199,000)	-	(199,000)	-
Net loss attributable to Common Stockholders	\$ (14,198,207)	\$ (5,681,574)	\$ (25,677,211)	\$ (16,234,682)
Net loss per share, basic and diluted	\$ (2.99)	\$ (1.23)	\$ (5.47)	\$ (3.51)
Basic and diluted weighted average Common Stock outstanding	4,744,229	4,636,829	4,698,104	4,624,437

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

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AYRO, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN MEZZANINE EQUITY AND STOCKHOLDERS' EQUITY
Three and Nine Months Ended September 30, 2023

	Series H-7 Preferred Stock		Series H Preferred Stock		Series H-3 Preferred Stock		Series H-6 Preferred Stock		Common Stock		Additional Paid-in	Accumulated	Total
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Capital	(Deficit)	
Balance, January 1, 2023	-	\$ -	8	\$ -	1,234	\$ -	50	\$ -	4,655,205	\$ 466	\$ 133,227,507	\$ (81,169,584)	\$ 52,058,389
Stock based compensation											20,116		20,116
Vested Restricted Stock									13,858	1	246,624		246,625
Net Loss												(5,475,769)	(5,475,769)
Balance, March 31, 2023	-	-	8	-	1,234	-	50	-	4,669,063	467	133,494,247	(86,645,353)	46,849,361
Stock based compensation											11,417		11,417
Vested Restricted Stock									23,568	2	230,711		230,713
Net Loss												(6,003,233)	(6,003,233)
Balance, June 30, 2023	-	-	8	-	1,234	-	50	-	4,692,632	469	133,736,375	(92,648,586)	41,088,258
Sale of preferred shares													
Issuance of convertible preferred stock, net of discounts and transaction costs	22,000	6,515,674											
Issuance of rounded shares as a result of the reverse stock split.									173,530	17	(17)		
Dividends (Accrued Series H-7 Preferred)		244,000										(244,000)	(244,000)
Deemed Dividend (Series H-5 warrants)													
Accretion of discounts to redemption value of H-7 convertible preferred stock		1,165,635										(1,165,635)	(1,165,635)
Stock based compensation											15,165		15,165
Vested Restricted Stock									23,975	3	207,730		207,733
Net Loss												(12,589,572)	(12,589,572)
Balance, September 30, 2023	22,000	\$ 7,925,309	8	\$ -	1,234	\$ -	50	\$ -	4,890,137	\$ 489	\$ 132,549,618	\$ (105,238,158)	\$ 27,311,949

Three and Nine Months Ended September 30, 2022

	Series H-7 Preferred Stock		Series H Preferred Stock		Series H-3 Preferred Stock		Series H-6 Preferred Stock		Common Stock		Additional	Accumulated	Total
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Paid-in Capital	(Deficit)	
Balance, January 1, 2022	-	\$ -	8	\$ -	1,234	\$ -	50	\$ -	4,608,370	\$ 461	\$ 131,658,002	\$ (58,234,231)	\$ 73,424,232
Stock based compensation											288,110		288,110
Vested Restricted Stock									5,375	1	329,380		329,381
Net Loss												(4,578,660)	(4,578,660)
Balance at March 31, 2022	-	-	8	-	1,234	-	50	-	4,613,745	462	132,275,492	(62,812,891)	69,463,063
Stock based compensation											303,553		303,553
Vested Restricted Stock									13,820	1	(1)		-
Net Loss												(5,974,448)	(5,974,448)
Balance, June 30, 2022	-	-	8	-	1,234	-	50	-	4,627,565	463	132,579,044	(68,787,339)	63,792,168
Stock based compensation											332,181		332,181
Vested Restricted Stock									13,858	1	(1)		-
Net Loss												(5,681,574)	(5,681,574)
Balance, September 30, 2022	-	\$ -	8	\$ -	1,234	\$ -	50	\$ -	4,641,423	\$ 464	\$ 132,911,224	\$ (74,468,913)	\$ 58,442,775

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

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AYRO, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CASH FLOWS
(UNAUDITED)

Nine Months Ended
September 30,

	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (24,068,576)	\$ (16,234,682)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	781,852	442,890
Stock-based compensation	731,768	923,844
Change in FV-Derivative Liability	(3,216,000)	-
Change in FV-Warrant Liability	10,095,960	-
Amortization of right-of-use asset	123,885	155,308
Bad debt expense	292,010	2,136
Unrealized gain on marketable securities	(602,211)	75,204
Realized gain on marketable securities	(143,344)	(110,490)
Impairment of inventory and prepaid	-	2,351,947
Change in operating assets and liabilities:		
Accounts receivable	74,072	510,922
Inventory	(3,376,229)	462,025
Prepaid expenses and other current assets	(1,606,457)	(1,430,565)
Deposits and other assets	(500)	18,798
Accounts payable	(280,291)	516,347
Accrued expenses	28,029	(473,953)
Lease obligations - operating leases	(136,086)	(168,935)
Net cash used in operating activities	<u>(21,302,119)</u>	<u>(12,959,204)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(2,076,070)	(970,557)
Change in marketable securities	(24,033,422)	(15,755,310)
Purchase of intangible assets	(29,204)	(46,546)
Net cash used in by investing activities	<u>(26,138,696)</u>	<u>(16,772,413)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from private placement of preferred stock, net of transaction costs	21,632,156	-
Net cash provided by financing activities	<u>21,632,156</u>	<u>-</u>
Net change in cash, cash equivalents and restricted cash	(25,808,660)	(29,731,616)
Cash, cash equivalents and restricted cash, beginning of period	<u>39,096,562</u>	<u>69,160,466</u>
Cash, cash equivalents and restricted cash, end of period	<u>\$ 13,287,902</u>	<u>\$ 39,428,850</u>
Supplemental disclosure of cash and non-cash transactions:		
Accrual of Series H-7 Convertible Preferred Stock Dividends	\$ 244,000	\$ -
Restricted Stock issued previously accrued	\$ -	\$ 329,381
Initial fair value of warrant liability	\$ 9,969,480	\$ -
Initial fair value of derivative liability	\$ 5,147,000	\$ -
Deemed Dividend H-5 Warrants	\$ 199,000	\$ -
Accretion of discounts to redemption value of H-7 convertible preferred stock	\$ 1,165,635	\$ -
Accrued fixed assets	\$ -	\$ 193,053
Supplemental disclosure of restricted cash:		
Cash and cash equivalents	\$ 3,287,902	\$ 39,428,850
Restricted Cash	<u>\$ 10,000,000</u>	<u>\$ -</u>
Total cash, cash equivalents and restricted cash	<u>\$ 13,287,902</u>	<u>\$ 39,428,850</u>

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

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AYRO, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

NOTE 1. ORGANIZATION AND NATURE OF OPERATIONS

AYRO, Inc. ("AYRO" or the "Company"), a Delaware corporation formerly known as DropCar, Inc. ("DropCar"), a corporation headquartered outside Austin, Texas, is the merger successor discussed below of AYRO Operating Company, Inc. ("AYRO Operating"), which was formed under the laws of the State of Texas on May 17, 2016 as Austin PRT Vehicle, Inc. and subsequently changed its name to Austin EV, Inc. under an Amended and Restated Certificate of Formation filed with the State of Texas on March 9, 2017. On July 24, 2019, the Company changed its name to AYRO, Inc. and converted its corporate domicile to Delaware. The Company was founded on the basis of promoting resource sustainability. The Company, and its wholly owned subsidiaries, are principally engaged in manufacturing and sales of environmentally conscious, minimal-footprint electric vehicles. The all-electric vehicles are typically sold both directly to customers and to dealers in the United States.

Reverse Stock Split

On September 15, 2023, the Company effected a one-for-eight reverse stock split of the Company's common stock (the "Reverse Stock Split"). All share and per share information in this quarterly report have been retroactively adjusted to reflect the Reverse Stock Split.

Strategic Review

Following the hiring of the Company's current Chief Executive Officer in the third quarter of 2021, AYRO initiated a strategic review of its product development strategy, as AYRO focused on creating value within the electric vehicle, last-mile delivery, smart payload and enabling infrastructure markets. In connection with the strategic review by the Company, AYRO cancelled development of its planned next-generation three-wheeled high-speed vehicle.

For the past several years, AYRO's primary supplier has been Cenntro Automotive Group, Ltd. ("Cenntro"), which operates a large electric vehicle factory in the automotive district in Hangzhou, China. As a result of rising shipping costs, quality issues with certain components and persistent delays, the Company ceased production of the AYRO 411x from Cenntro in September 2022 in order to focus its resources on the development and launch of the new 411 fleet vehicle model year 2023 refresh (the "Vanish").

In December of 2021, the Company began research and development on the Vanish, including updates on its supply chain evolution, offshoring/onshoring mix, manufacturing strategy, and annual model year refresh program. The Company commenced low-rate initial production of the Vanish in the second quarter of 2023 and commenced initial sales and delivery of the Vanish in the third quarter of 2023.

NOTE 2. LIQUIDITY AND OTHER UNCERTAINTIES

Liquidity and Other Uncertainties

The unaudited condensed consolidated financial statements have been prepared in conformity with generally accepted accounting principles in the United States ("GAAP"), which contemplates continuation of the Company as a going concern. The Company is subject to a number of risks similar to those of earlier stage commercial companies, including dependence on key individuals and products, the difficulties inherent in the development of a commercial market, the potential need to obtain additional capital, competition from larger companies, other technology companies and other technologies. The Company has a limited operating history and the sales and income potential of its business and market are unproven. The Company incurred net losses of \$11,479,002 24,068,576 for the six nine months ended June 30, 2023 September 30, 2023, and negative cash flows from operations of \$14,893,479 21,302,119 for the six nine months ended June 30, 2023 September 30, 2023. On June 30, 2023 September 30, 2023, the Company had cash balances and cash equivalents totaling \$13,569,265 3,287,902 and marketable securities of \$19,464,015 34,627,782 and restricted cash of \$10,000,000. In addition, overall working capital decreased increased by \$12,013,869 3,812,783 during the six nine months ended June 30, 2023 September 30, 2023. Management believes that the existing cash, cash equivalents and marketable securities as of June 30, 2023 September 30, 2023, will be sufficient to fund operations for at least the next twelve months following the issuance of these unaudited condensed consolidated financial statements. Additionally, on

On August 7, 2023, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement"), pursuant to which it agreed to sell to certain existing investors (the "Investors") in a private placement (the "Private Placement") (i) an aggregate of 22,000 shares of the Company's newly designated Series H-7 convertible preferred stock, par value \$0.0001 per share, with a stated value of \$1,000 per share ("Series H-7 Preferred Stock" Shares), and (ii) warrants (the "Warrants") initially exercisable for up to an aggregate of 2,750,000 shares of common stock. The Company raised approximately gross proceeds of \$22 million from the sale, which closed on August 10, 2023.

The certificate of designations for the Series H-7 Preferred Shares (the "Certificate of Designations") contains certain restrictive provisions, including (i) a requirement to maintain unencumbered, unrestricted cash and cash equivalents on hand in an amount equal to (a) until December 31, 2023, at least \$20,000,000 plus the net proceeds from the sale of the Series H-7 Preferred Shares pursuant to the Purchase Agreement, and (b) from January 1, 2024 and until an aggregate of eighty percent (80%) of the Series H-7 Preferred Shares have been converted into shares of common stock, at least \$21,000,000, and (ii) a requirement to deposit an amount equal to \$10,000,000 from the Private Placement proceeds into a newly established segregated deposit account of the Company ("Segregated Cash"), and to use such Segregated Cash solely for the purpose of performing the Company's monetary obligations to the holders of the Series H-7 Preferred Shares, provided, however, that the Company may use the Segregated Cash for any purpose, including general corporate purposes, with the prior written consent of holders of at least 75% of the outstanding Series H-7 Preferred Shares. As of September 30, 2023, the Company was not in compliance with the restrictive provisions discussed above. The Company has regained compliance subsequent to September 30, 2023.

The Purchase Agreement contains certain representations and warranties, covenants, and indemnities customary for similar transactions. The representations, warranties and covenants contained in the Purchase Agreement were made solely for the benefit of the parties to the Purchase Agreement and may be subject to limitations agreed upon by the contracting parties. Among other covenants, the Purchase Agreement requires the Company to hold a meeting of its stockholders no later than November 5, 2023, to seek approval under Nasdaq Stock Market Rule 5635(d) (the "Stockholder Approval") for the issuance of shares of common stock at prices below the "Minimum Price" (as defined in Rule 5635 of the Rules of the Nasdaq Stock Market) on the date of the Purchase Agreement pursuant to the terms of the Preferred Stock and the Warrants. Such Stockholder Approval was obtained at a Special Meeting held on September 14, 2023.

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The Company may experience increases in the cost or a sustained interruption in the supply or shortage of raw materials, including lithium-ion battery cells, semiconductors, and integrated circuits. Any such increase or supply interruption could materially and negatively impact the Company's business, prospects, financial condition, and operating results. Currently, the Company is experiencing supply chain shortages, including with respect to lithium-ion battery cells, integrated circuits, vehicle control chips, and displays. Certain production-ready components may be delayed in shipment to Company facilities which has and may continue to cause delays in validation and testing for these components, which would in turn create a delay in the availability of saleable vehicles.

The Company uses various raw materials, including aluminum, steel, carbon fiber, non-ferrous metals (such as copper), and cobalt. The prices for these raw materials fluctuate depending on market conditions, and global demand and could adversely affect business and operating results. For instance, the Company is exposed to multiple risks relating to price fluctuations for lithium-ion cells. These risks include:

- the inability or unwillingness of current battery manufacturers to build or operate battery cell manufacturing plants to supply the numbers of lithium-ion cells required to support the growth of the electric vehicle industry as demand for such cells increases;
- disruption in the supply of cells due to quality issues or recalls by the battery cell manufacturers; and
- an increase in the cost of raw materials, such as cobalt, used in lithium-ion cells.

Any disruption in the supply of lithium-ion battery cells, semiconductors, or integrated circuits could temporarily disrupt production of the Company's vehicles until a different supplier is fully qualified. Moreover, battery cell manufacturers may refuse to supply electric vehicle manufacturers if they determine that the vehicles are not sufficiently safe. Furthermore, fluctuations or shortages in petroleum and other economic conditions may cause the Company to experience significant increases in freight charges and raw material costs. Substantial increases in the prices for our raw materials would increase operating costs and could reduce our margins if the increased costs cannot be recouped through increased electric vehicle prices. There can be no assurance that the Company will be able to recoup the increasing costs of raw materials by increasing vehicle prices.

We have made certain indemnities, under which we may be required to make payments to an indemnified party, in relation to certain transactions. We indemnify our directors and officers to the maximum extent permitted under the laws of the State of Delaware. In connection with our facility leases, we have indemnified our lessors for certain claims arising from the use of the facilities. The duration of the indemnities vary and, in many cases, are indefinite. These indemnities do not provide for any limitation of the maximum potential future payments we could be obligated to make. Historically, we have not been obligated to make any payments for these obligations and no liabilities have been recorded for these indemnities.

On October 3, 2022, the Company received a letter from the Listing Qualifications Department of the Nasdaq Stock Market ("Nasdaq") indicating that, based upon the closing bid price of the Company's common stock for the 30 consecutive business day period between August 19, 2022 and September 30, 2022, the Company did not meet the minimum bid price of \$1.00 per share required for continued listing on The Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement"). The letter also indicated that the Company will be provided with a compliance period of 180 calendar days, or until April 3, 2023 (the "Initial Compliance Period"), in which to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A).

On April 4, 2023, the Company received a letter from Nasdaq notifying the Company that the Company has been granted an additional 180-day period, or until October 2, 2023, to regain compliance with the Minimum Bid Price Requirement. The new compliance period is an extension of the Initial Compliance Period provided for in Nasdaq's deficiency notice to the Company dated October 3, 2022. Nasdaq's determination was based on the Company meeting the continued listing requirement for market value of publicly held shares and all other applicable requirements for initial listing on the Nasdaq Capital Market, with the exception of the Minimum Bid Price Requirement, and the Company's written notice of its intention to cure the deficiency during the second compliance period by effecting a reverse stock split, if necessary.

Management's plan to regain compliance with the Minimum Bid Price Requirement is to seek stockholder approval for, and to file, an amendment to the Company's amended and restated certificate of incorporation ("Certificate of Incorporation") to effect a reverse stock split of the Company's common stock at a ratio of 1-for-2 to 1-for-10 with the exact ratio within such range to be determined by the Company's board of directors at its discretion (the "Reverse Stock Split Amendment"). On August 8, 2023, the Company filed a preliminary proxy statement in connection with a special meeting of the Company's stockholders to be held on September 14, 2023 for the purpose of approving, among other things, the Reverse Stock Split Amendment.

If compliance with the Minimum Bid Price Requirement cannot be demonstrated by October 2, 2023, Nasdaq will provide written notification that the Company's common stock could be delisted. In such an event, Nasdaq rules permit the Company to appeal any delisting determination to a Nasdaq Hearings Panel. Accordingly, there can be no assurance that the Company will be able to regain compliance with the Nasdaq listing rules or maintain its listing on Nasdaq.

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NOTE 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation

The unaudited condensed consolidated financial statements represent the consolidation of the accounts of the Company and its subsidiary in conformity with GAAP. All intercompany accounts and transactions have been eliminated in consolidation.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with GAAP accounting principles generally accepted in the United States ("GAAP") for interim financial reporting and in conformity with the instructions on to Form 10-Q and Rule 8-03 Article 10 of Regulation S-X and S-X. In the related rules and regulations opinion of management, the Securities and Exchange Commission ("SEC").

The unaudited condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation. The unaudited condensed consolidated financial statements reflect included herein contain all adjustments consisting necessary to present fairly the Company's financial position and the results of its operations and cash flows for the interim periods presented. Such adjustments are of a normal recurring accruals, which are, in the opinion of management, necessary for a fair presentation of such statements. nature. The results of operations for the three and six nine months ended June 30, 2023 September 30, 2023, are may not necessarily be indicative of the results that may be expected for the entire full year. These unaudited condensed consolidated financial statements should be read in conjunction with the consolidated audited financial statements and the accompanying notes to those statements for the fiscal year ended December 31, 2022, which are included in the Company's Annual Report on Form 10-K filed with the SEC on March 23, 2023, as amended on May 1, 2023.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements, in conformity with GAAP, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the unaudited consolidated financial statements, and the reported amounts of revenue and expenses during the reporting period.

The Company's most significant estimates include marketable securities, revenue recognition, and the measurement of stock-based compensation expenses, expenses, fair value measurements of warrant and derivative liabilities and accretion of preferred stock. Actual results could differ from these estimates.

Restricted Cash

As of September 30, 2023, cash of \$10 million was restricted in accordance with the Certificate of Designations. See Note 2, above.

Marketable Securities

Marketable securities include investment in fixed income bonds and U.S. Treasury securities that are considered to be highly liquid and easily tradeable. The marketable securities are considered trading securities and are measured at fair value and are accounted for in accordance with ASC 320. The marketable securities are valued using inputs observable in active markets for identical securities and are therefore classified as Level 1 within the Company's fair value hierarchy. The Company held \$19,464,015, 34,627,782 and \$9,848,804 in marketable securities as of June 30, 2023, September 30, 2023, and December 31, 2022, respectively.

Revenue Recognition

The Company recognizes revenue in accordance with ASC 606, *Revenue from Contracts with Customers*, the core principle of which is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to receive in exchange for those goods or services.

To achieve this core principle, five basic criteria must be met before revenue can be recognized: (1) identify the contract with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to performance obligations in the contract; and (5) recognize revenue when or as the Company satisfies a performance obligation.

Nature of goods and services

The following is a description of the Company's products and services from which the Company generates revenue, as well as the nature, timing of satisfaction of performance obligations, and significant payment terms for each:

Product revenue

Product revenue from customer contracts is recognized on the sale of each electric vehicle as vehicles are shipped to customers. The majority of the Company's vehicle sales orders generally have only one performance obligation: sale and delivery of complete vehicles. Ownership and risk of loss transfers to the customer based on FOB shipping point and freight charges are the responsibility of the customer. Revenue is typically recognized at the point control transfers or in accordance with payment terms customary to the business. The Company provides product warranties to assure that the product assembly complies with agreed upon specifications. The Company's product warranty is similar in all material respects to the product warranties provided by the Company's suppliers, therefore minimizing the warranty liability to the standard labor rates associated with the defective part replacement. Customers do not have the option to purchase a warranty separately; as such, warranty is not accounted for as a separate performance obligation. The Company's policy is to exclude taxes collected from a customer from the transaction price of automotive contracts.

Shipping revenue

Amounts billed to customers related to shipping and handling are classified as shipping revenue. The Company has elected to recognize the cost for freight and shipping when control over vehicles has transferred to the customer as an operating expense. The Company has reported shipping expenses of \$20,768,15,148 and \$145,496,79,767 for the three months ended June 30, 2023, September 30, 2023, and 2022 and \$41,334,56,482 and \$256,045,335,812 for the six nine months ended June 30, 2023, September 30, 2023, and 2022 respectively, included in General and Administrative Expenses.

Services and other revenue

Services and other revenue consist of non-warranty after-sales vehicle services. Revenue is typically recognized at a point in time when services and replacement parts are provided.

Miscellaneous income

Miscellaneous income consists of late fees charged for receivables not paid within the terms of the customer agreement based upon the outstanding customer receivable balance. This revenue is earned when a customer's receivable balance becomes delinquent, and its collection is reasonably assured and is calculated using a stated late fee rate multiplied by the outstanding balance that is subject to a late fee charge.

Derivative Financial Instruments

The Company evaluates all its financial instruments to determine if such instruments contain features that qualify as embedded derivatives. Embedded derivatives must be separately measured from the host contract if all the requirements for bifurcation are met. The assessment of the conditions surrounding the bifurcation of embedded derivatives depends on the nature of the host contract. Bifurcated embedded derivatives are recognized at fair value, with changes in fair value recognized in the statement of operations each period. Bifurcated embedded derivatives are classified with the related host contract in the Company's balance sheet. These particular derivatives are assessed under ASC 480 and ASC 815.

Fair Value Measurements

In accordance with ASC 820 (Topic 820, Fair Value Measurements and Disclosures), the company uses a three-level hierarchy for fair value measurements of certain assets and liabilities for financial reporting purposes that distinguishes between market participant assumptions developed from market data obtained from outside sources (observable inputs) and our own assumptions about market participant assumptions developed from the best information available to us in the circumstances (unobservable inputs). The fair value hierarchy is divided into three levels based on the source of inputs as follows:

- Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets;
- Level 2 - inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability other than quoted prices, either directly or indirectly including inputs in markets that are not considered to be active; and
- Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement.

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Categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718, Compensation-Stock Compensation. The Company recognizes all employee and non-employee share-based compensation as an expense in the financial statements on a straight-line basis over the requisite service period, based on the terms of the awards. Equity-classified awards principally related to stock options, restricted stock awards ("RSAs") and equity-based compensation, are measured at the grant date fair value of the award. The Company determines grant date fair value of stock option awards using the Black-Scholes option-pricing model. The fair value of RSAs is determined using the closing price of the Company's common stock on the grant date. For service based vesting grants, expense is recognized ratably over the requisite service period based on the number of options or shares. For value-based vesting grants, expense is recognized via straight line expense over the expected period per grant as determined by outside valuation experts. Stock-based compensation is reversed for forfeitures in the period of forfeiture.

The Company estimates the fair value of stock-based and cash unit awards containing a market condition using a Monte Carlo simulation model. Key inputs and assumptions used in the Monte Carlo simulation model include the stock price of the award on the grant date, the expected term, the risk-free interest rate over the expected term, the expected annual dividend yield, and the expected stock price volatility. The expected volatility is based on a combination of the historical and implied volatility of the Company's publicly traded, near-the-money stock options, and the valuation period is based on the vesting period of the awards. The risk-free interest rate is derived from the U.S. Treasury yield curve in effect at the time of grant and, since the Company does not currently pay or plan to pay a dividend on its common stock, the expected dividend yield was zero.

Stock options and warrants issued as compensation for services provided to the Company are accounted for based upon the fair value of the underlying equity instrument. The attribution of the fair value of the equity instrument is charged directly to compensation expense over the period during which services are rendered.

Basic and Diluted Loss Per Share

Basic and diluted net loss per share is determined by dividing net loss by the weighted average ordinary shares outstanding during the period. For all periods presented with a net loss, the shares underlying the ordinary share options and warrants have been excluded from the calculation because their effect would be anti-dilutive. Therefore, the weighted-average shares outstanding used to calculate both basic and diluted loss per share is the same for periods with a net loss.

The following In accordance with ASC 260, warrants that are accounted for as liabilities which are potentially dilutive securities have not been excluded from the computation of included in diluted weighted average shares outstanding earnings per share as they would be anti-dilutive; have been anti-dilutive during the three and nine months ended September 30, 2023.

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The following potentially dilutive securities have been excluded from the computation of diluted weighted average shares outstanding as they would be anti-dilutive:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
	Options to purchase common stock	38,696	98,178	38,696
Restricted stock unvested	116,293	96,353	116,293	96,353
Warrants outstanding	11,605,759	763,253	11,605,759	763,253
Preferred stock outstanding	11,122,696	309	11,122,696	309
Totals	22,883,444	958,093	22,883,444	958,093

Recent Accounting Pronouncements

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	Options to purchase common stock	732,422	788,546	732,422
Restricted stock unvested	1,120,502	781,686	1,120,502	781,686
Restricted stock vested - unissued	6,269	-	6,269	-
Warrants outstanding	5,969,595	6,106,023	5,969,595	6,106,023
Preferred stock outstanding	2,475	2,475	2,475	2,475
Total	7,831,263	7,678,730	7,831,263	7,678,730

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-06, which reduces the number of accounting models for convertible instruments, amends diluted earnings per share calculations for convertible instruments and allows more contracts to qualify for equity classification. ASU 2020-06 was effective for interim and annual periods beginning after December 15, 2021. The Company adopted ASU 2020-06 as of January 1, 2023. The adoption did not result in a material change to these unaudited condensed consolidated financial statements.

Inflation Risk

The Company does not believe that inflation has had a material effect on its business, financial condition, or results of operations. If costs were to become subject to significant inflationary pressures, the Company may not be able to fully offset such higher costs through price increases. The Company's inability or failure to do so could harm the business, financial condition, and results of operations.

NOTE 4. REVENUES

Disaggregation of Revenue

Revenue by type was as follows:

Revenue type	2023		2022		2023		2022	
	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022	2023	2022	2023	2022
Product revenue	\$ 127,106	\$ 918,808	\$ 247,388	\$ 1,838,150	\$ 80,475	\$ 332,792	\$ 327,863	\$ 2,170,943
Shipping revenue	12,438	22,752	(4,150)	130,255	7,920	35,507	3,770	165,762
Miscellaneous income	-	40,000	9,390	40,000	-	4,887	9,390	44,887
Total Revenue	\$ 139,544	\$ 981,560	\$ 252,628	\$ 2,008,405	\$ 88,395	\$ 373,186	\$ 341,023	\$ 2,381,592

Warranty Reserve

The Company records a reserve for warranty repairs upon the initial delivery of vehicles to its dealer network. The Company provides a product warranty on each vehicle including powertrain, battery pack and electronics package. Such warranty matches the product warranty provided by its supply chain for warranty parts for all unaltered vehicles and is not considered a separate performance obligation. The supply chain warranty does not cover warranty-based labor needed to replace a part under warranty. Warranty reserves include management's best estimate of the projected cost of labor to repair/replace all items under warranty. The Company reserves a percentage of all dealer-based sales to cover an industry-standard warranty fund to support dealer labor warranty repairs. Such percentage is recorded as a component of cost of revenues in the statement of operations. As of [June 30, 2023](#), [September 30, 2023](#), and December 31, 2022, warranty reserves were recorded within accrued expenses of \$395,071 and \$410,017, respectively.

NOTE 5. ACCOUNTS RECEIVABLE, NET

Accounts receivable, net, consists of amounts due from invoiced customers and product deliveries and were as follows:

	June 30,		December 31,		September 30,		December 31,	
	2023		2022		2023		2022	
	Trade receivables	\$ 104,155	\$ 512,420	\$ 143,990	\$ 512,420	\$ 143,990	\$ 512,420	\$ 512,420
Less: Allowance for doubtful accounts	-	(2,349)	-	(2,349)	-	(2,349)	(2,349)	

Accounts receivable, net	\$ 104,155	\$ 510,071	\$ 143,990	\$ 510,071
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The Company reduced allowance for doubtful accounts by \$2,349 for the three and six nine months ended June 30, 2023 September 30, 2023, and recorded \$292,010 of bad debt expense due to direct write off balances due from Club Car, LLC ("Club Car") for the six nine months ended June 30, 2023 September 30, 2023. The Company recorded \$2,069 2,136 of bad debt expense for the three and six nine months ending June 30, 2022 ended September 30, 2022.

NOTE 6. INVENTORY

Inventory consisted of the following:

	June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
Raw materials	\$ 2,481,859	\$ 330,931	\$ 3,889,979	\$ 330,931
Work-in-progress	-	-	-	-
Finished goods	568,113	639,450	456,631	639,450
Total	\$ 3,049,972	\$ 970,381	\$ 4,346,610	\$ 970,381

For the three months ended June 30, 2023 September 30, 2023, and 2022, depreciation for fleet inventory was \$0 and \$23,883 23,886, and for the six nine months ended June 30, 2023 September 30, 2023, and 2022, was \$0 and \$47,775 71,661, respectively.

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NOTE 7. PREPAID EXPENSES AND OTHER CURRENT ASSETS

	June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
Prepayments for inventory	\$ 2,603,057	\$ 1,174,466	\$ 2,623,760	\$ 1,174,466
Prepayments for insurance	274,724	118,434	222,006	118,434
Prepayments on advances on design	101,815	75,000	-	75,000
Prepayments on software	190,333	103,851	150,468	103,851
Prepaid other	99,902	7,094	89,069	7,094
Total Prepaid Expenses and Other Current Assets	<u>\$ 3,269,831</u>	<u>\$ 1,478,845</u>	<u>\$ 3,085,303</u>	<u>\$ 1,478,845</u>

NOTE 8. PROPERTY AND EQUIPMENT, NET

Property and equipment consisted of the following:

	June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
Computer and equipment	\$ 3,211,535	\$ 1,970,001	\$ 3,639,357	\$ 1,970,001
Furniture and fixtures	395,705	323,789	395,705	323,789
Lease improvements	1,093,481	952,952	1,275,050	952,952
Computer software	455,875	455,875	468,575	455,875
Property and equipment, gross	5,156,596	3,702,617	5,778,687	3,702,617
Less: Accumulated depreciation	(1,955,336)	(1,510,280)	(2,279,388)	(1,510,280)
Property and equipment, net	<u>\$ 3,201,260</u>	<u>\$ 2,192,337</u>	<u>\$ 3,499,299</u>	<u>\$ 2,192,337</u>

Depreciation expense for the three months ended June 30, 2023, September 30, 2023, and 2022 was \$254,160, \$324,052 and \$98,913, \$151,980, and for the six nine months ended June 30, 2023, September 30, 2023, and 2022 was \$444,966, \$769,108 and \$183,405, \$335,385, respectively. The company recorded a loss on disposal for fixed assets of \$11,666 for the three and six months ending June 30, 2023.

NOTE 9. ACCRUED EXPENSES

	June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
Accrued professional and consulting fees	\$ 122,964	\$ 410,711	\$ 97,900	\$ 410,711
Accrued payroll	392,079	6,000	464,166	6,000
Accrued warranty reserve	395,071	410,017	395,071	410,017
Accrued expenses other	-	138,209	35,829	138,209
Total accrued expenses	<u>\$ 910,114</u>	<u>\$ 964,937</u>	<u>\$ 992,966</u>	<u>\$ 964,937</u>

NOTE 10. STOCKHOLDERS' EQUITY*Restricted Stock*

On February 1, 2023, pursuant to the AYRO, Inc. 2020 Long-Term Incentive Plan, the Company granted 760,668, 95,087 shares of restricted stock to non-executive directors at a value of \$0.75, \$6.00 per share. During the six nine months ended June 30, 2023, September 30, 2023, 183,897, 47,542 were vested and an equal number of shares of common stock were issued.

On February 1, 2022, pursuant to the AYRO, Inc. 2020 Long-Term Incentive Plan, the Company issued 442,249, 55,282 shares of restricted stock to non-executive directors at a value of \$1.29, \$10.32 per share. As of December 31, 2022, 110,562, 13,858 shares of common stock remained unissued; these shares were issued during the six nine months ended June 30, 2023, September 30, 2023.

On February 24, 2021, pursuant to the AYRO, Inc. 2020 Long-Term Incentive Plan, the Company issued 172,000, 21,500 shares of restricted stock to non-executive directors at a value of \$7.66, \$61.28 per share. As of December 31, 2021, 43,000, 5,375 shares of common stock remained unissued; these shares were issued during the six nine months ended June 30, 2022, September 30, 2022.

Share Increase Amendment

On September 14, 2023, the Company amended its certificate of incorporation to increase the number of authorized shares of common stock from 100,000,000 to 200,000,000 and made a corresponding change to the number of authorized shares of capital stock, effective September 15, 2023.

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Series H Convertible Preferred Stock

Number of Series H Preferred Stock outstanding as of June 30, 2023		8	
Number of Series H Preferred Stock outstanding as of September 30, 2023			8
Multiplied by the stated value	\$	154	\$ 154
Equals the gross stated value	\$	1,232	\$ 1,232
Divided by the conversion price	\$	184.8	\$ 1,478.40
Equals the convertible shares of Company Common Stock		7	1
Multiplied by the fair market value of Company Common Stock as of June 30, 2023	\$	0.68	
Multiplied by the fair market value of Company Common Stock as of September 30, 2023			\$ 2.34
Equals the payment	\$	5	\$ 2

Series H-3 Convertible Preferred Stock

Number of Series H-3 Preferred Stock outstanding as of June 30, 2023		1,234	
Number of Series H-3 Preferred Stock outstanding as of September 30, 2023			1,234
Multiplied by the stated value	\$	138	\$ 138
Equals the gross stated value	\$	170,292	\$ 170,292
Divided by the conversion price	\$	165.6	\$ 1,324.80
Equals the convertible shares of Company Common Stock		1,028	129
Multiplied by the fair market value of Company Common Stock as of June 30, 2023	\$	0.68	
Multiplied by the fair market value of Company Common Stock as of September 30, 2023			\$ 2.34
Equals the payment	\$	699	\$ 302

Series H-6 Convertible Preferred Stock

Number of Series H-6 Preferred Stock outstanding as of June 30, 2023		50	
Multiplied by the stated value	\$	72	
Equals the gross stated value	\$	3,600	
Divided by the conversion price	\$	2.5	
Equals the convertible shares of Company Common Stock		1,440	
Multiplied by the fair market value of Company Common Stock as of June 30, 2023	\$	0.68	
Equals the payment	\$	979	
Number of Series H-6 Preferred Stock outstanding as of September 30, 2023		50	
Multiplied by the stated value	\$	72	
Equals the gross stated value	\$	3,600	
Divided by the conversion price	\$	5.76	
Equals the convertible shares of Company Common Stock		6.25	
Multiplied by the fair market value of Company Common Stock as of September 30, 2023	\$	2.34	
Equals the payment	\$	1,053	

August 2023 Private Placement

On August 7, 2023, the Company entered into the Purchase Agreement with the Investors, pursuant to which it agreed to sell to the Investors (i) an aggregate of 22,000 Series H-7 Preferred Shares with a stated value of \$1,000 per share, initially convertible into up to 2,750,000 shares of the Company's common stock at a conversion price of \$8.00 per share, and (ii) Warrants initially exercisable for up to an aggregate of 2,750,000 shares of common stock in the Private Placement.

In connection with the Private Placement, pursuant to an Engagement Letter, dated August 7, 2023, between the Company and Palladium Capital Group, LLC (the "Placement Agent"), the Company agreed to pay the Placement Agent (i) a cash fee equal to 6% of the gross proceeds from any sale of securities in the Private Placement and (ii) warrants ("Placement Agent Warrants," and together with the Investor Warrants, the "Warrants") to purchase shares of common stock equal to 2% of the number of shares of common stock that the Preferred Shares are initially convertible into, with an initial exercise price of \$8.00 per share (subsequently reduced to \$2.00 per share pursuant to a Stock Combination Event Adjustment following the Reverse Stock Split) and a five-year term.

The Series H-7 Preferred Shares are convertible into common stock (the "Conversion Shares") at the election of the holder at any time at an initial conversion price of \$8.00 (the "Conversion Price"). The Conversion Price is subject to adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment in the event of any issuances of common stock, or securities convertible, exercisable or exchangeable for common stock, at a price below the then-applicable Conversion Price (subject to certain exceptions). The Company will be required to redeem the Series H-7 Preferred Shares in 12 equal monthly installments, commencing on various dates, at the option of each Investor, between February 7, 2024, and August 7, 2025. The amortization payments due upon such redemption are payable, at the Company's election, in cash at 105% of the Installment Redemption Amount (as defined in the Certificate of Designations), or subject to certain limitations, in shares of common stock valued at the lower of (i) the Conversion Price then in effect and (ii) the greater of (A) 80% of the average of the three lowest closing prices of the Company's common stock during the thirty consecutive trading day period immediately prior to the date the amortization payment is due and (B) \$0.0744 (subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events) or, in any case, such lower amount as permitted, from time to time, by the Nasdaq Stock Market. The holders of the Series H-7 Preferred Shares have the option to defer amortization payments or, subject to certain limitations as specified in the Certificate of Designations, can elect to accelerate installment conversion amounts.

The holders of the Series H-7 Preferred Shares are entitled to dividends of 8.0% per annum, compounded monthly, which are payable in cash or shares of common stock at the Company's option, in accordance with the terms of the Certificate of Designations. Upon the occurrence and during the continuance of a Triggering Event (as defined in the Certificate of Designations), the Series H-7 Preferred Shares will accrue dividends at the rate of 15% per annum. Upon conversion or redemption, the holders of the Series H-7 Preferred Shares are also entitled to receive a dividend make-whole payment. The holders of Series H-7 Preferred Shares are entitled to vote with the holders of the common stock on all matters that such common stockholders are entitled to vote upon.

Notwithstanding the foregoing, the Company's ability to settle conversions and make amortization and dividend make-whole payments using shares of common stock is subject to certain limitations set forth in the Certificate of Designations. Further, the Certificate of Designations contains a certain beneficial ownership limitation after giving effect to the issuance of shares of common stock issuable upon conversion of, or as part of any amortization payment or dividend make-whole payment under, the Certificate of Designations or Warrants.

The Certificate of Designations includes certain Triggering Events including, among other things, the suspension from trading or the failure of the common stock to be trading or listed (as applicable) on an eligible market for a period of five (5) consecutive trading days, the Company's failure to pay any amounts due to the holders of the Series H-7 Preferred Shares when due. In connection with a Triggering Event, each holder of Series H-7 Preferred Shares will be able to require the Company to redeem in cash any or all of the holder's Series H-7 Preferred Shares at a premium set forth in the Certificate of Designations.

The Series H-7 Preferred Shares were determined to be more akin to a debt-like host than an equity-like host. The Company identified the following embedded features that are not clearly and closely related to the debt host instrument: 1) make-whole interest upon a contingent redemption event, 2) make-whole interest upon a conversion event, 3) an installment redemption upon an Equity Conditions Failure (as defined in the Certificate of Designations), and 4) variable share-settled installment conversion. These features were bundled together, assigned probabilities of being effected and measured at fair value. Subsequent changes in fair value of these features are recognized in the Consolidated Statement of Operations. The Company estimated the \$5.1 million fair value of the bifurcated embedded derivative at issuance using a Monte Carlo simulation model, with the following inputs: (i) estimated equity volatility of 75.0%, (ii) the time to maturity of 1.48 years, (iii) a discounted market interest rate of 12.2%, (iv) dividend rate of 8.0%, (v) a penalty dividend rate of 15.0%, and (vi) probability of default of 14.8%. The fair value of the bifurcated derivative liability was estimated utilizing the with and without method which uses the probability weighted difference between the scenarios with the derivative and the plain vanilla maturity scenario without a derivative.

The discount to the fair value is included as a reduction to the carrying value of the Series H-7 Preferred Shares. During the three months ended September 30, 2023, the Company recorded a total discount of approximately \$15.5 million upon issuance of the Series H-7 Preferred Shares, which was comprised of the issuance date fair value of the associated embedded derivative of approximately \$5.1 million, stock issuance costs of approximately \$0.6 million and the fair value of the Investor Warrants of approximately \$9.8 million. As of September 30, 2023, it is probable that the Series H-7 Preferred Shares will be redeemed. In accordance with ASC 480-10-599-3A the Company is accreting the discount on the effective interest method and approximately \$1.2 million was recorded as a deemed dividend during the three and nine months ended September 30, 2023.

Following the Reverse Stock Split, as discussed in Note 1 above, the Conversion Price was reduced to \$2.00 per share pursuant to the terms of the Certificate of Designation.

During each of the three and nine months ended September 30, 2023, the Company recorded a gain of approximately \$3.2 million, and \$0 for the comparable periods in 2022, related to the change in fair value of the derivative liability which is recorded in other income (expense) on the Statements of Operations. The Company estimated the \$1.9 million fair value of the bifurcated embedded derivative at September 30, 2023 using a Monte Carlo simulation model, with the following inputs: (i) estimated equity volatility of 76.0%, (ii) the time to maturity of 1.33 years, (iii) a discounted market interest rate of 14.93%, (iv) dividend rate of 8.0%, (v) a penalty dividend rate of 15.0%, and (vi) probability of default of 14.53%.

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Common Stock Warrants

Pursuant to the Private Placement, the Company issued to Investors Warrants initially exercisable for 2,750,000 shares of common stock. In addition, pursuant to its advisory agreement with the placement agent for the Private Placement, the Company issued to the Placement Agent Warrants initially exercisable for 55,000 shares of common stock with the same terms. The Placement Agent Warrants are within the scope of ASC 718 pursuant to ASC 718-10-20 but are subject to liability classification as they would be required to be classified as liabilities in accordance with ASC 815.

The Warrants are entitled to certain anti-dilution adjustments if the Company issues shares of its common stock at a lower price per share than the applicable exercise price. The Warrants are also entitled to certain adjustments following any stock split, stock dividend, stock combination, reverse stock split, recapitalization or other similar transaction involving the outstanding Common Stock. Such adjustments were triggered as a result of the Reverse Stock Split, resulting in an adjusted exercise price per share from \$8.00 to \$2.00. An additional 8,415,000 warrants exercisable at \$2.00 per share were issued.

The Warrants were determined to be subject to liability classification as they are considered to be indexed to the Company's own stock but fail to meet the requirements for equity classification in accordance with ASC 815. As such, the Company recorded the Warrants as a liability at fair value with subsequent changes in fair value recognized in earnings. The Company utilized the Black Scholes Model to calculate the value of these warrants issued during the three months ended September 30, 2023. The fair value of the Warrants of approximately \$10.0 million was estimated at the date of issuance using a stock price of \$5.20, an exercise price of \$8.00, and the following weighted average assumptions: (i) dividend yield 0%; (ii) expected term of 5.0 years; (iii) equity volatility of 96.0%; and (iv) a risk-free interest rate of 4.21%.

Transaction costs incurred attributable to the issuance of the Warrants of \$1.2 million were immediately expensed to general and administrative expense.

During each of the three and nine months ended September 30, 2023, and 2022, the Company recorded a loss of approximately \$10.0 million, and \$0 for comparable periods in 2022, related to the change in fair value of the warrant liability which is recorded in other income (expense) on the Statements of Operations. The fair value of the Warrants of approximately \$20.0 million was estimated at September 30, 2023, utilizing the Black Scholes Model using a stock price of \$2.34, an exercise price of \$2.00, and the following weighted average assumptions: (i) dividend yield 0%; (ii) remaining term of 4.86 years; (iii) equity volatility of 96.5%; and (iv) a risk-free interest rate of 4.61%.

The H-5 Warrants are entitled to certain anti-dilution adjustments if the Company issues shares of its common stock at a lower price per share than the applicable exercise price (subject to a floor price of \$6.336 per share). Anti-dilution adjustments were triggered resulting in an adjusted exercise price per share from \$20.00 to \$8.00 as the result of the issuance of Series H-7 Preferred Shares and from \$8.00 to \$6.336 as of result of the Reverse Stock Split. An additional 93,940 warrants exercisable at \$6.336 per share were issued.

The Company considers the change in exercise price due to the anti-dilution trigger related to the Series H-5 Warrants to be of an equity nature, as the issuance allowed the warrant holders to exercise warrants in exchange for common stock, which represents an equity for equity exchange. Therefore, the change in the fair value before and after the effect of the anti-dilution triggering event and the fair value of the Series H-5 warrants will be treated as a deemed dividend in the amount of \$199,000 during the three and nine months ended September 30, 2023. The Company valued the initial deemed dividend as the difference between: (a) the modified fair value of the Series H-5 Warrants in the amount of \$165,000 and (b) the fair value of the original award prior to the modification of \$21,000. The Company valued the second deemed dividend as the difference between: (a) the modified fair value of the Series H-5 Warrants in the amount of \$141,000 and (b) the fair value of the original award prior to the modification of \$86,000.

The warrants were valued using the Black-Scholes option pricing model on the date of the modification and issuance using the following assumptions for the initial deemed dividend: (a) fair value of common stock of \$5.20 per share, (b) expected volatility of 76.00%, (c) dividend yield of 0%, (d) risk-free interest rate of 4.91%, and (e) expected life of 1.82 years. The warrants were valued using the Black-Scholes option pricing model on the date of the modification and issuance using the following assumptions for the second deemed dividend: (a) fair value of common stock of \$3.90 per share, (b) expected volatility of 76.00%, (c) dividend yield of 0%, (d) risk-free interest rate of 5.13%, and (e) expected life of 1.73 years.

A summary of the Company's warrants to purchase common stock activity is as follows:

	Shares Underlying Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)
Outstanding at December 31, 2022	6,106,023	\$ 7.30	1.32
Granted	-	-	-
Exercised	-	-	-
Expired	(136,428)	9.60	-
Outstanding at June 30, 2023	5,969,595	\$ 7.25	0.84

	Shares Underlying Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)
Outstanding at December 31, 2022	763,253	\$ 58.40	1.32
Granted	11,313,940	2.00	-
Exercised	-	-	-
Expired	(471,435)	58.40	-
Outstanding at September 30, 2023	11,605,758	\$ 3.42	4.77

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NOTE 11. STOCK-BASED COMPENSATION

AYRO 2020 Long Term Incentive Plan

The Company has reserved a total of 4,089,650 1,229,956 shares of its common stock pursuant to the AYRO, Inc. 2020 Long-Term Incentive Plan, including shares of restricted stock that have been issued. The Company has 443,732 822,843 stock options, restricted stock and warrants remaining under this plan as of June 30, 2023 September 30, 2023.

Stock-based compensation, including restricted stock awards and stock options is included in the unaudited condensed consolidated statement of operations as follows:

	2023		2022		2023		2022	
	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022	2023	2022	2023	2022
Research and development	\$ 5,034	\$ (6,904)	\$ 11,798	\$ 9,800	\$ 6,219	\$ 5,269	\$ 18,017	\$ 15,069
Sales and marketing	(435)	870	5,489	13,815	1,999	6,001	7,488	19,816
General and administrative	237,532	309,587	491,582	568,048	214,681	320,911	706,263	888,959
Total	\$ 242,131	\$ 303,553	\$ 508,869	\$ 591,663	\$ 222,899	\$ 332,181	\$ 731,768	\$ 923,844

Options

The following table reflects a summary of stock option activity:

	Number of Shares		Weighted Average Exercise Price		Contractual Life (Years)	
Outstanding at December 31, 2022	777,922		\$ 6.15		7.56	
Forfeitures	(45,500)		0.97			
Outstanding at June 30, 2023	732,422		\$ 6.47		7.10	
	Number of Shares		Weighted Average Exercise Price		Contractual Life (Years)	
Outstanding at December 31, 2022	97,240		\$ 49.20		7.56	
Forfeitures	(58,544)		7.76			
Outstanding at September 30, 2023	38,696		\$ 87.67		6.79	

Of the outstanding options, 654,937 27,460 were vested and exercisable as of June 30, 2023 September 30, 2023. At June 30, 2023 September 30, 2023, the aggregate intrinsic value of stock options vested and exercisable was \$0.

The Company recognized \$11,417 15,165 and \$(6,298) 18,821 of stock option expense for the three months ended June 30, 2023 September 30, 2023, and 2022, and \$31,533 46,698 and \$26,078 44,899 for the six nine months ended June 30, 2023 September 30, 2023, and June 30, 2022 September 30, 2022, respectively. Total compensation cost related to non-vested stock option awards not yet recognized as of June 30, 2023 September 30, 2023, was \$69,823 53,321 and will be recognized on a straight-line basis through the end of the vesting periods through April 2025. The amount of future stock option compensation expense could be affected by any future option grants or by any forfeitures.

Restricted Stock

	Number of Shares		Weighted Average Grant Price		Number of Shares		Weighted Average Grant Price	
Outstanding at December 31, 2022	660,562		\$ 1.91		82,570	\$ 15.28		
Granted	760,668		0.75		95,087	6.00		
Vested	(300,728)		0.95		(61,364)	5.95		
Outstanding at June 30, 2023	1,120,502		\$ 1.38					
Outstanding at September 30, 2023					116,293	\$ 8.58		

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On February 1, 2023, pursuant to the AYRO, Inc. 2020 Long-Term Incentive Plan, the Company granted 760,668 95,087 shares of restricted stock to non-executive directors at a value of \$0.75 6.00 per share. There are 6,269 no vested and unissued shares of restricted stock awards as of June 30, 2023 September 30, 2023. As of June 30, 2023 September 30, 2023, 570,502 116,290 shares of restricted stock remain unvested and unissued.

The Company recognized compensation expense related to all restricted stock during the three months ended June 30, 2023 September 30, 2023, and 2022 of \$230,713 207,716 and \$309,850 313,360 and for the six nine months ended June 30, 2023 September 30, 2023, and 2022 \$477,335 686,869 and \$565,585 878,945, respectively. Total compensation cost related to non-vested restricted stock not yet recognized as of June 30, 2023 September 30, 2023, was \$428,473 220,741.

NOTE 12. CONCENTRATIONS AND CREDIT RISK

Revenues

One customer accounted for approximately 46 65% of the Company's revenues for the three months ended June 30, 2023 September 30, 2023, and another customer accounted for 35 12%. Club Car accounted for approximately 89 100% of the Company's revenue for the three months ended September 30, 2022. Three customers accounted for approximately 36%, 31%, and another customer 10 12% of the Company's revenues for the three nine months ended June 30, 2022. Three customers accounted for approximately 42%, 25%, and 20% of the Company's revenues for the six months ended June 30, 2023 September 30, 2023, respectively. Club Car accounted for approximately 95% of the Company's revenues for the six nine months ended June 30, 2022 September 30, 2022. We do not expect Club Car to remain a customer going forward.

Accounts Receivable

As of June 30, 2023 September 30, 2023, two customers accounted for 61 85% and 39 14%, respectively, of the Company's net accounts receivable. As of December 31, 2022, Club Car accounted for 100% of the Company's net accounts receivable.

Purchasing

The Company places orders with various suppliers. No Certain suppliers accounted for more than 10% of the Company's raw materials purchased for the three months ended June 30, 2023 September 30, 2023, including, one for 16%, one for 14%, one for 12%, and the fourth for 10%. During the six nine months ended June 30, 2023 September 30, 2023, two no suppliers accounted for more than 10% of the Company's raw materials, materials.

During the nine months ended September 30, 2022, one supplier accounted for approximately 15 57% the, and two other 13%. During the six months ended June 30, 2022, two suppliers accounted for accounted for more than 10% 12% of the Company's raw materials. One supplier accounted for 61% and the other 13%, materials purchases. The Company's purchases of raw materials from one supplier was three suppliers were approximately 43 49%, 17%, and 13% and 9% respectively, of its total purchases of raw materials for the three months ended June 30, 2022 September 30, 2022.

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NOTE 13. COMMITMENTS AND CONTINGENCIES

Manufacturing Agreements

On July 28, 2022, the Company partnered with Linamar Corporation (“Linamar”) a Canadian manufacturer, in a manufacturing agreement (the “Linamar MLA”) to provide certain sub assembly and assembly parts, including the cabin frame and skate for the Vanish (collectively, the “Products”). During the term of the Linamar MLA, Linamar has the exclusive right to supply the Products to the Company, subject to certain exceptions. The Linamar MLA has an initial term of three years and will automatically renew for successive two-year terms unless either party has given at least 12 months’ written notice of nonrenewal. Either party may terminate the Linamar MLA at any time upon 12 months’ written notice, and in the event of a change in control of the Company prior to the end of the initial term, the Company may terminate upon written notice within three days of completion of such change in control.

In the event the Company terminates the Linamar MLA prior to its expiration, whether following a change in control or otherwise, the Company must purchase any remaining raw material inventory, finished goods inventory and work in progress and any unamortized capital equipment used in production and testing of the Products and pay a termination fee of \$750,000, subject to certain adjustments. The Company is dependent on the Linamar MLA, and in the event of its termination the Company’s manufacturing operations and customer deliveries would be materially impacted.

Supply Chain Agreements

In 2017, the Company executed a supply chain contract with Cenntro, which has historically been the Company’s primary supplier. Cenntro was previously a significant stockholder in AYRO Operating. Cenntro owns the design of the AYRO 411 Fleet vehicles and has granted the Company an exclusive license to purchase the AYRO 411 Fleet vehicles for sale in North America. The Company purchased 100% of its vehicle chassis, cabs, and wheels for AYRO 411 Fleet Vehicles through this supply chain relationship with Cenntro. The Company must sell a minimum number of units in order to maintain its exclusive supply chain contract.

As of December 31, 2021, the net balance between prepaid expenses and accrued expenses with Cenntro was a prepaid balance of \$602,016. As of December 31, 2022, the balance was zero. Impairments of prepaid expenses led to a write-down, netted with the balance in accrued expenses. The remainder of the balance was expensed through cost of goods sold for \$621,097. Additionally, all inventory associated with Cenntro’s lithium-ion line NCM line was written off to cost of goods sold for \$1,317,289.

The Company has canceled all purchase orders and future builds with Cenntro and currently intends to only order replacement parts from Cenntro in the future.

Litigation

The Company is subject to various legal proceedings and claims, either asserted or unasserted, which arise in the ordinary course of business, that it believes are incidental to the operation of its business. While the outcome of these claims cannot be predicted with certainty, management does not believe that the outcome of any of these legal matters will have a material adverse effect on its results of operations, financial positions, or cash flows.

On March 23, 2018, DropCar was made aware of an audit being conducted by the New York State Department of Labor (“DOL”) regarding a claim filed by an employee. The DOL is investigating whether DropCar properly paid overtime for which DropCar has raised several defenses. In addition, the DOL is conducting its audit to determine whether the Company owes spread of hours pay (non-exempt worker whose workday is longer than ten hours must receive an extra hour of pay at the basic minimum hourly rate). Management believes the case has no merit.

DropCar was audited by the New York State Department of Taxation and Finance (“DOTF”) for its sales tax paid over the period of 2017 – 2020. The DOTF believes DropCar owes additional sales tax plus interest. Management is investigating the details of this audit. As of December 31, 2021, the Company has accrued \$476,280 in expense for such additional sales tax and interest and paid as of December 31, 2022.

NOTE 14. SUBSEQUENT EVENTS

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On June 15, 2023, a certain lease agreement commenced for the purpose of expanding AYRO operations into Florida. The agreement called for the leased premises to provide general systems and equipment to be available in working order. The said premises ultimately failed to meet the working order provision, and all parties agreed to terminate the said lease. Thus, the lease for the Florida expansion premises was terminated on July 28, 2023, amicably, by all parties. Remaining obligations for this lease are de minimis.

NOTE 14. FAIR VALUE MEASUREMENTS

On August 7, 2023 Fair value measurements discussed herein are based upon certain market assumptions and pertinent information available to management as of and during the nine months ended September 30, 2023. The carrying amounts of cash equivalents, accounts receivable, other current assets, other assets, accounts payable, and accrued expenses approximated their fair values as of September 30, 2023, due to their short-term nature. The fair value of the bifurcated embedded derivative related to the convertible preferred stock was estimated using a Monte Carlo simulation model, which uses as inputs the fair value of our common stock and estimates for the equity volatility and traded volume volatility of our common stock, the time to maturity of the convertible preferred stock, the risk-free interest rate for a period that approximates the time to maturity, dividend rate, a penalty dividend rate, and our probability of default. The fair value of the warrant liability was estimated using the Black Scholes Model which uses as inputs the following weighted average assumptions, as noted above: dividend yield, expected term in years, equity volatility, and risk-free interest rate.

Fair Value on a Recurring Basis

The Company follows the guidance in ASC 820 for its financial assets and liabilities that are re-measured and reported at fair value at each reporting period, and non-financial assets and liabilities that are re-measured and reported at fair value at least annually. The estimated fair value of the warrant liability and bifurcated embedded derivatives represent Level 3 measurements. The following table presents information about the Company's liabilities that are measured at fair value on a recurring basis at September 30, 2023, and indicates the fair value hierarchy of the valuation inputs the Company entered into utilized to determine such fair value:

The following table sets forth a Securities Purchase Agreement (the "Purchase Agreement") with the Investors, pursuant to which it agreed to sell to the Investors (i) an aggregate of 22,000 shares of Series H-7 Preferred Stock, initially convertible into up to 22,000,000 shares summary of the Company's common stock change in the fair value of the warrant liability that is measured at fair value on a conversion price recurring basis:

Description	Level	September 30, 2023	At Inception August 10, 2023
Liabilities:			
Warrant liability (see Note 10)	3	\$ 20,065,440	\$ 9,969,480
Bifurcated embedded derivative liability (see Note 10)	3	\$ 1,931,000	\$ 5,147,000

The following table sets forth a summary of \$1.00 per share, and (ii) warrants to acquire up to an aggregate the change in the fair value of the bifurcated embedded derivative liability that is measured at fair value on a recurring basis:

	September 30, 2023
Balance on December 31, 2022	\$ -
Issuance of warrants	9,969,480
Change in fair value of warrant liability	10,095,960
Balance on September 30, 2023	\$ 20,065,440

The following table sets forth a summary of common stock the change in the fair value of the bifurcated embedded derivative liability that is measured at an exercise price of \$ fair value on a recurring basis:

	September 30, 2023
Balance on December 31, 2022	\$ -
Issuance of convertible preferred stock with bifurcated embedded derivative	5,147,000
Change in fair value of bifurcated embedded derivative	(3,216,000)
Balance on September 30, 2023	\$ 1,931,000

NOTE 15. SUBSEQUENT EVENTS

The closing

On October 20, 2023, Club Car filed a complaint against the Company in the Superior Court of Columbia County, Georgia (Civil Action File No. 2023ECV0838) (the "Club Car Complaint"), alleging that the Company had breached its contractual obligations to Club Car under the Company's master procurement agreement with Club Car (the "MPA") due to alleged defects in the vehicles sold to Club Car and the Company's termination of warranty support following termination of the Private Placement occurred on August 10, 2023. The aggregate gross proceeds from MPA. Club Car seeks unspecified damages and indemnification for past and future customer claims with respect to the Private Placement were approximately \$22 million, vehicles sold to Club Car under the MPA. The Company expects intends to use the net proceeds from the Private Placement for general corporate purposes.

The Purchase Agreement contains certain representations and warranties, covenants, and indemnities customary for similar transactions. The representations, warranties and covenants contained in the Purchase Agreement were made solely for the benefit of the parties to the Purchase Agreement and may be subject to limitations agreed upon by the contracting parties, vigorously contest these allegations.

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

The following management's discussion and analysis should be read in conjunction with our historical financial statements and the related notes thereto. This management's discussion and analysis contains forward-looking statements, such as statements of our plans, objectives, expectations, and intentions. Any statements that are not statements of historical fact are forward-looking statements. When used, the words "believe," "plan," "intend," "anticipate," "target," "estimate," "expect" and the like, and/or future tense or conditional constructions ("will," "may," "could," "should," etc.), or similar expressions, identify certain of these forward-looking statements. These forward-looking statements are subject to risks and uncertainties, including those under "Risk Factors" in our filings with the Securities and Exchange Commission ("SEC") that could cause actual results or events to differ materially from those expressed or implied by the forward-looking statements. Our actual results and the timing of events could differ materially from those anticipated in these forward-looking statements as a result of several factors. See "Cautionary Note Regarding Forward-Looking Statements."

References in this management's discussion and analysis to "we," "us," "our," "the Company," "our Company," or "AYRO" refer to AYRO, Inc. and its subsidiaries.

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q (this "Form 10-Q") contains forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements may be identified by the use of forward-looking terms such as "anticipates," "assumes," "believes," "can," "could," "estimates," "expects," "forecasts," "guides," "intends," "is confident that," "may," "plans," "seeks," "projects," "targets," "would" and "will" or the negative of such terms or other variations on such terms or comparable terminology. Such forward-looking statements include, but are not limited to, future financial and operating results, the company's plans, objectives, expectations and intentions, statements concerning the strategic review of our product development strategy, the development and launch of the AYRO Vanish (the "Vanish") and other statements that are not historical facts. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition, and results of operations. These forward-looking statements speak only as of the date of this Form 10-Q and are subject to a number of risks, uncertainties, and assumptions that could cause actual results to differ materially from our historical experience and our present expectations, or projections described under the sections in this Form 10-Q and our other reports filed with the SEC titled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

A summary of the principal risk factors that make investing in our securities risky and might cause our actual results to differ materially from those projected in these forward-looking statements is set forth below. If any of the following risks occur, our business, financial condition, results of operations, cash flows, cash available for distribution, ability to service our debt obligations and prospects could be materially and adversely affected.

- we may be acquired by a third party;
- we have a history of losses and have never been profitable, and we expect to incur additional losses in the future and may never be profitable;
- our failure to meet the continued listing requirements of The Nasdaq Capital Market could result in a delisting of our common stock;
- a significant portion of our revenues has historically been derived from Club Car LLC ("Club Car") pursuant to the MPA, MPA (as defined below). Following our termination of the MPA, our sales could decrease significantly, and we will need to identify new strategic channel partners to support the sales of our vehicles;
- we face risks associated with litigation and claims;
- holders of our Series H-7 convertible preferred stock with a stated value of \$1,000 per share ("Series H-7 Preferred Stock") are entitled to certain payments that may be paid in cash or in shares of common stock depending on the circumstances, if we make these payments in cash, we may be required to expend a substantial portion of our cash resources, and if we make these payments in common stock, it may result in substantial dilution to the holders of our common stock;
- the certificate of designations for the Series H-7 Preferred Stock (the "Certificate of Designations") and the warrants issued concurrently therewith contain anti-dilution provisions and other adjustment provisions that may result have resulted in the reduction of the conversion price of the Series H-7 Preferred Stock or and the exercise price of such warrants and may do so again in the future. These features may increase the number of shares of common stock being issuable upon conversion of the Series H-7 Preferred Stock or upon the exercise of the warrants;
- under the Purchase Agreement (as defined below) we are subject to certain restrictive covenants that may make it difficult to procure additional financing;
- if we do not receive approval from our stockholders, we will be unable to pay amounts due to the holders of the Series H-7 Preferred Shares in shares of common stock and we will be required to pay such amounts in cash, which may force us to divert cash from other uses;

- we rely on a single third-party supplier and manufacturer located in Canada for certain sub-assembly and assembly parts for the Vanish and any disruption in the operations of this third-party supplier could adversely affect our business and results of operations;
- if we lose our exclusive license to manufacture the AYRO 411x model ("411x") in North America, Cenntro could sell identical or similar products through other companies or directly to our customers;
- we may be unable to replace lost manufacturing capacity on a timely and cost-effective basis, which could adversely impact our operations and ability to meet delivery timelines;
- we may experience delays in the development and introduction of new products;
- the market for our products is developing and may not develop as expected;
- we are currently evaluating our product development strategy, which may result in significant changes and have a material impact on our business, results of operations and financial condition;
- our business is subject to general economic and market conditions, including trade wars and tariffs;
- if disruptions in our transportation network continue to occur or our shipping costs continue to increase, we may be unable to sell or timely deliver our products, and our gross margin could decrease;
- our limited operating history makes evaluating our business and future prospects difficult and may increase the risk of any investment in our securities;
- if we are unable to effectively implement or manage our growth strategy, our operating results and financial condition could be materially and adversely affected;
- developments in alternative technologies or improvements in the internal combustion engine may have a materially adverse effect on the demand for our electric vehicles;
- the markets in which we operate are highly competitive, and we may not be successful in competing in these industries;
- our future growth depends on customers' willingness to adopt electric vehicles;
- we may experience lower-than-anticipated market acceptance of our current models and the vehicles in development;
- if we are unable to manage our growth and expand our operations successfully, our business and operating results will be harmed, and our reputation may be damaged;
- if we fail to include key feature sets relative to the target markets for our electric vehicles, our business will be harmed;
- unanticipated changes in industry standards could render our vehicles incompatible with such standards and adversely affect our business;
- our future success depends on our ability to identify additional market opportunities and develop and successfully introduce new and enhanced products that address such markets and meet the needs of customers in such markets;
- unforeseen or recurring operational problems at our facilities, or a catastrophic loss of our manufacturing facilities, may cause significant lost or delayed production and adversely affect our results of operations;

- we may become subject to product liability claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims;
- if our vehicles fail to perform as expected due to defects, our ability to develop, market and sell our electric vehicles could be seriously harmed;
- we depend on key personnel to operate our business, and the loss of one or more members of our management team, or our failure to attract, integrate and retain other highly qualified personnel in the future, could harm our business;
- transitioning from an offshoring to an onshoring business model carries risk;
- we currently have limited electric vehicles marketing and sales experience, and if we are unable to establish sales and marketing capabilities or enter into dealer agreements to market and sell our vehicles, we may be unable to generate any revenue;
- failure to maintain the strength and value of our brand could have a material adverse effect on our business, financial condition, and results of operations;
- the range of our electric vehicles on a ~~single-charge~~ single charge declines over time, which may negatively influence potential customers' decisions whether to purchase our vehicles;
- an unexpected change in failure rates of our products could have a material adverse impact on our business, financial condition, and operating results;
- increases in costs, disruption of supply or shortage of raw materials, in particular lithium-ion battery cells, chipsets and displays, could harm our business;
- customer financing and insuring our vehicles may prove difficult because retail lenders are unfamiliar with our vehicles and our vehicles have a limited loss history determining residual values within the insurance industry;
- our electric vehicles make use of lithium-ion battery cells, which, if not appropriately managed and controlled, have occasionally been observed to catch fire or vent smoke and flames;
- our business may be adversely affected by labor and union activities;
- we rely on our dealers for the service of our vehicles and have limited experience servicing our vehicles, and if we are unable to address the service requirements of our future customers, our business will be materially and adversely affected;

- if we fail to deliver vehicles and accessories to market as scheduled, our business will be harmed;
- failure in our information technology and storage systems could significantly disrupt the operation of our business;
- we may be required to raise additional capital to fund our operations, and such capital raising may be costly or difficult to obtain, and could dilute our stockholders' ownership interests;
- our long-term capital requirements are subject to numerous risks;
- we may invest in or acquire other businesses, and our business may suffer if we are unable to successfully integrate acquired businesses into our company or otherwise manage the growth associated with multiple acquisitions;
- increased safety, emissions, fuel economy or other regulations may result in higher costs, cash expenditures, and/or sales restrictions;
- our vehicles are subject to multi-jurisdictional motor vehicle standards;
- we may fail to comply with evolving environmental and safety laws and regulations;
- changes in regulations could render our vehicles incompatible with federal, state, or local regulations, or use cases;
- unusual or significant litigation, governmental investigations or adverse publicity arising out of alleged defects in our vehicles, or otherwise, may derail our business;
- we are required to comply with state-specific regulations regarding the sale of vehicles by a manufacturer;
- we have identified a material weakness in our internal control over financial reporting, and if we are unable to remediate the material weakness, or if we experience additional material weaknesses in the future, our business may be harmed;
- if we are unable to adequately protect our proprietary designs and intellectual property rights, our competitive position could be harmed;
- we may need to obtain rights to intellectual property from third parties in the future, and if we fail to obtain licenses or fail to comply with our obligations in existing agreements under which we have licensed intellectual property and other rights from third parties, we could lose our ability to manufacture our vehicles;
- many of our proprietary designs are in digital form, and a breach of our computer systems could result in these designs being stolen;
- our proprietary designs are susceptible to reverse engineering by our competitors;
- if we are unable to protect the confidentiality of our trade secrets or know-how, such proprietary information may be used by others to compete against us;
- legal proceedings or third-party claims of intellectual property infringement and other challenges may require us to spend substantial time and money and could harm our business;
- we are generally obligated to indemnify our sales channel partners, customers, suppliers and contractors for certain expenses and liabilities resulting from intellectual property infringement claims regarding our products, which could force us to incur substantial costs;
- we are subject to exposure from changes in the exchange rates of local currencies; and
- we are subject to governmental export and import controls that could impair our ability to compete in international markets due to licensing requirements and subject us to liability if we are not in compliance with applicable laws.

For a more detailed discussion of these and other factors that may affect our business and that could cause our actual results to differ materially from those projected in these forward-looking statements, see the risk factors and uncertainties set forth in Part II, Item 1A of this Form 10-Q and in Part I, Item 1A of our Annual Report on Form 10-K as filed with the SEC on March 23, 2023 and amended on May 1, 2023 ("Form 10-K"). Any one or more of these uncertainties, risks and other influences could materially affect our results of operations and whether forward-looking statements made by us ultimately prove to be accurate. We undertake no obligation to publicly update or revise any forward-looking statements, whether from new information, future events or otherwise, except as required by law.

Overview

We design and manufacture compact, sustainable electric vehicles for closed campus mobility, low speed urban and community transport, local on-demand and last mile delivery and government use. Our four-wheeled purpose-built electric vehicles are geared toward commercial customers, including universities, business and medical campuses, last mile delivery services and food service providers. We are currently updating have commenced sales and delivery of our next current model, year (model year 2023) vehicle lineup the Vanish, in support of the aforementioned markets.

Reverse Stock Split

On September 15, 2023, we effected a one-for-eight reverse stock split of our common stock (the "Reverse Stock Split"). All share and per share information in this quarterly report have been retroactively adjusted to reflect the Reverse Stock Split.

Strategic Review

Following the hiring of our current Chief Executive Officer in the third quarter of 2021, we initiated a strategic review of our product development strategy, as we focus on creating value within the electric vehicle, last-mile delivery, smart payload and enabling infrastructure markets. In connection with our strategic review, we cancelled development of our planned next-generation three-wheeled high-speed vehicle.

For the past several years, our primary supplier has been Cenntro Automotive Group, Ltd. ("Cenntro"), which operates a large electric vehicle factory in the automotive district in Hangzhou, China. As a result of rising shipping costs, quality issues with certain components and persistent delays, we ceased production of the AYRO 411x from Cenntro in September 2022 in order to focus our resources on the development and launch of the new 411 fleet vehicle model year 2023 refresh, the Vanish. We began design and development of the Vanish in December 2021, including updates to our supply chain, the offshoring/onshoring mix, our manufacturing strategy, and our annual model year refresh program. We unveiled the first Vanish prototype in the fourth quarter of 2022. Pre-production commenced low-rate initial production of the Vanish was completed in December 2022, the second quarter of 2023 and commenced initial sales and delivery of the Vanish in the third quarter of 2023.

Products

Our vehicles provide the end user an environmentally friendly alternative to internal combustion engine vehicles (cars powered by gasoline or diesel oil), for light duty uses, including low-speed logistics, maintenance services, cargo services, and personal/group transport in a quiet, zero emissions vehicle with a lower total cost of ownership.

Manufacturing Agreement with Cenntro

In 2017, AYRO Operating partnered with Cenntro in a supply chain agreement to provide sub-assembly manufacturing services. Cenntro owns the design of the AYRO Club Car 411 and 411x ("AYRO 411 Fleet") vehicles and has granted us an exclusive license to purchase the AYRO 411 Fleet vehicles for sale in North America.

Under our Manufacturing License Agreement with Cenntro (the "Cenntro MLA"), in order for us to maintain our exclusive territorial rights pursuant to the Cenntro MLA, we must meet certain minimum purchase requirements.

We imported semi-knocked-down vehicle kits from Cenntro for the AYRO 411 Fleet models that comprised our model year 2022 lineup. The vehicle kits were received through shipping containers at the assembly facility of Karma Automotive LLC ("Karma"), our previous manufacturing partner in southern California, as well as at our customization, service and integration facility in Round Rock, Texas. The vehicles were then assembled with tailored customization requirements per order.

On May 31, 2022, we received a letter from Cenntro purporting to terminate all agreements and contracts between the Company and Cenntro. Although we do not believe Cenntro's termination of the Cenntro MLA is valid, we have determined to cease production of the 411x and focus our resources on the Vanish. We have canceled all purchase orders and future builds with Cenntro and currently intend to only order replacement parts for vehicles from Cenntro in the future. Cenntro inventory remaining on hand as of September 30, 2023, was valued at \$109,238. We expect to lose our exclusive license under the Cenntro MLA, in which case Cenntro could sell identical or similar products through other companies or directly to our customers, which could have a material adverse effect on our results of operations and financial condition.

The new Vanish utilizes assemblies and products that largely eliminate our dependency on Chinese imports and optimize the supply chain to rely primarily upon North American and European sources. Final assembly of the Vanish occurs in our Round Rock, Texas facilities.

Manufacturing Agreement with Linamar

On July 28, 2022, we partnered with Linamar Corporation (“Linamar”), a Canadian manufacturer, in a manufacturing agreement (the “Linamar MLA”) to provide certain sub assembly and assembly parts, including the cabin frame and skate for the Vanish (collectively, the “Products”). During the term of the Linamar MLA, Linamar has the exclusive right to supply the Products to the Company, subject to certain exceptions. The Linamar MLA has an initial term of three years and will automatically renew for successive two-year terms unless either party has given at least 12 months’ written notice of nonrenewal. Either party may terminate the Linamar MLA at any time upon 12 months’ written notice, and in the event of a change in control of the Company prior to the end of the initial term, we may terminate upon written notice within three days of completion of such change in control.

In the event we terminate the Linamar MLA prior to its expiration, whether following a change in control or otherwise, we must purchase any remaining raw material inventory, finished goods inventory, work in progress and any unamortized capital equipment used in production and testing of the Products and pay a termination fee of \$750,000, subject to certain adjustments. We are dependent on the Linamar MLA, and in the event of its termination our manufacturing operations and customer deliveries would be materially impacted.

Under the Linamar MLA, we must commit to certain minimum purchases, to be determined by AYRO on a quarterly basis.

We import the Products from Linamar in Canada, and we manufacture and assemble the Vanish at our customization, service, and integration facility in Round Rock, Texas. Over 98% of the vehicle assemblies, components, and products for the Vanish are from North American and European sources.

Club Car MPA Termination

The majority of our sales have historically been comprised of sales to Club Car LLC ("Club Car") pursuant to a master procurement agreement (the "MPA") entered into by and among AYRO Operating Company, Inc., our subsidiary ("AYRO Operating"), and Club Car on March 5, 2019. The MPA grants Club Car the exclusive right to sell our 411 and 411x vehicles (the "AYRO 411 Fleet") in North America, provided that Club Car orders at least 500 vehicles per year. Club Car did not meet this volume threshold for 2020, 2021 or 2022. Pursuant to the MPA, AYRO Operating granted Club Car a right of first refusal for sales of 51% or more of AYRO Operating's assets or equity interests, which right of first refusal is exercisable for a period of 45 days following delivery of an acquisition notice to Club Car. AYRO Operating also agreed to collaborate **Manufacturing Agreement** with Club Car on new products similar to the AYRO 411 Fleet and improvements to existing products and granted Club Car a right of first refusal to purchase similar commercial utility vehicles which AYRO Operating may develop during the term of the MPA. **Linamar**

On **April 4, 2023** July 28, 2022, AYRO Operating delivered notice of termination we partnered with Linamar Corporation ("Linamar"), a Canadian manufacturer, in a manufacturing agreement (the "Linamar MLA") to provide certain sub assembly and assembly parts, including the cabin frame and skate for the Vanish (collectively, the "Products"). During the term of the MPA Linamar MLA, Linamar has the exclusive right to Club Car, and we intend to replace Club Car with new business partners for selling our products beginning with supply the Vanish. We do not expect Club Car to remain a customer going forward. In connection with the termination of the MPA and the forthcoming introduction of the Vanish, we are reevaluating our channel strategy with an eye towards distributing our next-generation platform and payloads in a manner that maximizes visibility, moderates channel costs, and creates value. The loss of Club Car as a customer could have a material adverse effect on our sales, financial condition, and results of operations.

Nasdaq Minimum Bid Price Requirement

As previously reported, on October 3, 2022, we received a letter from the Listing Qualifications Department of the Nasdaq Stock Market ("Nasdaq") indicating that, based upon the closing bid price of our common stock for the 30 consecutive business day period between August 19, 2022 and September 30, 2022, we did not meet the minimum bid price of \$1.00 per share required for continued listing on The Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement"). The letter also indicated that the Company would be provided with a compliance period of 180 calendar days, or until April 3, 2023 (the "Initial Compliance Period"), in which to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A).

On April 4, 2023, we received a letter from Nasdaq notifying us that we had been granted an additional 180-day period, or until October 2, 2023, to regain compliance with the Minimum Bid Price Requirement. The new compliance period is an extension of the Initial Compliance Period provided for in Nasdaq's deficiency notice **Products** to the Company, dated October 3, 2022. Nasdaq's determination was based on our meeting the continued listing requirement subject to certain exceptions. The Linamar MLA has an initial term of **three years and will automatically renew** for market value of publicly held shares and all other applicable requirements for initial listing on the Nasdaq Capital Market, with the exception of the Minimum Bid Price Requirement, and our successive two-year terms unless either party has given at least 12 months' written notice of our intention nonrenewal. **Either party may terminate the Linamar MLA at any time upon 12 months' written notice, and in the event of a change in control of the Company prior to cure the deficiency during the second compliance period by effecting a reverse stock split, if necessary.**

Management's plan to regain compliance with the Minimum Bid Price Requirement is to seek stockholder approval for, and to file, an amendment to our amended and restated certificate of incorporation ("Certificate of Incorporation") to effect a reverse stock split of our common stock at a ratio of 1-for-2 to 1-for-10, including shares held by us as treasury shares, with the exact ratio within such range to be determined by our board of directors at its discretion (the "Reverse Stock Split Amendment"). On August 8, 2023, we filed a preliminary proxy statement in connection with a special meeting of our stockholders to be held on September 14, 2023 (the "Special Meeting") for the purpose of approving, among other things, the Reverse Stock Split Amendment.

If compliance with the Minimum Bid Price Requirement cannot be demonstrated by October 2, 2023, Nasdaq will provide written notification that our common stock could be delisted. In such an event, Nasdaq rules permit us to appeal any delisting determination to a Nasdaq Hearings Panel. There can be no assurance that we will be able to regain compliance with the Nasdaq listing rules or maintain its listing on Nasdaq.

Products

Our vehicles provide the end user an environmentally friendly alternative to internal combustion engine vehicles (cars powered by gasoline or diesel oil), for light duty uses, including low-speed logistics, maintenance services, cargo services, and personal/group transport of the initial term, we may terminate upon written notice within three days of completion of such change in a quiet, zero emissions vehicle with a lower total cost of ownership.

Manufacturing Agreement with Cenntrocontrol.

In 2017, AYRO Operating partnered with Cenntro the event we terminate the Linamar MLA prior to its expiration, whether following a change in a supply chain agreement to provide sub-assembly manufacturing services. Cenntro owns the design control or otherwise, we must purchase any remaining raw material inventory, finished goods inventory, work in progress and any unamortized capital equipment used in production and testing of the AYRO Club Car 411 Products and 411x ("AYRO 411 Fleet") vehicles pay a termination fee of \$750,000, subject to certain adjustments. We are dependent on the Linamar MLA, and has granted us an exclusive license to purchase in the AYRO 411 Fleet vehicles for sale in North America. event of its termination our manufacturing operations and customer deliveries would be materially impacted.

Under our Manufacturing License Agreement with Cenntro (the "Cenntro MLA"), in order for us to maintain our exclusive territorial rights pursuant to the Cenntro Linamar MLA, we must meet commit to certain minimum purchase requirements. purchases, to be determined by AYRO on a quarterly basis.

We imported semi-knocked-down vehicle kits import the Products from Cenntro for Linamar in Canada, and we manufacture and assemble the AYRO 411x models comprising our model year 2022 lineup. The vehicle kits were received through shipping containers at the assembly facility of Karma Automotive LLC ("Karma"), our previous manufacturing partner in southern California, as well as Vanish at our customization, service, and integration facility in Round Rock, Texas. The vehicles were then assembled with tailored customization requirements per order.

On May 31, 2022, we received a letter from Cenntro purporting to terminate all agreements and contracts between the Company and Cenntro. Although we do not believe Cenntro's termination Over 98% of the Cenntro MLA is valid, we have determined to cease production of the AYRO 411x vehicle assemblies, components, and focus our resources on the development and launch of the Vanish. We have canceled all purchase orders and future builds with Cenntro and currently intend to only order replacement parts for vehicles from Cenntro in the future. Cenntro inventory remaining on hand as of June 30, 2023, was valued at \$109,238. We expect to lose our exclusive license under the Cenntro MLA, in which case Cenntro could sell identical or similar products through other companies or directly to our customers, which could have a material adverse effect on our results of operations and financial condition.

We intend for the new Vanish to utilize assemblies and products that will largely eliminate our dependency on Chinese imports and optimize the supply chain to rely primarily upon are from North American and European sources. Final assembly of the Vanish will occur in our Round Rock, Texas facilities.

Manufacturing Agreement with Linamar

On July 28, 2022, we partnered with Linamar Corporation ("Linamar"), a Canadian manufacturer, in a manufacturing agreement (the "Linamar MLA") to provide certain sub assembly and assembly parts, including the cabin frame and skate for the Vanish (collectively, the "Products"). During the term of the Linamar MLA, Linamar has the exclusive right to supply the Products to the Company, subject to certain exceptions. The Linamar MLA has an initial term of three years and will automatically renew for successive two-year terms unless either party has given at least 12 months' written notice of nonrenewal. Either party may terminate the Linamar MLA at any time upon 12 months' written notice, and in the event of a change in control of the Company prior to the end of the initial term, we may terminate upon written notice within three days of completion of such change in control.

In the event we terminate the Linamar MLA prior to its expiration, whether following a change in control or otherwise, we must purchase any remaining raw material inventory, finished goods inventory, work in progress and any unamortized capital equipment used in production and testing of the Products and pay a termination fee of \$750,000, subject to certain adjustments. We are dependent on the Linamar MLA, and in the event of its termination our manufacturing operations and customer deliveries would be materially impacted.

Under the Linamar MLA, we must commit to certain minimum purchases, to be determined by AYRO on a quarterly basis.

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Club Car MPA Termination

The majority of our sales have historically been comprised of sales to Club Car pursuant to a master procurement agreement (the "MPA") entered into by and among AYRO Operating Company, Inc., our subsidiary ("AYRO Operating"), and Club Car on March 5, 2019. The MPA granted Club Car the exclusive right to sell the AYRO 411 Fleet in North America, provided that Club Car ordered at least 500 vehicles per year. Club Car did not meet this volume threshold for 2020, 2021 or 2022. Pursuant to the MPA, AYRO Operating granted Club Car a right of first refusal for sales of 51% or more of AYRO Operating's assets or equity interests, which right of first refusal is exercisable for a period of 45 days following delivery of an acquisition notice to Club Car. AYRO Operating also agreed to collaborate with Club Car on new products similar to the AYRO 411 Fleet and improvements to existing products and granted Club Car a right of first refusal to purchase similar commercial utility vehicles which AYRO Operating may develop during the term of the MPA.

On April 4, 2023, AYRO Operating delivered notice of termination of the MPA to Club Car, and we intend to replace Club Car with new business partners for selling our products beginning with the Vanish. We do not expect Club Car to remain a customer going forward. In connection with the termination of the MPA and the forthcoming introduction of the Vanish, we are reevaluating our channel strategy with an eye towards distributing our next-generation platform and payloads in a manner that maximizes visibility, moderates channel costs, and creates value. The loss of Club Car as a customer could have a material adverse effect on our sales, financial condition, and results of operations.

Recent Developments

August 2023 Private Placement

On August 7, 2023, we entered into a Securities Purchase Agreement (the "Purchase Agreement") with certain existing investors (the "Investors"), pursuant to which we agreed to sell to the Investors in a private placement (the "Private Placement") (i) an aggregate of 22,000 shares of our newly-designated Series H-7 Preferred Stock, initially convertible into up to 2,750,000 shares of our common stock (the "Preferred Shares") at a conversion price (the "Conversion Price") of \$8.00 per share, and (ii) warrants to acquire up to an aggregate of 2,750,000 shares of common stock at an initial exercise price ("Exercise Price") of \$8.00 per share (the "Investor Warrants"). Following the Reverse Stock Split, the Conversion Price was reduced to \$2.00 per share pursuant to the terms of the Certificate of Designations and the Exercise Price was reduced to \$2.00 per share pursuant to the terms of the Warrants (as defined below).

The Private Placement is exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D of the Securities Act and in reliance on similar exemptions under applicable state laws. Each of the Investors has represented to us that it is an accredited investor within the meaning of Rule 501(a) of Regulation D and that it is acquiring the securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. The Preferred Shares and Investor Warrants were offered without any general solicitation by us or our representatives.

The Private Placement closed on August 10, 2023. The aggregate gross proceeds from the Private Placement were approximately \$22 million. We expect to use the net proceeds from the Private Placement for general corporate purposes.

The Purchase Agreement contains certain representations and warranties, covenants, and indemnities customary for similar transactions. The representations, warranties and covenants contained in the Purchase Agreement were made solely for the benefit of the parties to the Purchase Agreement and may be subject to limitations agreed upon by the contracting parties.

In connection with the Private Placement, pursuant to an Engagement Letter, dated August 7, 2023, between the Company and Palladium Capital Group, LLC (the "Placement Agent"), we agreed to pay the Placement Agent (i) a cash fee equal to 6% of the gross proceeds from any sale of securities in the Private Placement and (ii) warrants ("Placement Agent Warrants," and together with the Investor Warrants, the "Warrants") to purchase shares of common stock equal to 2% of the number of shares of common stock that the Preferred Shares are initially convertible into, with an initial exercise price of \$8.00 per share (subsequently reduced to \$2.00 per share pursuant to a Stock Combination Event Adjustment (as defined below) following the Reverse Stock Split) and a five-year term.

Series H-7 Preferred Stock

The terms of the Preferred Shares are as set forth in the Certificate of Designations, which was filed with the Secretary of State of the State of Delaware prior to the closing of the Private Placement. The Preferred Shares are convertible into shares of common stock (the "Conversion Shares") at the election of the holder at any time at an initial Conversion Price of \$8.00. The Conversion Price is subject to adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment in the event of any issuances of common stock, or securities convertible, exercisable or exchangeable for common stock, at a price below the then-applicable Conversion Price (subject to certain exceptions). Following the Reverse Stock Split, the Conversion Price for the Preferred Shares was reduced to \$2.00 per share pursuant to the terms of the Certificate of Designations. We are required to redeem the Preferred Shares in twelve equal monthly installments, commencing on a date between February 7, 2024, and August 7, 2025, at the election of each Investor. The amortization payments due upon such redemption are payable, at our election, in cash at 105% of the Installment Redemption Amount (as defined in the Certificate of Designations), or subject to certain limitations, in shares of common stock valued at the lower of (i) the Conversion Price then in effect and (ii) the greater of (A) 80% of the average of the three lowest closing prices of the common stock during the thirty trading day period immediately prior to the date the amortization payment is due or (B) \$0.744, or, in any case, such lower amount as permitted, from time to time, by the Nasdaq Stock Market, which amortization payments are subject to certain adjustments as set forth in the Certificate of Designations.

The holders of the Preferred Shares are entitled to dividends of 8% per annum, compounded monthly, which are payable in cash or shares of common stock at our option, in accordance with the terms of the Certificate of Designations. Upon the occurrence and during the continuance of a Triggering Event (as defined in the Certificate of Designations), the Preferred Shares will accrue dividends at the rate of 15% per annum. Upon conversion or redemption, the holders of the Preferred Shares are also entitled to receive a dividend make-whole payment assuming for calculation purposes that the stated value remained outstanding through and including the twelve (12) month anniversary of the first installment date as elected by an Investor. Except as required by applicable law, the holders of Preferred Shares are entitled to vote with holders of the common stock on an as-converted basis, with the number of votes to which each holder of Preferred Shares is entitled to be calculated assuming conversion at the Minimum Price (as defined in Rule 5635 of the Rules of the Nasdaq Stock Market) applicable immediately before the execution and delivery of the Purchase Agreement.

Notwithstanding the foregoing, our ability to settle conversions and make amortization and dividend make-whole payments using shares of common stock is subject to certain limitations set forth in the Certificate of Designations, including a limit on the number of shares that may be issued until the time, if any, that our stockholders have approved the issuance of more than 19.9% of our outstanding shares of common stock in accordance with Nasdaq listing standards (the "Nasdaq Stockholder Approval"). We agreed to seek the Nasdaq Stockholder Approval at a meeting of stockholders, and such approval was obtained at the Company's special meeting of stockholders held on September 14, 2023. Our directors and officers executed an agreement to vote their shares in favor of the Nasdaq Stockholder Approval. The Certificate of Designations also contains a certain beneficial ownership limitation after giving effect to the issuance of shares of common stock issuable upon conversion of, or as part of any amortization or dividend make-whole payment under, the Certificate of Designations or Warrants. Such amount may be lowered with the consent of the holder and the Company.

The Certificate of Designations includes certain Triggering Events (as defined in the Certificate of Designations), including, among other things, the suspension from trading or the failure of the common stock to be trading or listed (as applicable) on an eligible market for a period of five (5) consecutive trading days and our failure to pay any amounts due to the holders of the Preferred Shares when due. In connection with a Triggering Event, each holder of Preferred Shares will be able to require us to redeem in cash any or all of the holder's Preferred Shares at a premium set forth in the Certificate of Designations.

We are subject to certain affirmative and negative covenants regarding the incurrence of indebtedness, the existence of liens, investment transactions, the repayment of indebtedness, the payment of cash in respect of dividends (other than dividends pursuant to the Certificate of Designations), distributions or redemptions, the transfer of assets, and certain minimum cash requirements and establishment of a segregated deposit account for the proceeds of the offering, among other matters.

There is no established public trading market for the Preferred Shares, and we do not intend to list the Preferred Shares on any national securities exchange or nationally recognized trading system.

Warrants

The Warrants are exercisable for shares of common stock (the "Warrant Shares") immediately at an initial Exercise Price of \$8.00 per share and expire five years from the date of issuance. The Exercise Price is subject to adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment, on a "full ratchet" basis, in the event of any issuances of common stock, or securities convertible, exercisable or exchangeable for common stock, at a price below the then-applicable Exercise Price (subject to certain exceptions). Following the Reverse Stock Split, the Exercise Price was reduced to \$2.00 per share pursuant to the terms of the Warrants and the number of Warrant Shares issuable upon the exercise of the Warrants was increased proportionately. There is no established public trading market for the Warrants, and we do not intend to list the Warrants on any national securities exchange or nationally recognized trading system.

Supply Agreement with Gallery Carts Registration Rights

During 2020, we The Preferred Shares, the Conversion Shares, the Warrants, and the Warrant Shares have not been registered under the Securities Act. In connection with the Purchase Agreement, on August 7, 2023, the Company and the Investors entered into a supply agreement Registration Rights Agreement (the "Registration Rights Agreement"), pursuant to which we are required to file a resale registration statement (the "Registration Statement") with Gallery Carts ("Gallery") the SEC to register for resale 150% of the Conversion Shares and the Warrant Shares promptly following the closing date, but in no event later than 30 calendar days after the closing date, and to have such Registration Statement declared effective by the Effectiveness Date (as defined in the Registration Rights Agreement). We filed a registration statement for the resale of such securities on September 8, 2023, a leading provider of food and beverage kiosks, carts, and mobile storefront solutions. Joint development efforts have led as amended on September 27, 2023. We will be obligated to pay certain liquidated damages to the launch Investors if we fail to file or cause the Registration Statement to be declared effective by the SEC when required or fail to maintain the effectiveness of the parties' first all-electric configurable mobile hospitality vehicle Registration Statement pursuant to the terms of the Registration Rights Agreement.

Nasdaq Minimum Bid Price Requirement

As previously reported, on October 3, 2022, we received a letter from the Listing Qualifications Department of the Nasdaq Stock Market (“Nasdaq”) indicating that, based upon the closing bid price of our common stock for “on-the-go” venues across the United States. This innovative solution permits food, beverage, 30 consecutive business day period between August 19, 2022 and merchandising operators September 30, 2022, we did not meet the minimum bid price of \$1.00 per share required for continued listing on The Nasdaq Capital Market pursuant to bring goods directly to consumers. Nasdaq Listing Rule 5550(a)(2) (the “Minimum Bid Price Requirement”).

The configurable Powered Vendor Box, letter also indicated that we would be provided with a compliance period of 180 calendar days, or until April 3, 2023, in the rear of the vehicle, features long-life lithium batteries which to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A). On April 4, 2023, we received a letter from Nasdaq notifying us that power the preconfigured hot/cold beverage and food equipment and is directly integrated we have been granted an additional 180-day period, or until October 2, 2023, to regain compliance with the AYRO 411x and will be directly integrated with the Vanish. The canopy doors, as well as the full vehicle, can be customized with end-user logos and graphics to enhance the brand experience. Gallery, with 40 years of experience delivering custom food kiosk solutions, has expanded into electric mobile delivery vehicles, as customers increasingly want food, beverages and merchandise delivered to where they are gathering. For example, a recent study conducted by Technomic found that a large majority of students, 77%, desired alternative mobile and to-go food options on campuses. Minimum Bid Price Requirement.

Gallery, On September 15, 2023, we effected the Reverse Stock Split in order to regain compliance with the Minimum Bid Price Requirement. On October 2, 2023, we received written notice from the Listing Qualifications Department of Nasdaq stating that because our common stock had a premier distributor of AYRO vehicles, has a diverse clientele throughout mobile food, beverage, closing bid price at or above \$1.00 per share for the last 10 consecutive business days, from September 18 to September 29, 2023, we had regained compliance with the Minimum Bid Price Requirement, and merchandise distribution markets for key customer applications such as university, corporate and government campuses, major league and amateur-level stadiums and arenas, resorts, airports, and event centers. In addition to finding innovative and safe ways to deliver food and beverages to their patrons, reducing and ultimately eliminating their carbon footprint that the matter is a top priority for many of these customers. now closed.

Factors Affecting Results of Operations

Master Procurement Agreement

In March 2019, we entered into the MPA with Club Car. In partnership with Club Car and in interaction with its dealer network, we directed our business development resources towards supporting Club Car’s enterprise and fleet sales function as Club Car proceeds in its new product introduction initiatives. Substantially all of our sales have historically been to Club Car pursuant to the MPA. On April 4, 2023, we delivered notice of termination of the MPA to Club Car, and we intend to replace Club Car with new business partners for selling our products beginning with the Vanish. We do not expect Club Car to remain a customer going forward.

Tariffs

Countervailing tariffs on certain goods from China continued to have an adverse impact on raw material costs throughout 2021 and 2022.

Supply Chain

Beginning in the second quarter of 2021, we offered a configuration of our 411x powered by lithium-ion battery technology. Additionally, our powered food box offerings are currently powered by lithium-ion battery technology. Our business depends on the continued supply of battery cells and other parts for our vehicles. During 2021 and 2022, we at times experienced supply chain shortages of both lithium-ion battery cells and other critical components used to produce our vehicles, which has slowed our planned production of vehicles. In addition, we could be impacted by shortages of other products or raw materials, including silicon chips that we or our suppliers use in the production of our vehicles or parts sourced for our vehicles.

We intend for the The Vanish to utilize utilizes assemblies and products that will largely eliminate our dependency on Chinese imports and optimize the supply chain to North American and European sources.

Revenue

We derive revenue from the sale of our four-wheeled electric vehicles, and, to a lesser extent, shipping, parts, and service fees. In the past we also derived rental revenue from vehicle revenue sharing agreements with tourist destination fleet operators, and, to a lesser extent, shipping, parts, and service fees. Provided that all other revenue recognition criteria have been met, we typically recognize revenue upon shipment, as title and risk of loss are transferred to customers and channel partners at that time. Products are typically shipped to dealers or directly to end customers, or in some cases to our international distributors. These international distributors assist with import regulations, currency conversions and local language. Our vehicle product sales revenues vary from period to period based on, among other things, the customer orders received and our ability to produce and deliver the ordered products. Customers often specify requested delivery dates that coincide with their need for our vehicles.

Because these customers may use our products in connection with a variety of projects of different sizes and durations, a customer's orders for one reporting period generally do not indicate a trend for future orders by that customer. Additionally, order patterns do not necessarily correlate amongst customers.

Cost of Goods Sold

Cost of goods sold primarily consists of costs of materials and personnel costs associated with manufacturing operations, and an accrual for post-sale warranty claims. Personnel costs consist of wages and associated taxes and benefits. Cost of goods sold also includes freight and changes to our warranty reserves. Allocated overhead costs consist of certain facilities and utility costs. We expect the cost of revenue to increase in absolute dollars as product revenue increases.

Operating Expenses

Our operating expenses consist of general and administrative, sales and marketing and research and development expenses. Salaries and personnel-related costs, benefits, and stock-based compensation expense are the most significant components of each category of operating expenses. Operating expenses also include allocated overhead costs for facilities and utility costs.

Stock-based compensation

We account for stock-based compensation expense in accordance with Accounting Standards Codification ("ASC") 718, *Compensation—Stock Compensation*, which requires the measurement and recognition of compensation expense for share-based awards based on the estimated fair value on the date of grant.

The fair value of each stock option granted to employees is estimated on the date of the grant using the Black-Scholes option-pricing model and the related stock-based compensation expense is recognized over the vesting period during which an employee is required to provide service in exchange for the award. The fair value of the options granted to non-employees is measured and expensed as the options vest.

Restricted stock grants are stock awards that entitle the holder to receive shares of our common stock as the award vests over time. The fair value of each restricted stock grant is based on the fair market value price of common stock on the date of grant, and it is measured and expensed as the restricted stock vests.

We estimate the fair value of stock-based and cash unit awards containing a market condition using a Monte Carlo simulation model. Key inputs and assumptions used in the Monte Carlo simulation model include the stock price of the award on the grant date, the expected term, the risk-free interest rate over the expected term, the expected annual dividend yield, and the expected stock price volatility. The expected volatility is based on a combination of the historical and implied volatility of our publicly traded, near-the-money stock options, and the valuation period is based on the vesting period of the awards. The risk-free interest rate is derived from the U.S. Treasury yield curve in effect at the time of grant and, since we do not currently pay or plan to pay a dividend on its common stock, the expected dividend yield was zero.

Research and Development Expense

Research and development expense consists primarily of employee compensation and related expenses, prototype expenses, depreciation associated with assets acquired for research and development, amortization of product development costs, product strategic advisory fees, third-party engineering and contractor support costs and allocated overhead. We expect our research and development expenses to increase in absolute dollars as we continue to invest in new and existing products.

Sales and Marketing Expense

Sales and marketing expenses consist primarily of employee compensation and related expenses, sales commissions, marketing programs, travel and entertainment expenses and allocated overhead. Marketing programs consist of advertising, tradeshows, events, corporate communications, and brand-building activities. We expect sales and marketing expenses to increase in absolute dollars as we expand our sales force, expand our product lines, increase marketing resources, and further develop potential sales channels.

General and Administrative Expense

General and administrative expenses consist primarily of employee compensation and related expenses for administrative functions including finance, legal, human resources and fees for third-party professional services, and allocated overhead. We expect our general and administrative expense to increase in absolute dollars as we continue to invest in growing our business.

Other (Expense) Income

Other (expense) income consists of income received or expenses incurred for activities outside of our core business. Other expense consists primarily of interest expense, and unrealized gain/loss on marketable securities, securities and changes in fair values of warrants and derivative liabilities.

Provision for Income Taxes

Provision for income taxes consists of estimated income taxes due to the United States government and to the state tax authorities in jurisdictions in which we conduct business. In the case of a tax deferred asset, we reserve the entire value for future periods.

Results of Operations

Three months ended **June 30, 2023** **September 30, 2023**, compared to three months ended **June 30, 2022** **September 30, 2022**

The following table sets forth our results of operations for each of the periods set forth below:

	For the Three Months Ended June 30,		
	2023	2022	Change
Revenue	\$ 139,544	\$ 981,560	\$ (842,016)
Cost of goods sold	332,027	2,827,512	(2,495,485)
Gross loss	(192,483)	(1,845,952)	1,653,469
Operating expenses:			
Research and development	2,405,398	1,046,797	1,358,601
Sales and marketing	420,861	337,226	83,635
General and administrative	3,247,731	2,741,700	506,031
Total operating expenses	6,073,990	4,125,723	1,948,267
Loss from operations	(6,266,473)	(5,971,675)	(294,798)
Other income (expense):			
Other income (expense), net	(9,166)	10,706	(19,872)
Interest income	117,278	-	117,278
Unrealized gain (loss) on marketable securities	146,935	(13,479)	160,414
Realized gain on marketable securities	8,193	-	8,193
Net loss	\$ (6,003,233)	\$ (5,974,448)	\$ (28,785)

	Three Months Ended September 30,		
	2023	2022	Change
Revenue	\$ 88,395	\$ 373,186	\$ (284,791)
Cost of goods sold	231,837	955,003	(723,166)
Gross loss	(143,441)	(581,817)	438,375
Operating expenses:			
Research and development	1,335,167	1,837,511	(502,344)
Sales and marketing	390,684	384,748	5,936
General and administrative	4,370,684	3,000,156	1,370,528
Total operating expenses	6,096,535	5,222,414	874,121
Loss from operations	(6,239,976)	(5,804,231)	(435,745)
Other income (expense):			
Interest Income	35,557	51,792	(16,235)
Change in FV-Warrant Liability	(10,095,960)	-	(10,095,960)
Change in FV-Derivative Liability	3,216,000	-	3,216,000
Unrealized gain/loss on marketable securities	403,996	(32,135)	436,131
Realized gain on marketable securities	90,812	103,000	(12,189)
Other income (expense), net	(6,349,596)	122,657	(6,472,254)
Net loss	\$ (12,589,572)	\$ (5,681,574)	\$ (6,907,998)

Revenue

Revenue was \$0.14 million \$0.09 million for the three months ended **June 30, 2023** **September 30, 2023**, as compared to \$0.98 million \$0.37 million for the same period in 2022, a decrease of **85.8%** **76.3%**, or **\$0.84 million** **\$0.28 million**. The decrease in revenue was the result of a reduction in sales to Club Car as we wind down our relationship with Club Car.

Cost of goods sold and gross loss

Cost of goods sold decreased by **\$2.5 million** **\$0.72 million**, or **88.3%** **75.7%** for the three months ended **June 30, 2023** **September 30, 2023**, as compared to the same period in 2022, corresponding with the decrease in vehicle sales and a \$1.32 million write-off of NCM inventory and \$0.62 million of Cenntro prepaid and accrued balances that were expensed in the same period in 2022. sales.

Research and development expense

Research and development ("R&D") expense was **\$2.41 million** **\$1.33 million** for the three months ended **June 30, 2023** **September 30, 2023**, as compared to **\$1.05 million** **\$1.84 million** for the same period in 2022, an increase a decrease of **\$1.36 million** **\$0.50 million**, or **129.8%** **27.3%**. The increase decrease was primarily due to pre-production and low-rate initial production costs for the AYRO Vanish. We had an increase in reduced R&D contracting for professional service and design costs expenses from consultants of \$0.41 million,

an increase in design and testing material of \$0.54 million, and \$1.0 million offset by an increase in salaries and related expenses of \$0.37 million, \$0.50 million, as the Company entered into low-rate initial production of the Vanish.

Sales and marketing expense

Sales and marketing expense was \$0.42 million \$0.39 million for the three months ended June 30, 2023 September 30, 2023, as compared to \$0.34 million \$0.38 million for the same period in 2022, an increase of \$0.08 million \$0.01 million, or 24.8% 1.54%, as we increased continued our focus on marketing-related initiatives surrounding the AYRO Vanish. Contracting for professional marketing services increased by \$0.07 million.

General and administrative expenses

The majority of our operating losses from continuing operations resulted from general and administrative expenses. General and administrative expenses consist primarily of costs associated with our overall operations and with being a public company. These costs include personnel, legal and financial professional services, insurance, investor relations, and compliance related fees. General and administrative expense was \$3.25 million \$4.37 million for the three months ended June 30, 2023 September 30, 2023, compared to \$2.74 million \$3.0 million for the same period in 2022, an increase of \$0.51 million \$1.37 million, or 18.5% 45.68% primarily due to contracting cost and professional services for overall repositioning associated expenses related to the issuance of engineering, design, and manufacturing partnerships. Salaries and related expenses decreased by \$0.09 million, primarily due to reducing headcount. Fulfillment expense and rent expense decreased by \$0.05 million and \$0.04 million, respectively. Depreciation and Series H-7 Preferred Stock of \$1.237 million. There was an increase in stock-based compensation increased by \$0.06 million and decreased by \$0.07 million, respectively, of \$0.13 million.

Other income and expense

We recorded a \$0.01 million \$6.47 million decrease of net other income from disposing due to the accounting treatment of the change in fair value of both warrant and derivative liabilities of \$6.88 million, a fixed asset, a \$0.17 million increase \$0.02 million decrease in interest income on cash accounts, and a decrease in realized gains of \$0.01 million on marketable securities, partially offset by an increase in unrealized gains of \$0.16 million on marketable securities, and an increase in realized gains of \$0.01 million \$0.44 million on marketable securities.

Six Nine months ended June 30, 2023 September 30, 2023, compared to six nine months ended June 30, 2022 September 30, 2022

The following table sets forth our results of operations for each of the periods set forth below:

	For the Six Months Ended June 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Revenue	\$ 252,628	\$ 2,008,405	\$ (1,755,777)	\$ 341,023	\$ 2,381,592	\$ (2,040,569)
Cost of goods sold	551,820	4,004,657	(3,452,837)	783,656	4,959,660	(4,176,004)
Gross loss	(299,192)	(1,996,252)	1,697,060	(442,633)	(2,578,068)	2,135,435
Operating expenses:						
Research and development	4,535,388	1,912,204	2,623,184	5,870,555	3,749,714	2,120,841
Sales and marketing	1,138,953	1,182,042	(43,089)	1,529,637	1,566,790	(37,153)
General and administrative	6,091,047	5,446,627	644,420	10,461,733	8,446,785	2,014,948
Total operating expenses	11,765,388	8,540,873	3,224,515	17,861,925	13,763,289	4,098,636
Loss from operations	(12,064,580)	(10,537,125)	(1,527,455)	(18,304,558)	(16,341,357)	(1,963,201)
Other income (expense):						
Interest Income				370,387	71,389	298,998
Change in FV-Warrant Liability				(10,095,960)	-	(10,095,960)
Change in FV-Derivative Liability				3,216,000	-	3,216,000
Unrealized gain/loss on marketable securities				602,211	(75,204)	677,415
Realized gain on marketable securities				143,344	110,490	32,854
Other income (expense), net	52,532	19,597	32,935	(5,764,018)	106,675	(5,870,693)
Interest income	261,638	-	261,638			
Unrealized gain (loss) on marketable securities	198,215	(35,580)	233,795			
Realized loss on marketable securities	73,193	-	73,193			
Net loss	\$ (11,479,002)	\$ (10,553,108)	\$ (925,894)	\$ (24,068,576)	\$ (16,234,682)	\$ 7,833,894

Revenue

Revenue was \$0.25 million \$0.34 million for the six nine months ended June 30, 2023 September 30, 2023, as compared to \$2.01 million \$2.38 million for the same period in 2022, a decrease of 87.4% 85.7%, or \$1.76 million \$2.04 million. The decrease in revenue was the result of a reduction in sales to Club Car as we wind down our relationship with Club Car.

Cost of goods sold and gross profit loss

Cost of goods decreased by \$3.45 million \$4.18 million, or 86.2% 84.2% for the six nine months ended June 30, 2023 September 30, 2023, as compared to the same period in 2022, corresponding with the decrease in vehicle sales and a \$1.32 million write-off of NCM inventory and \$0.62 million of Cenntro prepaid and accrued balances that were expensed in the same period in 2022.

Research and development expense

Research and development ("R&D") expense was \$4.54 million \$5.87 million for the six nine months ended June 30, 2023 September 30, 2023, as compared to \$1.91 million \$3.75 million for the same period in 2022, an increase of \$2.62 million \$2.12 million, or 137.2% 56.6%. The increase was primarily due to pre-production and low-rate initial production costs for the AYRO Vanish. We had Vanish, including an increase in R&D contracting for professional service and design costs of \$1.5 million \$0.85 million, an increase in design and testing material of \$0.66 million, and an increase in salaries and related expenses of \$0.4 million \$0.68 million and an increase in shop and tool supplies expenses of \$0.66 million.

Sales and marketing expense

Sales and marketing expense was \$1.14 million \$1.53 million for the six nine months ended June 30, 2023 September 30, 2023, as compared to \$1.18 million \$1.57 million for the same period in 2022, an decrease of \$0.04 million, or 3.6% 2.4%, as we restructured our sales and marketing staff and marketing-related initiatives surrounding the AYRO Vanish. Salaries and related expenses decreased by \$0.48 million \$0.47 million due to the a reduction of in our sales and marketing resources. Contracting for professional marketing services increased by \$0.19 million. Bad debt increased by \$0.29 million due to winding down our relationship with Club Car. Contracting for professional marketing services increased by \$0.16 million.

General and administrative expenses

The majority of our operating losses from continuing operations resulted from general and administrative expenses. General and administrative expenses consist primarily of costs associated with our overall operations and with being a public company. These costs include personnel, legal and financial professional services, insurance, investor relations, and compliance related fees. General and administrative expense was \$6.09 million \$10.46 million for the six nine months ended June 30, 2023 September 30, 2023, compared to \$5.45 million \$8.45 million for the same period in 2022, an increase of \$0.64 million \$2.01 million, or 11.8% 23.9% primarily due to an overall repositioning \$1.237 million of engineering, design, issuance costs and manufacturing partnerships. associated legal expenses related to the issuance of Series H-7 Preferred Stock. Salaries and related expenses increased by \$0.21 million \$0.27 million, primarily due to expanding headcount. Fulfillment expense and rent expense decreased by \$0.21 million and \$0.13 million, respectively. Depreciation and stock-based compensation increased by \$0.1 million \$0.13 million and decreased by \$0.08 million \$0.18 million, respectively.

Other income and expense

We recorded a \$0.5 million increase \$5.87 million decrease of net other income resulting from an insurance settlement on damaged vehicles the accounting treatment of the change in transit fair value of both warrant and loss on disposal derivative liabilities of \$6.88 million, partially offset by a fixed asset of \$0.01 million, a \$0.26 million \$0.30 million increase in interest income on cash accounts, an increase in realized unrealized gains of \$0.07 million \$0.68 million on marketable securities, and an increase in unrealized realized gains of \$0.24 million \$0.03 million on marketable securities.

Liquidity and Capital Resources

As of June 30, 2023 September 30, 2023, we had \$13.57 million \$3.29 million in cash \$19.46 million and cash equivalents, \$10.0 million in restricted cash and \$34.63 million in marketable securities and working capital of \$37.65 million \$53.48 million. As of December 31, 2022, we had \$39.1 million in cash, \$9.85 million in marketable securities and working capital of \$49.67 million. The decrease in cash and increase in working capital was primarily a result of our operating loss, loss partially offset by the issuance of Series H-7 Preferred Stock, the proceeds of which were primarily invested in marketable securities. Our sources of cash since inception have been predominately from the sale of equity and debt.

Our business is capital-intensive, and future capital requirements will depend on many factors, including our growth rate. On August 7, 2023, we entered into the timing and extent Purchase Agreement with the Investors, pursuant to which we agreed to sell to the Investors (i) an aggregate of 22,000 Preferred Shares, initially convertible into up to support development efforts, the results 2,750,000 shares of our strategic review, the expansion common stock at a conversion price of our sales \$8.00 per share, and marketing teams, the timing (ii) Investor Warrants to acquire up to an aggregate of new product introductions and the continuing market acceptance 2,750,000 shares of our products and services. We are working to control expenses and deploy our capital in the most efficient manner. common stock at an exercise price of \$8.00 per share, for aggregate gross proceeds of approximately \$22,000,000.

We are evaluating other options for the strategic deployment of capital beyond our ongoing strategic initiatives, including potentially entering other segments of the electric vehicle market. We anticipate being opportunistic with our capital, and we intend to explore potential partnerships and acquisitions that could be synergistic with our competitive stance in the market.

We are subject to a number of risks similar to those of earlier stage commercial companies, including dependence on key individuals and products, the difficulties inherent in the development of a commercial market, the potential need to obtain additional capital, and competition from larger companies, other technology companies and other technologies. Based on the foregoing, management believes that the existing cash, cash equivalents and marketable securities at June 30, 2023 September 30, 2023, will be sufficient to fund operations for at least the next twelve months following the date of this report.

As discussed above, in connection with our strategic review we canceled development of our planned next-generation three-wheeled vehicle. In December We commenced low-rate initial production of 2022 we completed pre-production on the new 411 fleet vehicle model refresh, Vanish in the Vanish, second quarter of 2023 and commenced initial sales and delivery of the Vanish in the third quarter of 2023.

Summary of Cash Flows

The following table summarizes our cash flows:

	For the Six Months Ended June 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Cash Flows:				
Net cash used in operating activities	\$ (14,893,479)	\$ (9,831,514)	\$ (21,302,119)	\$ (12,959,204)
Net cash used in investing activities	\$ (10,633,818)	\$ (18,438,183)	\$ (26,138,696)	\$ (16,772,413)
Net cash provided by financing activities	\$ -	\$ -	\$ 21,632,156	\$ -

Operating Activities

During the six nine months ended June 30, 2023 September 30, 2023, we used \$14.89 million \$21.30 million in cash in operating activities, an increase in use of \$5.06 million \$8.34 million compared to the cash used in operating activities of \$9.83 million \$12.96 million during the same period in 2022. The increase in cash used in operating activities was primarily a result of raw materials purchased and \$1.51 million \$1.7 million of prepayments for inventory and manufacturing services, payments of accrued expenses, and an increase in our operating loss as we continue to build our core business.

Our ability to generate cash from operations in future periods will depend in large part on profitability, the rate and timing of collections of our accounts receivable, inventory turns and our ability to manage other areas of working capital.

Investing Activities

During the six nine months ended June 30, 2023 September 30, 2023, we used cash of \$10.63 million from \$26.14 million in investing activities as compared to \$18.44 million \$16.77 million of cash used in investing activities during 2022, a decrease the nine months ended September 30, 2022, an increase of \$7.8 million \$9.37 million. The net decrease increase was primarily due to our investment in marketable securities of \$9.3 million \$24.03 million for the six nine months ended June 30, 2023 September 30, 2023, as compared to \$18 million \$15.76 million for the six nine months ended June 30, 2022 September 30, 2022.

Financing Activities

During the six nine months ended June 30, 2023 September 30, 2023, and 2022, we had no financing activities provided \$21.63 million from the issuance of note. Series H-7 Preferred Stock, a 100% increase compared to the same period in 2022.

Critical Accounting Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The preparation of our consolidated financial statements and related disclosures requires us to make estimates, assumptions and judgments that affect the reported amount of assets, liabilities, revenue, costs and expenses and 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. Accordingly, we evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions and conditions.

Our critical accounting estimates have not changed materially from those previously reported in our Form 10-K.

Recent Developments

August 2023 Private Placement

On August 7, 2023, we entered into a Securities Purchase Agreement (the "Purchase Agreement") with certain existing investors (the "Investors"), pursuant to 10-K in regard to which we agreed to sell to the Investors (i) an aggregate of 22,000 shares of our newly-designated Series H-7 Preferred Stock initially convertible into up to 22,000,000 shares of our common stock at a conversion price of \$1.00 per share (the "Preferred Shares"), and (ii) warrants to acquire up to an aggregate of 22,000,000 shares of common stock at an exercise price of \$1.00 per share (the "Investor Warrants" and such transactions collectively, the "Private Placement").

The Private Placement is exempt from the registration requirements treatment of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to the exemption for transactions by an issuer associated warrant and derivative liabilities, which did not involving any public offering under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D of the Securities Act and in reliance on similar exemptions under applicable state laws. Each of the Investors has represented to us that it is an accredited investor within the meaning of Rule 501(a) of Regulation D and that it is acquiring the securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. The Preferred Shares and Investor Warrants were offered without any general solicitation by us or our representatives.

The Private Placement closed on August 10, 2023. The aggregate gross proceeds from the Private Placement were approximately \$22 million. We expect to use the net proceeds from the Private Placement for general corporate purposes.

The Purchase Agreement contains certain representations and warranties, covenants and indemnities customary for similar transactions. The representations, warranties and covenants contained in the Purchase Agreement were made solely for the benefit of the parties to the Purchase Agreement and may be subject to limitations agreed upon by the contracting parties.

In connection with the Private Placement, pursuant to an Engagement Letter, dated August 7, 2023, between the Company and Palladium Capital Group, LLC (the "Placement Agent"), we agreed to pay the Placement Agent (i) a cash fee equal to 6% of the gross proceeds from any sale of securities in the Private Placement and (ii) warrants ("Placement Agent Warrants," and together with the Investor Warrants, the "Warrants") to purchase shares of common stock equal to 2% of the number of shares of common stock that the Preferred Shares are initially convertible into, with an exercise price of \$1.00 per share and a five-year term.

Series H-7 Preferred Stock

The terms of the Preferred Shares are as set forth in the certificate of designations filed with the Secretary of State of the State of Delaware prior to the closing of the Private Placement (the "Certificate of Designations"). The Preferred Shares are convertible into shares of common stock (the "Conversion Shares") exist at the election of time the holder at any time at an initial conversion price ("Conversion Price") of \$1.00. The Conversion Price is subject to customary adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment in the event of any issuances of common stock, or securities convertible, exercisable or exchangeable for common stock, at a price below the then-applicable Conversion Price (subject to certain exceptions). We are required to redeem the Preferred Shares in twelve equal monthly installments, commencing on a date between February 7, 2024 and August 7, 2025, at the election of each Investor. The amortization payments due upon such redemption are payable, at our election, in cash at 105% of the Installment Redemption Amount (as defined in the Certificate of Designations), or subject to certain limitations, in shares of common stock valued at the lower of (i) the Conversion Price then in effect and (ii) the greater of (A) 80% of the average of the three lowest closing prices of the common stock during the thirty trading day period immediately prior to the date the amortization payment is due or (B) the lower of \$0.144 and 20% of the Minimum Price (as defined in Rule 5635 of the Rules of the Nasdaq Stock Market) on the date of receipt of Nasdaq Stockholder Approval (as defined below), which amortization payments are subject to certain adjustments as set forth in the Certificate of Designations.

Form 10-K was filed.

The holders of the Preferred Shares are entitled to dividends of 8% per annum, compounded monthly, which are payable in cash or shares of common stock at our option, in accordance with the terms of the Certificate of Designations. Upon the occurrence and during the continuance of a Triggering Event (as defined in the Certificate of Designations), the Preferred Shares will accrue dividends at the rate of 15% per annum. Upon conversion or redemption, the holders of the Preferred Shares are also entitled to receive a dividend make-whole payment assuming for calculation purposes that the stated value remained outstanding through and including the twelve (12) month anniversary of the first installment date as elected by an Investor. Except as required by applicable law, the holders of Preferred Shares are entitled to vote with holders of the common stock on an as-converted basis, with the number of votes to which each holder of Preferred Shares is entitled to be calculated assuming conversion at the Minimum Price (as defined in Rule 5635 of the Rules of the Nasdaq Stock Market) applicable immediately before the execution and delivery of the Purchase Agreement.

Notwithstanding the foregoing, our ability to settle conversions and make amortization and dividend make-whole payments using shares of common stock is subject to certain limitations set forth in the Certificate of Designations, including a limit on the number of shares that may be issued until the time, if any, that our stockholders have approved the issuance of more than 19.9% of our outstanding shares of common stock in accordance with Nasdaq listing standards (the "Nasdaq Stockholder Approval"). We have agreed to seek stockholder approval of these matters at a meeting to be held no later than November 5, 2023. We intend to obtain the Nasdaq Stockholder Approval at the Special Meeting. Our directors and officers holding approximately 1,484,458 shares of common stock, representing approximately 3.9% of our issued and outstanding Common Stock, have executed an agreement to vote their shares in favor of the Nasdaq Stockholder Approval. The Certificate of Designations also contains a certain beneficial ownership limitation after giving effect to the issuance of shares of common stock issuable upon conversion of, or as part of any amortization or dividend make-whole payment under, the Certificate of Designations or Warrants. Such amount may be lowered with the consent of the holder and the Company.

The Certificate of Designations includes certain Triggering Events (as defined in the Certificate of Designations), including, among other things, the suspension from trading or the failure of the common stock to be trading or listed (as applicable) on an eligible market for a period of five (5) consecutive trading days and our failure to pay any amounts due to the holders of the Preferred Shares when due. In connection with a Triggering Event, each holder of Preferred Shares will be able to require us to redeem in cash any or all of the holder's Preferred Shares at a premium set forth in the Certificate of Designations.

We are subject to certain affirmative and negative covenants regarding the incurrence of indebtedness, the existence of liens, investment transactions, the repayment of indebtedness, the payment of cash in respect of dividends (other than dividends pursuant to the Certificate of Designations), distributions or redemptions, the transfer of assets, and certain minimum cash requirements and establishment of a segregated deposit account for the proceeds of the offering, among other matters.

There is no established public trading market for the Preferred Shares and we do not intend to list the Preferred Shares on any national securities exchange or nationally recognized trading system.

Warrants

The Warrants are exercisable for shares of common stock (the "Warrant Shares") immediately at an exercise price of \$1.00 per share (the "Exercise Price") and expire five years from the date of issuance. The Exercise Price is subject to customary adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment, on a "full ratchet" basis, in the event of any issuances of common stock, or securities convertible, exercisable or exchangeable for common stock, at a price below the then-applicable Exercise Price (subject to certain exceptions). There is no established public trading market for the Warrants and we do not intend to list the Warrants on any national securities exchange or nationally recognized trading system.

Registration Rights

The Preferred Shares, the Conversion Shares, the Warrants and the Warrant Shares have not been registered under the Securities Act. In connection with the Purchase Agreement, on August 7, 2023, the Company and the Investors entered into a Registration Rights Agreement (the "Registration Rights Agreement"), pursuant to which we are required to file a resale registration statement (the "Registration Statement") with the SEC to register for resale 150% of the Conversion Shares and the Warrant Shares promptly following the closing date, but in no event later than 30 calendar days after the closing date, and to have such Registration Statement declared effective by the Effectiveness Date (as defined in the Registration Rights Agreement). We will be obligated to pay certain liquidated damages to the Investors if we fail to file the Registration Statement when required, fails to file or cause the Registration Statement to be declared effective by the SEC when required, or fails to maintain the effectiveness of the Registration Statement pursuant to the terms of the Registration Rights Agreement.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

ITEM 4. CONTROLS AND PROCEDURES

Under the supervision and with the participation of management, including our principal executive and principal financial officers, we evaluated the effectiveness of our disclosure controls and procedures as of **June 30, 2023** **September 30, 2023**. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on the evaluation of our disclosure controls and procedures as of **June 30, 2023** **September 30, 2023**, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were ineffective due to the material weakness in internal control over financial reporting discussed below.

In its assessment of the effectiveness of internal control over financial reporting as of December 31, 2022, management identified a material weakness related to segregation of duties. Specifically, due to limited resources and headcount, we did not have multiple people in the accounting function for full segregation of duties.

Management subsequently identified a material weakness related to the Company’s lack of a sufficient number of accounting personnel with the appropriate level of technical knowledge, experience and training in GAAP and SEC reporting requirements.

Plan for Remediation of Material Weakness

We have engaged a third party to conduct a full assessment of our controls and procedures. **In the fourth quarter of 2022** **Additionally, we completed plan to engage a third party with GAAP and SEC reporting experience to assist with our full assessment and are now in the process of testing those controls. financial reporting.**

Changes in Internal Control over Financial Reporting

Except as described above, **under “Plan for Remediation of Material Weakness,”** there has been no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

There have been no changes. On October 20, 2023, Club Car filed a complaint against the Company in the Superior Court of Columbia County, Georgia (Civil Action File No. 2023ECV0838) (the "Club Car Complaint"), alleging that the Company had breached its contractual obligations to Club Car under the MPA due to alleged defects in the vehicles sold to Club Car and the Company's termination of warranty support following termination of the MPA. Club Car seeks unspecified damages and indemnification for past and future customer claims with respect to the legal proceedings disclosed in our Form 10-K, vehicles sold to Club Car under the MPA. The Company intends to vigorously contest these allegations.

ITEM 1A. RISK FACTORS

Except as set forth below, there have been no material changes to the risk factors as identified in our Form 10-K.

Our failure to meet the continued listing requirements of The Nasdaq Capital Market could result in a delisting of our common stock.

As previously reported, on October 3, 2022, we received a letter from Nasdaq indicating that, based upon the closing bid price of the Company's common stock for the 30 consecutive business day period between August 19, 2022 and September 30, 2022, we did not meet the minimum bid price of \$1.00 per share required for continued listing on The Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2). In order to regain compliance with Nasdaq's minimum bid price requirement, our common stock was required to maintain a minimum closing bid price of \$1.00 for at least ten consecutive business days during the Initial Compliance Period. We did not regain compliance during the Initial Compliance Period. On April 4, 2023, we received a letter from Nasdaq notifying us that we had been granted an additional 180-day period, or until October 2, 2023, to regain compliance with the Minimum Bid Price Requirement. The new compliance period is an extension of the Initial Compliance Period provided for in Nasdaq's deficiency notice to the Company dated October 3, 2022. Nasdaq's determination was based on the Company meeting the continued listing requirement for market value of publicly held shares and all other applicable requirements for initial listing on the Nasdaq Capital Market, with the exception of the Minimum Bid Price Requirement, and our written notice of our intention to cure the deficiency during the second compliance period by effecting a reverse stock split, if necessary.

To resolve the noncompliance, we may consider available options including a reverse stock split, which may not result in a permanent increase in the market price of our common stock, which is dependent on many factors, including general economic, market and industry conditions and other factors detailed from time to time in the reports we file with the SEC. It is not uncommon for the market price of a company's shares to decline in the period following a reverse stock split.

If compliance with the Minimum Bid Price Requirement cannot be demonstrated by October 2, 2023, Nasdaq will provide written notification that our common stock could be delisted. In such an event, Nasdaq rules permit the Company to appeal any delisting determination to a Nasdaq Hearings Panel. However, there can be no assurance that we will be able to regain compliance with the Nasdaq listing rules or maintain its listing on Nasdaq.

Although we expect to take actions intended to restore our compliance with the listing requirements, we can provide no assurance that any action taken by us would be successful, or that any such action would stabilize the market price or improve the liquidity of our common stock. Should a delisting occur, an investor would likely find it significantly more difficult to dispose of, or to obtain accurate quotations as to the value of our common stock, and our ability to raise future capital through the sale of our common stock could be severely limited.

A significant portion of our revenues has historically been derived from Club Car pursuant to the MPA. Following the termination of the MPA, we will need to identify new strategic channel partners to support the sales of our vehicles.

The majority of our sales have historically been comprised of sales to Club Car pursuant to the MPA, with revenues from Club Car constituting approximately 100% of our revenues in 2022 and 79% of our revenues in 2021. On April 4, 2023, we delivered notice of termination of the MPA to Club Car, and we do not expect them to remain a customer going forward. The loss of Club Car as a customer could have a material adverse effect on our sales, financial condition, and results of operations.

Following the termination of the MPA, we will need to identify new strategic channel partners to support the sales of our vehicles. It may take time to identify and add these partners and to train new personnel to market and support our vehicles. We may be unable to identify suitable partners, or such partners may not successfully market and sell our vehicles and may not devote sufficient time and resources to enable our vehicles to develop, achieve or sustain market acceptance. Failure to enter into arrangements with and retain a sufficient number of high-quality strategic channel partners could increase our marketing costs, adversely impact buying and inventory patterns, payment terms or other contractual terms, sell-through or delivery of our vehicles or curtail our routes-to-market, and could have a material adverse effect on our prospects, business, financial condition or results of operations.

We face risks associated with litigation and claims.

We are a party to certain legal proceedings, as further described under "Legal Proceedings." In addition, from time to time, we may become involved in various claims, disputes and legal or regulatory proceedings that arise in the ordinary course of business and relate to contractual and other obligations. Due to the uncertainties of litigation, we can give no assurance that we will prevail on any claims made against us in any such lawsuit. Also, we can give no assurance that any other lawsuits or claims brought in the future will not have an adverse effect on our financial condition, liquidity, or operating results. Adverse outcomes in some or all of these claims may result in significant monetary damages that could adversely affect our ability to conduct our business.

Holders of our Series H-7 Preferred Stock are entitled to certain payments under the Certificate of Designations that may be paid in cash or in shares of common stock depending on the circumstances. If we make these payments in cash, we may be required to expend a substantial portion of our cash resources. If we make these payments in common stock, it may result in substantial dilution to the holders of our common stock.

Under the Certificate of Designations, we are required to redeem the Series H-7 Preferred Shares in monthly installments, commencing on a date between February 7, 2024, and August 7, 2025. Holders of the Series H-7 Preferred Shares are also entitled to receive dividends, payable in arrears monthly, and dividends payable on installment dates shall be paid as part of the applicable installment amount. Installment amounts are payable, at the company's election, in shares of common stock or, subject to certain limitations, in cash. Installment amounts paid in cash must be paid in the amount of 105% of the applicable payment amount due. For any installment amounts paid in shares of common stock, the number of shares of common stock shall be calculated by dividing the applicable payment amount due by the "installment conversion price." The installment conversion price shall be equal to the lower of (i) the Conversion Price (as defined in the Certificate of Designations) in effect as of the applicable payment date and (ii) the greater of (A) 80% of the average of the three lowest closing prices of our common stock during the thirty trading day period immediately prior to the date the payment is due or (B) the lower of (x) \$0.144 and (y) 20% of the "Minimum Price" (as defined in Rule 5635 of the Rules of the Nasdaq Stock Market) on the date of the Nasdaq Stockholder Approval \$0.744 (subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events) or, in any case, such lower amount as permitted, from time to time, by the Nasdaq Stock Market.

Our ability to make payments due to the holders of the Preferred Shares using shares of common stock is subject to certain limitations set forth in the Certificate of Designations, including a limit on the number of shares that may be issued until our receipt of the Nasdaq Stockholder Approval. Designations. If we are unable to make installment amortization payments in shares of common stock, we may be forced to make such payments in cash. If we do not have sufficient cash resources to make these payments, we may need to raise additional equity or debt capital, and we cannot provide any assurance that we will be successful in doing so. If are unable to raise sufficient capital to meet our payment obligations, we may need to delay, reduce, or eliminate certain of our operations, sell some or all of our assets or merge with another entity. Our ability to make payments due to the holders of the Series H-7 Preferred Shares using cash is also limited by the amount of cash we have on hand at the time such payments are due, as well as certain provisions of the Delaware General Corporation Law. Further, we intend to make the installment amortization payments due to holders of Series H-7 Preferred Stock in the form of common stock to the extent allowed under the Certificate of Designations and applicable law in order to preserve our cash resources. The issuance of shares of common stock to the holders of our Series H-7 Preferred Stock will increase the number of shares of common stock outstanding and could result in substantial dilution to the existing holders of our common stock.

The Certificate of Designations and the Warrants contain anti-dilution provisions and other adjustment provisions that may result have resulted in the reduction of the conversion price Conversion Price of the Preferred Shares or and the exercise price Exercise Price of the Warrants and may do so again in the future. These features may increase the number of shares of common stock being issuable upon conversion of the Preferred Shares or upon the exercise of the warrants. Warrants.

The Certificate of Designations and the Warrants contain anti-dilution provisions, which provisions require the lowering of the applicable conversion price Conversion Price or exercise, Exercise Price, as then in effect, to the purchase price of equity or equity-linked securities issued in any subsequent offerings. If The Certificate of Designations and the Warrants also contain certain other adjustment provisions that provide for the lowering of the applicable Conversion Price or Exercise Price, as then in effect, following any stock split, stock dividend, stock combination, reverse stock split, recapitalization or other similar transaction involving the outstanding Common Stock (a "Stock Combination Event Adjustment"). Pursuant to the Stock Combination Event Adjustment provisions, following the Reverse Stock Split, the Conversion Price and the Exercise Price were both reduced from \$8.00 per share to \$2.00 per share. Additionally, if in the future, while any shares of the Series H-7 Preferred Shares or Warrants are outstanding, we issue securities for a consideration per share of common stock (the "New Issuance Price") that is less than the Conversion Price of the Series H-7 Preferred Shares or the Exercise Price of the Warrants, as then in effect, we will be required, subject to certain limitations and adjustments as provided in the Certificate of Designations or the Warrants, to reduce the Conversion Price or the Exercise Price to be equal to the New Issuance Price, which will result in a greater number of shares of common stock being issuable upon conversion of the Preferred Shares and the exercise of the Warrants, which in turn will increase the dilutive effect of such conversions or exercises on existing holders of our common stock. It is possible that we will not have a sufficient number of shares available to satisfy the conversion of the Preferred Shares or the exercise of the Warrants if we enter into a future transaction that reduces the applicable Conversion Price or Exercise Price. If we do not have a sufficient number of available shares for any Preferred Share conversions or Warrant exercises, we may need to seek stockholder approval to increase the number of authorized shares of our common stock, which may not be possible and will be time consuming and expensive. The potential for such additional issuances may depress the price of our common stock regardless of our business performance and may make it difficult for us to raise additional equity capital while any of the Preferred Shares or Warrants are outstanding.

Under the Purchase Agreement we are subject to certain restrictive covenants that may make it difficult to procure additional financing.

The Purchase Agreement contains the following restrictive covenants: covenants, among others: (i) until Preferred Shares are no longer outstanding, we agreed not to enter into any variable rate transactions; (ii) we agreed to offer to the Investors, until the later of (x) the date on which no Preferred Shares no longer outstanding and (y) the maturity date of the Preferred Shares, the opportunity to participate in any subsequent securities offerings by us; and (iii) we agreed to use our reasonable best efforts to hold a stockholder meeting, at which we would solicit our stockholders' affirmative vote for approval of our issuance of the maximum Conversion Shares upon conversion of the Preferred Shares and the maximum Warrant Shares upon exercise of the Warrants, each in accordance with the applicable law and rules and regulations of Nasdaq Stockholder Approval no later than November 5, 2023, which approval was obtained at the Company's special meeting of stockholders held on September 14, 2023. If we require additional funding while these restrictive covenants remain in effect, we may be unable to effect, a financing transaction while remaining in compliance with the terms of the Purchase Agreement, or we may be forced to seek a waiver from the investors party to the Purchase Agreement.

If we do not receive approval from our stockholders, we will be unable to pay amounts due to the holders of the Series H-7 Preferred Shares in shares of common stock and we will be required to pay such amounts in cash, which may force us to divert cash from other uses.

Under the Purchase Agreement, we are required to hold a meeting of our stockholders to seek approval under Rule 5635(d) of the Nasdaq Stock Market for the sale, issuance or potential issuance by us of our common stock (or securities convertible into or exercisable for our common stock) in excess of 7,554,727 shares, which is 19.99% of the shares of common stock outstanding immediately prior to the execution of the Purchase Agreement. Our directors and officers, who held approximately 3.9% of our issued and outstanding common stock as of the date of the Purchase Agreement, are party to a voting agreement pursuant to which, among other things, each such stockholder agreed, solely in their capacity as a stockholder, to vote all of their shares of common stock in favor of the approval. If an insufficient number of our remaining stockholders vote in favor of the proposal we will be unable to issue shares of common stock in order to pay amounts due under the Certificate of Designations to holders of the Series H-7 Preferred Shares in shares of common stock. If we are unable to pay such amounts when due in shares of common stock, we will have to satisfy our payment obligations by means of cash payments. If we do not have sufficient cash resources to make these payments, we may need to delay, reduce or eliminate certain of our operations, sell some or all of our assets or merge with another entity.

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

None. There were no unregistered shares of the Company's equity securities during the three months ended September 30, 2023, other than those previously reported in a Current Report on Form 8-K.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q 10-Q.

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation, effective May 28, 2020 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 29, 2020).
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation, effective May 28, 2020 (incorporated by reference to Exhibit 3.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 29, 2020).
3.3 3.3**	Certificate of Designations of Series H-7 Convertible Preferred Stock
3.4	Certificate of Amendment to Amended and Restated Certificate of Incorporation, effective September 15, 2023 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 15, 2023).
3.5	Certificate of Amendment to Amended and Restated Certificate of Incorporation, effective September 15, 2023 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 15, 2023).
3.6	Amended and Restated Bylaws, effective May 28, 2020 (incorporated by reference to Exhibit 3.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 29, 2020).
3.4 3.7	First Amendment to the Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 8, 2020).
3.5 3.8	Second Amendment to the Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 19, 2021).
3.6 3.9	Form of Certificate of Designations of Series H-7 Convertible Preferred Stock Third Amendment to the Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 8, 2023 October 12, 2023).
4.1	Form of Warrant (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 8, 2023).
10.1	Form of Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 8, 2023).
10.2	Form of Registration Rights Agreement (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 8, 2023).
10.3 †	Second Amendment to the AYRO, Inc. 2020 Long-Term Incentive Plan, dated September 14, 2023 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 15, 2023).

Exhibit No.	Description
31.1**	Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2**	Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1***	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101 INS**	Inline XBRL Instance Document
101 SCH**	Inline XBRL Taxonomy Extension Schema Document
101 CAL**	Inline XBRL Taxonomy Calculation Linkbase Document
101 DEF**	Inline XBRL Taxonomy Extension Definition Linkbase Document
101 LAB**	Inline XBRL Taxonomy Labels Linkbase Document
101 PRE**	Inline XBRL Taxonomy Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)
**	Filed herewith.
***	Furnished herewith herewith.
†	Management or compensatory plan or arrangement.

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.

AYRO, INC.

Dated: August 14, 2023 November 20, 2023

By: /s/ Thomas M. Wittenschlaeger
Thomas M. Wittenschlaeger
President and Chief Executive Officer
(Principal Executive Officer)

Dated: August 14, 2023 November 20, 2023

By: /s/ David E. Hollingsworth
David E. Hollingsworth
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

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Exhibit 3.3

CERTIFICATE OF DESIGNATIONS OF PREFERENCES AND RIGHTS OF
SERIES H-7 CONVERTIBLE PREFERRED STOCK
OF
AYRO, INC.
a Delaware corporation

I, Thomas M. Wittenschlaeger, hereby certify that I am the Chief Executive Officer of AYRO, Inc. (the "Company"), a corporation organized and existing under the Delaware General Corporation Law (the "DGCL"), and further do hereby certify:

That pursuant to the authority expressly conferred upon the Board of Directors of the Company (the "Board") by the Company's Certificate of Incorporation (the "Certificate of Incorporation"), and Section 151(g) of the DGCL, the Board on August 6, 2023 adopted the following resolution determining it desirable and in the best interests of the Company and its stockholders for the Company to create a series of twenty-two thousand (22,000) shares of preferred stock designated as "Series H-7 Convertible Preferred Stock", none of which shares have been issued, to be issued pursuant to the Securities Purchase Agreement (as defined below) in accordance with the terms of the Securities Purchase Agreement:

RESOLVED, that pursuant to the authority vested in the Board this Company, in accordance with the provisions of the Certificate of Incorporation, a series of preferred stock, par value \$0.0001 per share, of the Company be and hereby is created pursuant to this certificate of designations (this "Certificate of Designations"), and that the designation and number of shares thereof and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

SERIES H-7 PREFERRED STOCK

1. Designation and Number of Shares. There shall hereby be created and established a series of preferred stock of the Company designated as "Series H-7 Convertible Preferred Stock" (the "Preferred Shares"). The authorized number of Preferred Shares shall be 22,000. Each Preferred Share shall have a par value of \$0.0001. Capitalized terms not defined herein shall have the meaning as set forth in Section 33 below.

2. Ranking. Except to the extent that the holders of at least a majority of the outstanding Preferred Shares (the "Required Holders") expressly consent to the creation of Parity Stock (as defined below) or Senior Preferred Stock (as defined below) in accordance with Section 18, all shares of capital stock of the Company shall be junior in rank to all Preferred Shares with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (such junior stock is referred to herein collectively as "Junior Stock"). The rights of all such shares of capital stock of the Company shall be subject to the rights, powers, preferences and privileges of the Preferred Shares. Without limiting any other provision of this Certificate of Designations, without the prior express consent of the Required Holders, voting separately as a single class, the Company shall not hereafter authorize or issue any additional or other shares of capital stock that are (i) of senior rank to the Preferred Shares in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (collectively, the "Senior Preferred Stock"), (ii) of pari passu rank to the Preferred Shares in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Company (collectively, the "Parity Stock") or (iii) any Junior Stock having a maturity date or any other date requiring redemption or repayment of such shares of Junior Stock that is prior to the Maturity Date. In the event of the merger or consolidation of the Company with or into another corporation, the Preferred Shares shall maintain their relative rights, powers, designations, privileges and preferences provided for herein and no such merger or consolidation shall be consummated if it would result in the Preferred Shares being treated in any manner inconsistently with the foregoing.

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3. Dividends and Payments.

(a) From and after the first date of issuance of any Preferred Shares (the “**Initial Issuance Date**”), each holder of a Preferred Share (each, a “**Holder**” and collectively, the “**Holders**”) shall be entitled to receive dividends on the Stated Value of the Preferred Shares (“**Dividends**”) at the Dividend Rate computed on the basis of a 360-day year and twelve 30-day months and shall be payable in arrears monthly on each Dividend Date and shall compound each calendar month and shall be payable in funds legally available therefor or, in connection with an Installment Conversion (as defined below) pursuant to Section 9, shares of Common Stock. Dividends shall be paid (i) on each Dividend Date occurring on an Installment Date in accordance with Section 9 as part of the applicable Installment Amount due on the applicable Installment Date if not paid in funds legally available therefor or shares of Common Stock as provided in Section 9 and (ii) with respect to each other Dividend Date not occurring on an Installment Date, on such Dividend Date in funds legally available therefor.

(b) Prior to the payment of Dividends on a Dividend Date, Dividends shall be payable by way of inclusion of the Dividends in the Conversion Amount on each Conversion Date in accordance with Section 4(b)(i) or upon any redemption in accordance with Section 12 or any required payment upon any Triggering Event. From and after the occurrence and during the continuance of any Triggering Event, Dividends shall accrue on the Stated Value each Preferred Share at fifteen percent (15.0%) per annum (the “**Default Rate**”) and shall be computed on the basis of a 360-day year and twelve 30-day months.

(c) On each Installment Date, the Company shall pay to the Holder an amount equal to the Installment Amount due on such Installment Date in accordance with Section 9. On the Maturity Date, the Company shall pay to the Holder an amount in funds legally available therefor (excluding any amounts paid in shares of Common Stock on the Maturity Date in accordance with Section 9) representing all outstanding Preferred Shares, accrued and unpaid Dividends and unpaid Late Charges. Other than as specifically permitted hereunder, the Company may not prepay any portion of the aggregate Stated Value underlying outstanding Preferred Shares, accrued and unpaid Dividends or accrued and unpaid Late Charges.

4. **Conversion.** At any time after the Initial Issuance Date, each Preferred Share shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 4.

(a) **Holder’s Conversion Right.** Subject to the provisions of Section 4(d), at any time or times on or after the Initial Issuance Date, each Holder shall be entitled to convert any portion of the outstanding Preferred Shares held by such Holder into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 4(c) at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Preferred Shares.

(b) **Conversion Rate.** The number of shares of Common Stock issuable upon conversion of any Preferred Share pursuant to Section 4(a) shall be determined by dividing (x) the Conversion Amount of such Preferred Share by (y) the Conversion Price (the “**Conversion Rate**”):

(i) “**Conversion Amount**” means, with respect to each Preferred Share, as of the applicable date of determination, the sum of (1) the Stated Value thereof plus (2) the Make Whole Amount, (3) the Additional Amount thereon and any accrued and unpaid Late Charges (as defined below in Section 26(c)) with respect to such Stated Value and Additional Amount as of such date of determination.

(ii) “**Conversion Price**” means, with respect to each Preferred Share, as of any Conversion Date or other date of determination, \$1.00, subject to adjustment as provided herein.

(c) **Mechanics of Conversion.** The conversion of each Preferred Share shall be conducted in the following manner:

(i) **Optional Conversion.** To convert a Preferred Share into shares of Common Stock on any date (a "**Conversion Date**"), a Holder shall deliver (whether via electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion of the share(s) of Preferred Shares subject to such conversion in the form attached hereto as **Exhibit I** (the "**Conversion Notice**") to the Company. If required by Section 4(c)(iii), within two (2) Trading Days following a conversion of any such Preferred Shares as aforesaid, such Holder shall surrender to a nationally recognized overnight delivery service for delivery to the Company the original certificates, if any, representing the Preferred Shares (the "**Preferred Share Certificates**") so converted as aforesaid (or an indemnification undertaking with respect to the Preferred Shares in the case of its loss, theft or destruction as contemplated by Section 20(b)).

On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment of confirmation and representation as to whether such shares of Common Stock may then be resold pursuant to Rule 144 or an effective and available registration statement, in the form attached hereto as **Exhibit II**, of receipt of such Conversion Notice to such Holder and the Company's transfer agent (the "**Transfer Agent**"), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the second (2nd) Trading Day following each date on which the Company has received a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Conversion Notice) (the "**Share Delivery Deadline**"), the Company shall (1) provided that the Transfer Agent is participating in The Depository Trust Company's ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**"), credit such aggregate number of shares of Common Stock to which such Holder shall be entitled pursuant to such conversion to such Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in FAST, upon the request of such Holder, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such Holder or its designee, for the number of shares of Common Stock to which such Holder shall be entitled. If the number of Preferred Shares represented by the Preferred Share Certificate(s) submitted for conversion pursuant to Section 4(c)(iii) is greater than the number of Preferred Shares being converted, then the Company shall, as soon as practicable and in no event later than two (2) Trading Days after receipt of the Preferred Share Certificate(s) and at its own expense, issue and deliver to such Holder (or its designee) a new Preferred Share Certificate or a new Book-Entry (in either case, accordance with Section 20(d)) representing the number of Preferred Shares not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. In connection with any conversion of Preferred Shares by a Holder, the number of Preferred Shares converted by such Holder shall be deducted from the Installment Amount(s) of such Holder relating to the Installment Date(s) as set forth in the applicable Conversion Notice. Notwithstanding the foregoing, with respect to any Conversion Notice delivered by a Buyer (as defined in the Securities Purchase Agreement) to the Company on or prior to 4:00 p.m. (New York City time) on the Trading Day immediately prior to the date of initial issuance of such applicable Preferred Shares to be converted pursuant to such Conversion Notice (each, an "**Issuance Date**"), which may be delivered at any time after the time of execution of the Securities Purchase Agreement, the Company agrees to deliver the shares of Common Stock issuable upon conversion of such Preferred Shares to be issued on such date subject to such notice(s) by 4:00 p.m. (New York City time) on such applicable Issuance Date and such Issuance Date shall be the Share Delivery Deadline for purposes hereunder with respect to such Conversion Notice.

(ii) Company's Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, if the Transfer Agent is not participating in FAST, to issue and deliver to such Holder (or its designee) a certificate for the number of shares of Common Stock to which such Holder is entitled and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, to credit such Holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of any Conversion Amount (as the case may be) (a "**Conversion Failure**"), then, in addition to all other remedies available to such Holder, (X) the Company shall pay in cash from funds legally available therefor to such Holder on each day after the Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to 1% of the product of (A) the sum of the number of shares of Common Stock not issued to such Holder on or prior to the Share Delivery Deadline and to which such Holder is entitled, multiplied by (B) any trading price of the Common Stock selected by such Holder in writing as in effect at any time during the period beginning on the applicable Conversion Date and ending on the applicable Share Delivery Deadline, and (Y) such Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Preferred Shares that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 4(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to such Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (ii) below, and if on or after such Share Delivery Deadline such Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such conversion that such Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure (a "**Buy-In**"), then, in addition to all other remedies available to such Holder, the Company shall, within two (2) Business Days after receipt of such Holder's request and in such Holder's discretion, either: (I) pay cash from funds legally available therefor to such Holder in an amount equal to such Holder's total purchase price (including brokerage commission, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such shares of Common Stock) or credit to the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash from funds legally available therefor to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II). 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 certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the conversion of the Preferred Shares as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Conversion Failure, this Section 4(c)(ii) shall not apply to a Holder to the extent the Company has already paid such amounts in full to such Holder with respect to such Conversion Failure, as applicable, pursuant to the analogous sections of the Securities Purchase Agreement.

(iii) **Registration; Book-Entry.** At the time of issuance of any Preferred Shares hereunder, the applicable Holder may, by written request (including by electronic-mail) to the Company, elect to receive such Preferred Shares in the form of one or more Preferred Share Certificates or in Book-Entry form. The Company (or the Transfer Agent, as custodian for the Preferred Shares) shall maintain a register (the "**Register**") for the recordation of the names and addresses of the Holders of each Preferred Share and the Stated Value of the Preferred Shares and whether the Preferred Shares are held by such Holder in Preferred Share Certificates or in Book-Entry form (the "**Registered Preferred Shares**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and each Holder of the Preferred Shares shall treat each Person whose name is recorded in the Register as the owner of a Preferred Share for all purposes (including, without limitation, the right to receive payments and Dividends hereunder) notwithstanding notice to the contrary. A Registered Preferred Share may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Preferred Shares by such Holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Preferred Shares in the same aggregate Stated Value as the Stated Value of the surrendered Registered Preferred Shares to the designated assignee or transferee pursuant to Section 20, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of such Registered Preferred Shares within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 4, following conversion of any Preferred Shares in accordance with the terms hereof, the applicable Holder shall not be required to physically surrender such Preferred Shares held in the form of a Preferred Share Certificate to the Company unless (A) the full or remaining number of Preferred Shares represented by the applicable Preferred Share Certificate are being converted (in which event such certificate(s) shall be delivered to the Company as contemplated by this Section 4(c)(iii)) or (B) such Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Preferred Shares upon physical surrender of the applicable Preferred Share Certificate. Each Holder and the Company shall maintain records showing the Stated Value, Dividends and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to such Holder and the Company, so as not to require physical surrender of a Preferred Share Certificate upon conversion. If the Company does not update the Register to record such Stated Value, Dividends and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, such records of such Holder establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each Preferred Share Certificate shall bear the following legend:

ANY TRANSFEREE OR ASSIGNEE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES H-7 PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 4(c)(iii) THEREOF. THE NUMBER OF SHARES OF SERIES H-7 PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES H-7 PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 4(c)(iii) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES H-7 PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Preferred Shares submitted for conversion, the Company shall convert from each Holder electing to have Preferred Shares converted on such date a Holder Pro Rata Amount of such Holder's Preferred Shares submitted for conversion on such date based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the aggregate number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Preferred Shares, the Company shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 25.

(d) Limitation on Beneficial Ownership.

(i) Beneficial Ownership. The Company shall not effect the conversion of any of the Preferred Shares held by a Holder, and such Holder shall not have the right to convert any of the Preferred Shares held by such Holder pursuant to the terms and conditions of this Certificate of Designations and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder together with the other Attribution Parties collectively would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder and the other Attribution Parties shall include the number of shares of Common Stock held by such Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Preferred Shares beneficially owned by such Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes, convertible preferred stock or warrants, including the Preferred Shares and the Warrants) beneficially owned by such Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 4(d)(i). For purposes of this Section 4(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the 1934 Act and the rules and regulations promulgated thereunder. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Preferred Shares without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this Section 4(d)(i), to exceed the Maximum Percentage, such Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to such 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 such Preferred Shares, by such Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Preferred Shares results in such Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which such Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and such Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, any Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage of such Holder to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Holder and the other Attribution Parties and not to any other Holder that is not an Attribution Party of such Holder. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Certificate of Designations in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert such Preferred Shares pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The 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)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 4(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of such Preferred Shares.

(ii) Principal Market Regulation. The Company shall not issue any shares of Common Stock upon conversion of any Preferred Shares or otherwise pursuant to the terms of this Certificate of Designations if the issuance of such shares of Common Stock (taken together with the issuance of all other shares of Common Stock upon exercise of the Warrants) would exceed the aggregate number of shares of Common Stock which the Company may issue upon exercise or conversion (as the case may be) of the Preferred Shares and the Warrants without breaching the Company's obligations under the rules and regulations the listing rules of the Principal Market (the number of shares which may be issued without violating such rules and regulations, the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules and regulations of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Required Holders. Until such approval or such written opinion is obtained, no Holder shall be issued in the aggregate, upon conversion or exercise (as the case may be) of any Preferred Shares or any Warrant, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Initial Issuance Date multiplied by (ii) the quotient of (1) the aggregate number of Preferred Shares issued to such Holder on the Initial Issuance Date divided by (2) the aggregate number of Preferred Shares issued to the Holders on the Initial Issuance Date (with respect to each Holder, the "**Exchange Cap Allocation**"). In the event that any Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, the transferee shall be allocated a pro rata portion of such Holder's Exchange Cap Allocation with respect to such portion of such Preferred Shares so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion in full of a holder's Preferred Shares, the difference (if any) between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder upon such holder's conversion in full of such Preferred Shares shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Preferred Shares and/or related Warrants on a pro rata basis in proportion to the shares of Common Stock underlying the Preferred Shares and/or related Warrants then held by each such holder of Preferred Shares and/or related Warrants. In the event that after November 5, 2023, the Company is prohibited from issuing any shares of Common Stock pursuant to this Section 4(d)(ii)(the "**Exchange Cap Shares**") to a Holder, the Company shall pay cash from funds legally available therefor to such Holder in exchange for the redemption of such number of Preferred Shares held by such Holder that are not convertible into such Exchange Cap Shares at a price equal to the sum of (i) the product of (x) such number of Exchange Cap Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date such Holder delivers the applicable Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 4(d)(ii) and (ii) to the extent such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of Exchange Cap Shares, any brokerage commissions and other out-of-pocket expenses, if any, of such Holder incurred in connection therewith.

(e) Right of Alternate Conversion.

(i) Alternate Conversion Upon a Triggering Event. Subject to Section 4(d), at any time during a Triggering Event Redemption Right Period (as defined below), such Holder may, at such Holder's option, by delivery of a Conversion Notice to the Company (the date of any such Conversion Notice, each an "**Alternate Conversion Date**"), convert all, or any number of Preferred Shares (such Conversion Amount of the Preferred Shares to be converted pursuant to this Section 4(e)(ii), each, an "**Alternate Conversion Amount**") into shares of Common Stock at the Alternate Conversion Price (each an "**Alternate Conversion**").

(ii) Mechanics of Alternate Conversion. On any Alternate Conversion Date, a Holder may voluntarily convert any Alternate Conversion Amount of Preferred Shares pursuant to Section 4(c) (with "Alternate Conversion Price" replacing "Conversion Price" for all purposes hereunder with respect to such Alternate Conversion and with "Required Premium of the Conversion Amount" replacing "Conversion Amount" in clause (x) of the definition of Conversion Rate above with respect to such Alternate Conversion) by designating in the Conversion Notice delivered pursuant to this Section 4(e) of this Certificate of Designations that such Holder is electing to use the Alternate Conversion Price for such conversion; provided that in the event of the Conversion Floor Price Condition, on the applicable Alternate Conversion Date the Company shall also deliver to the Holder the applicable Alternate Conversion Floor Amount. Notwithstanding anything to the contrary in this Section 4(e), but subject to Section 4(d), until the Company delivers shares of Common Stock representing the applicable Alternate Conversion Amount of Preferred Shares to such Holder, such Preferred Shares may be converted by such Holder into shares of Common Stock pursuant to Section 4(c) without regard to this Section 4(e).

(f) [Reserved].

5. Triggering Event Redemptions.

(a) **Triggering Event.** Each of the following events shall constitute a “**Triggering Event**” and each of the events in clauses (viii), (ix), and (x) shall constitute a “**Bankruptcy Triggering Event**”:

(i) the suspension from trading or the failure of the Common Stock to be trading or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(ii) the Company’s (A) failure to cure a Conversion Failure or a Delivery Failure (as defined in the Warrants) by delivery of the required number of shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or exercise date (as the case may be) or (B) written notice to any holder of Preferred Shares or Warrants, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for exercise of any Warrants for Warrant Shares in accordance with the provisions of the Warrants or a request for conversion of any Preferred Shares into shares of Common Stock that is requested in accordance with the provisions of this Certificate of Designations, other than pursuant to Section 4(d) hereof;

(iii) except to the extent the Company is in compliance with Section 11(b) below, at any time following the tenth (10th) consecutive day that a Holder’s Authorized Share Allocation (as defined in Section 11(a) below) is less than the sum of (A) 150% of the number of shares of Common Stock that such Holder would be entitled to receive upon a conversion, in full, of all of the Preferred Shares then held by such Holder (assuming a conversion at the Floor Price then in effect and without regard to any limitations on conversion set forth in this Certificate of Designations) and (B) 150% of the number of shares of Common Stock that such Holder would then be entitled to receive upon exercise in full of such Holder’s Warrants (without regard to any limitations on exercise set forth in the Warrants);

(iv) subject to the applicable provisions of the DGCL, the Board fails to declare any Dividend to be paid on the applicable Dividend Date in accordance with Section 3;

(v) the Company’s failure to pay to any Holder any Dividend on any Dividend Date (whether or not declared by the Board) or any other amount when and as due under this Certificate of Designations (including, without limitation, the Company’s failure to pay any redemption payments or amounts hereunder), the Securities Purchase Agreement or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby (in each case, whether or not permitted pursuant to the DGCL), except, in the case of a failure to pay Dividends and Late Charges when and as due, in each such case only if such failure remains uncured for a period of at least five (5) Trading Days;

(vi) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the applicable Holder upon conversion or exercise (as the case may be) of any Securities (as defined in the Securities Purchase Agreement) acquired by such Holder under the Transaction Documents as and when required by such Securities or the Securities Purchase Agreement, as applicable, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(vii) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of \$500,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries;

(viii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(ix) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(x) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(xi) a final judgment or judgments for the payment of money aggregating in excess of \$500,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the \$500,000 amount set forth above so long as the Company provides each Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to each Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(xii) the Company and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$500,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of \$500,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate, but only if such failure or occurrence remains uncured for a period of at least five (5) days;

(xiii) other than as specifically set forth in another clause of this Section 5(a), the Company or any Subsidiary breaches any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

(xiv) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company that either (A) the Equity Conditions are satisfied, (B) there has been no Equity Conditions Failure, or (C) as to whether any Triggering Event has occurred;

(xv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 15(m) of this Certificate of Designations;

(xvi) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs that has not been cured, if capable of curing, within five (5) Trading Days of the occurrence thereof; or

(xvii) any provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Company, or the validity or enforceability thereof shall be contested, directly or indirectly, by the Company or any Subsidiary, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof or the Company or any of its Subsidiaries shall deny in writing that it has any liability or obligation purported to be created under one or more Transaction Documents.

(b) Notice of a Triggering Event; Redemption Right. Upon the occurrence of a Triggering Event with respect to the Preferred Shares, the Company shall within one (1) Business Day deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an “**Triggering Event Notice**”) to each Holder. At any time after the earlier of a Holder’s receipt of a Triggering Event Notice and such Holder becoming aware of a Triggering Event (such earlier date, the “**Triggering Event Right Commencement Date**”) and ending (such ending date, the “**Triggering Event Right Expiration Date**”, and each such period, a “**Triggering Event Redemption Right Period**”) on the fifteenth (15th) Trading Day after the later of (x) the later of (1) the date such Triggering Event is cured and (2) the date the Company delivers written notice to the Holders of the cure of such Triggering Event and (y) such Holder’s receipt of a Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the opinion of the Company, such Triggering Event is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Triggering Event and (III) a certification as to the date the Triggering Event occurred and, if cured on or prior to the date of such Triggering Event Notice, the applicable Triggering Event Right Expiration Date, such Holder may require the Company to redeem (regardless of whether such Triggering Event has been cured on or prior to the Triggering Event Right Expiration Date) all or any of the Preferred Shares by delivering written notice thereof (the “**Triggering Event Redemption Notice**”) to the Company, which Triggering Event Redemption Notice shall indicate the number of the Preferred Shares such Holder is electing to redeem. Each of the Preferred Shares subject to redemption by the Company pursuant to this Section 5(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate with respect to the Conversion Amount in effect at such time as such Holder delivers a Triggering Event Redemption Notice multiplied by (Y) the product of (1) the Redemption Premium multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Triggering Event and ending on the date the Company makes the entire payment required to be made under this Section 5(b) (the “**Triggering Event Redemption Price**”). Redemptions required by this Section 5(b) shall be made in accordance with the provisions of Section 12. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Preferred Shares by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5(b), but subject to Section 4(d), until the Triggering Event Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by such Holder into Common Stock pursuant to the terms of this Certificate of Designations. In the event of a partial redemption of the Preferred Shares held by a Holder pursuant hereto, the number of Preferred Shares of such Holder redeemed shall be deducted from the Installment Amount(s) of such Holder relating to the applicable Installment Date(s) as set forth in the Triggering Event Redemption Notice including Section 4(e). In the event of the Company’s redemption of any of the Preferred Shares under this Section 5(b), a Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for such Holder. Accordingly, any redemption premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of such Holder’s actual loss of its investment opportunity and not as a penalty. Any redemption upon a Triggering Event shall not constitute an election of remedies by the applicable Holder or any other Holder, and all other rights and remedies of each Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Triggering Event. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Triggering Event, whether occurring prior to or following the Maturity Date, the Company shall immediately redeem, out of funds legally available therefor, each of the Preferred Shares then outstanding at a redemption price equal to the applicable Triggering Event Redemption Price (calculated as if such Holder shall have delivered the Triggering Event Redemption Notice immediately prior to the occurrence of such Bankruptcy Triggering Event), without the requirement for any notice or demand or other action by any Holder or any other person or entity, provided that a Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Triggering Event, in whole or in part, and any such waiver shall not affect any other rights of such Holder or any other Holder hereunder, including any other rights in respect of such Bankruptcy Triggering Event, any right to conversion, and any right to payment of such Triggering Event Redemption Price or any other Redemption Price, as applicable.

6. Rights Upon Fundamental Transactions.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity (if the Successor Entity is not the Company) assumes in writing all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents in accordance with the provisions of this Section 6(a) pursuant to written agreements in form and substance satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Preferred Shares in exchange for such Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designations, including, without limitation, having a stated value and dividend rate equal to the stated value and dividend rate of the Preferred Shares held by the Holders and having similar ranking to the Preferred Shares, and satisfactory to the Required Holders, and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose shares of common stock are quoted on or listed for trading on an Eligible Market. Upon the occurrence of any 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 Certificate of Designations 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 Certificate of Designations and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. In addition to the foregoing, upon consummation of a Fundamental Transaction, the Successor Entity (if the Successor Entity is not the Company) shall deliver to each Holder confirmation that there shall be issued upon conversion or redemption of the Preferred Shares at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 7 and 17, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Preferred Shares prior to such Fundamental Transaction, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity) which each Holder would have been entitled to receive upon the happening of such Fundamental Transaction had all the Preferred Shares held by each Holder been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designations), as adjusted in accordance with the provisions of this Certificate of Designations. Notwithstanding the foregoing, such Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 6(a) to permit the Fundamental Transaction without the assumption of the Preferred Shares. The provisions of this Section 6 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares.

(b) **Notice of a Change of Control Redemption Right.** No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to each Holder (a "**Change of Control Notice**"). At any time during the period beginning after a Holder's receipt of a Change of Control Notice or such Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to such Holder in accordance with the immediately preceding sentence (as applicable) and ending on the later of (A) the date of consummation of such Change of Control or (B) twenty (20) Trading Days after the date of receipt of such Change of Control Notice or (C) twenty (20) Trading Days after the date of the announcement of such Change of Control, such Holder may require the Company to redeem all or any portion of such Holder's Preferred Shares by delivering written notice thereof ("**Change of Control Redemption Notice**") to the Company, which Change of Control Redemption Notice shall indicate the number of Preferred Shares such Holder is electing to have the Company redeem. Each Preferred Share subject to redemption pursuant to this Section 6(b) shall be redeemed by the Company in funds legally available therefor at a price equal to the greatest of (i) the product of (w) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount of the Preferred Shares being redeemed, (ii) the product of (x) the Change of Control Redemption Premium multiplied by (y) the product of (A) the Conversion Amount of the Preferred Shares being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable Change of Control and (2) the public announcement of such Change of Control and ending on the date such Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (y) the Change of Control Redemption Premium multiplied by (z) the product of (A) the Conversion Amount of the Preferred Shares being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration and the aggregate cash value of any non-cash consideration per share of Common Stock to be paid to such holders of the shares of Common Stock upon consummation of such Change of Control (any such non-cash consideration constituting publicly-traded securities shall be valued at the highest of the Closing Sale Price of such securities as of the Trading Day immediately prior to the consummation of such Change of Control, the Closing Sale Price of such securities on the Trading Day immediately following the public announcement of such proposed Change of Control and the Closing Sale Price of such securities on the Trading Day immediately prior to the public announcement of such proposed Change of Control) divided by (II) the Conversion Price then in effect (the "**Change of Control Redemption Price**"). Redemptions required by this Section 6(b) shall have priority to payments to all other stockholders of the Company in connection with such Change of Control. To the extent redemptions required by this Section 6(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Preferred Shares by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 6(b), but subject to Section 4(d), until the applicable Change of Control Redemption Price (together with any Late Charges thereon) is paid in full to the applicable Holder, the Preferred Shares submitted by such Holder for redemption under this Section 6(b) may be converted, in whole or in part, by such Holder into Common Stock pursuant to Section 4 or in the event the Conversion Date is after the consummation of such Change of Control, stock or equity interests of the Successor Entity substantially equivalent to the Company's shares of Common Stock pursuant to Section 4. In the event of a partial redemption of the Preferred Shares held by a Holder pursuant hereto, the number of Preferred Shares of such Holder redeemed shall be deducted from the Installment Amount(s) of such Holder relating to the applicable Installment Date(s) as set forth in the Change of Control Redemption Notice. In the event of the Company's redemption of any of the Preferred Shares under this Section 6(b), such Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for a Holder. Accordingly, any redemption premium due under this Section 6(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of such Holder's actual loss of its investment opportunity and not as a penalty. The Company shall make payment of the applicable Change of Control Redemption Price concurrently with the consummation of such Change of Control if a Change of Control Redemption Notice is received prior to the consummation of such Change of Control and within two (2) Trading Days after the Company's receipt of such notice otherwise (the "**Change of Control Redemption Date**"). Redemptions required by this Section 6 shall be made in accordance with the provisions of Section 12.

7. Rights Upon Issuance of Purchase Rights and Other Corporate Events.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 8 and Section 17 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose that all the Preferred Shares were converted at the Alternate Conversion Price as of the applicable record date) held by such Holder immediately prior to 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, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to such extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of such Holder until such time or times, if ever, as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) to the same extent as if there had been no such limitation).

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that each Holder will thereafter have the right, at such Holder's option, to receive upon a conversion of all the Preferred Shares held by such Holder (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which such Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by such Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares set forth in this Certificate of Designations) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as such Holder would have been entitled to receive had the Preferred Shares held by such Holder initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant the preceding sentence shall be in a form and substance satisfactory to the Required Holders. The provisions of this Section 7 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares set forth in this Certificate of Designations.

8. Rights Upon Issuance of Other Securities.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. If and whenever on or after the Subscription Date the Company grants, issues or sells (or enters into any agreement or publicly announces its intention to grant, issue or sell), or in accordance with this Section 8(a) is deemed to have granted, issued or sold, any shares of Common Stock (including the granting, issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities granted, issued or sold or deemed to have been granted, issued or sold) for a consideration per share (the "**New Issuance Price**") less than a price equal to the Conversion Price in effect immediately prior to such granting, issuance or sale or deemed granting, issuance or sale (such Conversion Price then in effect is referred to herein as the "**Applicable Price**") (the foregoing a "**Dilutive Issuance**"), then, immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Conversion Price and the New Issuance Price under this Section 8(a)), the following shall be applicable:

(i) Issuance of Options. If the Company in any manner grants, issues or sells (or enters into any agreement to grant, issue or sell) any Options and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting, issuance or sale of such Option for such price per share. For purposes of this Section 8(a)(i), the “lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof, minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale (or the time of execution of such agreement to issue or sell, as applicable) of such Convertible Securities for such price per share. For the purposes of this Section 8(a)(ii), the “lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) with respect to any one share of Common Stock upon the issuance or sale (or the agreement to issue or sell, as applicable) of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 8(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 8(b) below), the Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 8(a)(iii), if the terms of any Option or Convertible Security (including, without limitation, any Option or Convertible Security that was outstanding as of the Subscription Date) are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 8(a) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Required Holders, the "Primary Security", and such Option and/or Convertible Security and/or Adjustment Right, the "Secondary Securities" and together with the Primary Security, each a "Unit"), together comprising one integrated transaction, the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be the lower of (x) the purchase price of such Unit, (y) if such Primary Security is an Option and/or Convertible Security, the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise or conversion of the Primary Security in accordance with Section 8(a)(i) or 8(a)(ii) above and (z) the lowest VWAP of the shares of Common Stock on any Trading Day during the five (5) Trading Day period (the "Adjustment Period") immediately following the public announcement of such Dilutive Issuance (for the avoidance of doubt, if such public announcement is released prior to the opening of the Principal Market on a Trading Day, such Trading Day shall be the first Trading Day in such five Trading Day period and if any Preferred Shares are converted, on any given Conversion Date during any such Adjustment Period, solely with respect to such Preferred Shares converted on such applicable Conversion Date, such applicable Adjustment Period shall be deemed to have ended on, and included, the Trading Day immediately prior to such Conversion Date). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Required Holders. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Required Holders. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(v) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Sections 7, 17 or 8(a), if the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Sections 7, 17 or 8(a), if the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 8(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 8(b) occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 8(b), if the Company in any manner issues or sells or enters into any agreement to issue or sell, any Common Stock, Options or Convertible Securities (any such securities, "**Variable Price Securities**") after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to a fixed price, but exclusive of such formulations reflecting customary anti-dilution provisions (such as share splits, share combinations, share dividends and similar transactions) (each of the formulations for such variable price being herein referred to as, the "**Variable Price**"), the Company shall provide written notice thereof via electronic mail and overnight courier to each Holder on the date of such agreement and/or the issuance of such shares of Common Stock, Convertible Securities or Options, as applicable. From and after the date the Company enters into such agreement or issues any such Variable Price Securities, each Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of the Preferred Shares by designating in the Conversion Notice delivered upon any conversion of Preferred Shares that solely for purposes of such conversion such Holder is relying on the Variable Price rather than the Conversion Price then in effect. A Holder's election to rely on a Variable Price for a particular conversion of Preferred Shares shall not obligate such Holder to rely on a Variable Price for any future conversions of Preferred Shares. In addition, from and after the date the Company enters into such agreement or issues any such Variable Price Securities, for purposes of calculating the Installment Conversion Price as of any time of determination, the "Conversion Price" as used therein shall mean the lower of (x) the Conversion Price as of such time of determination and (y) the Variable Price as of such time of determination.

(d) Stock Combination Event Adjustments. If at any time and from time to time on or after the Subscription Date there occurs any stock split, stock dividend, stock combination, reverse stock split, recapitalization or other similar transaction involving the Common Stock (each, a "**Stock Combination Event**", and such date thereof, the "**Stock Combination Event Date**") and the Event Market Price is less than the Conversion Price then in effect (after giving effect to the adjustment in Section 8(b) above), then on the sixteenth (16th) Trading Day immediately following such Stock Combination Event Date, the Conversion Price then in effect on such sixteenth (16th) Trading Day (after giving effect to the adjustment in Section 8(b) above) shall be reduced (but in no event increased) to the Event Market Price. For the avoidance of doubt, if the adjustment in the immediately preceding sentence would otherwise result in an increase in the Conversion Price hereunder, no adjustment shall be made.

(e) Other Events. In the event that the Company (or any Subsidiary) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect any Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 8 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Board shall in good faith determine and implement an appropriate adjustment in the Conversion Price so as to protect the rights of such Holder, provided that no such adjustment pursuant to this Section 8(e) will increase the Conversion Price as otherwise determined pursuant to this Section 8, provided further that if such Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Board and such Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding absent manifest error and whose fees and expenses shall be borne by the Company.

(f) **Calculations.** All calculations under this Section 8 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(g) **Voluntary Adjustment by Company.** Subject to the rules and regulations of the Principal Market, the Company may at any time any Preferred Shares remain outstanding, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board.

9. **Installment Conversion or Installment Redemption.**

(a) **General.** On each applicable Installment Date, provided no Equity Conditions Failure has occurred and is continuing, the Company shall pay to each Holder of Preferred Shares the applicable Installment Amount due on such date by converting such Installment Amount in accordance with this Section 9 (an "**Installment Conversion**"); provided, however, that the Company may, at its option following notice to each Holder as set forth below, pay the Installment Amount by redeeming such Installment Amount in legally available funds at the Cash Installment Price (an "**Installment Redemption**") or by any combination of an Installment Conversion and an Installment Redemption so long as all of the outstanding applicable Installment Amount due on any Installment Date shall be converted and/or redeemed by the Company on the applicable Installment Date, subject to the provisions of this Section 9. On a date which is between the twenty-fifth (25th) Trading Day and the twenty-third (23rd) Trading Day prior to each Installment Date (each, an "**Installment Notice Due Date**"), the Company shall deliver written notice (each, an "**Installment Notice**" and the date all Holders receive such notice is referred to as to the "**Installment Notice Date**"), to each Holder of Preferred Shares and such Installment Notice shall (i) either (A) confirm that the applicable Installment Amount of such Holder shall be converted in whole pursuant to an Installment Conversion or (B) (1) state that the Company elects to redeem for cash, or is required to redeem for cash in accordance with the provisions of this Certificate of Designations, in whole or in part, the applicable Installment Amount pursuant to an Installment Redemption and (2) specify the portion of such Installment Amount which the Company elects or is required to redeem pursuant to an Installment Redemption (such amount to be redeemed in cash, the "**Installment Redemption Amount**" and for clarity, the Installment Redemption Amount includes the Additional Amount and the Make Whole Amount on the Preferred Shares being redeemed pursuant to such Installment Redemption Amount) and the portion of the applicable Installment Amount, if any, with respect to which the Company will, and is permitted to, effect an Installment Conversion (such amount of the applicable Installment Amount so specified to be so converted pursuant to this Section 9 is referred to herein as the "**Installment Conversion Amount**" and for clarity, the Installment Conversion Amount includes the Additional Amount and the Make Whole Amount on the Preferred Shares being converted pursuant to such Installment Conversion Amount), which amounts when added together, must at least equal the entire applicable Installment Amount and (ii) if the applicable Installment Amount is to be paid, in whole or in part, pursuant to an Installment Conversion, certify that there is not then an Equity Conditions Failure as of the applicable Installment Notice Date. In addition, the Company may not effect an Installment Conversion as to any such Installment Date unless, no later than two Trading Days following the applicable Installment Notice Due Date, the Company shall have, subject to Sections 4(d) and (e), delivered to the Holder's account with DTC a number of shares of Common Stock to be applied against such Installment Conversion Amount equal to the quotient of (x) the applicable Installment Conversion Amount divided by (y) the Pre-Installment Price (the "**Pre-Installment Conversion Shares**"). In the event that that number of Pre-Installment Conversion Shares that the Company can issue to the Holder is limited as result of Section 4(d), then such excess number of shares shall be held in abeyance until the Holder notifies the Company that the issuances of such shares to the Holder would not violate Section 4(d) at which time the Company shall deliver such shares to the Holder. Each Installment Notice shall be irrevocable. If the Company does not timely deliver an Installment Notice and Pre-Installment Conversion Shares in accordance with this Section 9 with respect to a particular Installment Date, then the Company shall be deemed to have delivered an irrevocable Installment Notice confirming an Installment Redemption of the entire Installment Amount payable on such Installment Date. Except as expressly provided in this Section 9(a), the Company shall convert and/or redeem the applicable Installment Amounts pursuant to this Section 9 in the same ratio of the applicable Installment Amount being converted and/or redeemed hereunder. The applicable Installment Conversion Amount (whether set forth in the applicable Installment Notice or by operation of this Section 9) shall be converted in accordance with Section 9(b) and the applicable Installment Redemption Amount shall be redeemed in accordance with Section 9(c). For purposes hereof, "**Pre-Installment Price**" means, with respect to a particular date of determination, lowest of (i) the Conversion Price then in effect, and (ii) the greater of (x) the Floor Price and (y) eighty percent (80%) of the average of the three lowest closing prices of the Common Stock on Trading Days during the prior thirty (30) consecutive Trading Day period (each, an "**Installment Conversion Price Measuring Period**") ending and including the Trading Day immediately prior to the applicable Installment Notice Due Date. All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

(b) **Mechanics of Installment Conversion.** Subject to Section 4(d), if the Company delivers an Installment Notice or is deemed to have delivered an Installment Notice certifying that such Installment Amount is being paid, in whole or in part, in an Installment Conversion in accordance with Section 9(a), then the remainder of this Section 9(b) shall apply. The applicable Installment Conversion Amount, if any, shall be converted on the applicable Installment Date at the applicable Installment Conversion Price and the Company shall, on such Installment Date or such earlier date agreed upon by the Company and a Holder, (A) deliver to each Holder's account with DTC any True-Up Shares and (B) in the event of the Conversion Floor Price Condition, the Company shall deliver to the Holder the applicable Conversion Installment Floor Amount, provided that the Equity Conditions are then satisfied (or waived in writing by such Holder) on such Installment Date and an Installment Conversion is not otherwise prohibited under any other provision of the Certificate of Designations. For purposes hereof, "True-Up Shares" means, in the event that the number of shares of Common Stock calculated by taking the applicable Installment Conversion Amount divided by the Installment Conversion Price (the "Adjustment Shares"), is greater than the number of Pre-Installment Conversion Shares received with respect to the Installment Date, a number of additional Conversion Shares equal to the difference between (A) such number of Adjustment Shares and (B) such number of Pre-Installment Conversion Shares. If the Company confirmed (or is deemed to have confirmed by operation of Section 9(a)) the conversion of the applicable Installment Conversion Amount, in whole or in part, and there was no Equity Conditions Failure as of the applicable Installment Notice Date (or is deemed to have certified that the Equity Conditions in connection with any such conversion have been satisfied by operation of Section 9(a)) but an Equity Conditions Failure occurred between the applicable Installment Notice Date and any time through the applicable Installment Date (the "Interim Installment Period"), the Company shall provide each Holder a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by such Holder) during such Interim Installment Period or an Installment Conversion is not otherwise permitted under any other provision of this Certificate of Designations, then, at the option of such Holder designated in writing to the Company, such Holder may require the Company to do any one or more of the following: (i) the Company shall redeem all or any part designated by such Holder of the unconverted Installment Conversion Amount (such designated amount is referred to as the "Designated Redemption Amount") and the Company shall pay to such Holder within three (3) days of such Installment Date, by wire transfer of immediately available funds, an amount in legally available funds equal to 125% of such Designated Redemption Amount, provided, however, at the option of the Holder, (1) the Designated Redemption Amount shall be reduced by an amount equal to the product of the (x) the number of Pre-Installment Conversion Shares issued to the Holder in connection with such Installment Conversion Amount and (y) and the actual prices at which the Holder sold such Pre-Installment Conversion Shares during the Interim Installment Period or (2) such Pre-Installment Conversion Shares shall be retained by the Holder and applied to the next instance in which the Company issues Pre-Installment Conversion Shares; provided, further however, that if the Company does not elect to pay a future Installment Amount by means of an Installment Conversion in accordance with this Section 9, the Holder shall return the number of Pre-Installment Conversion Shares to the Company and/or (ii) the Installment Conversion shall be null and void with respect to all or any part designated by such Holder of the unconverted Installment Conversion Amount and such Holder shall be entitled to all the rights of a holder of the Preferred Shares with respect to such designated part of the Installment Conversion Amount; provided, however, the Conversion Price for such designated part of such unconverted Installment Conversion Amount shall thereafter be adjusted to equal the lesser of (A) the Installment Conversion Price as in effect on the date on which such Holder voided the Installment Conversion and (B) the Installment Conversion Price that would be in effect on the date on which such Holder delivers a Conversion Notice relating thereto as if such date was an Installment Date; provided, further, however, at the option of the Holder, (3) any Pre-Installment Conversion Shares delivered in connection with such voided Installment Conversion shall be deemed to redeem a number of Preferred Shares having a Stated Value equal to the product of (i) the number of such Pre-Installment Conversion Shares and (y) the actual prices at which the Holder sold such Pre-Installment Conversion Shares during the Interim Installment Period or (4) such Pre-Installment Conversion Shares shall be retained by the Holder and applied to the next instance in which the Company issues Pre-Installment Conversion Shares; provided, further however, that if the Company does not elect to pay a future Installment Amount by means of an Installment Conversion in accordance with this Section 9, the Holder shall return the number of Pre-Installment Conversion Shares to the Company. If the Company fails to redeem any Designated Redemption Amount by the second (2nd) day following the applicable Installment Date by payment of such amount by such date for any reason (including, without limitation, to the extent such payment is prohibited pursuant to the DGCL), then such Holder shall have the rights set forth in Section 12(a) as if the Company failed to pay the applicable Installment Redemption Price (as defined below) and all other rights under this Certificate of Designations (including, without limitation, such failure constituting a Triggering Event described in Section 5(a)(iv)). Notwithstanding anything to the contrary in this Section 9(b), but subject to Section 4(d), until the Company delivers Common Stock representing the Installment Conversion Amount to such Holder, the Installment Conversion Amount may be converted by such Holder into Common Stock pursuant to Section 4. In the event that a Holder elects to convert the Installment Conversion Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Conversion Amount so converted shall be deducted from the Installment Amount(s) of such Holder relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. For further clarification, if any conversion is applied against an Installment Amount, the Pre-Installment Conversion Shares issued in connection with such Installment Amount (and that were not already applied to such conversions) shall be applied first against such conversions or, at the option of the Holder as indicated in the Conversion Notice, retained by the Holder and applied to the next instance in which the Company issues Pre-Installment Conversion Shares. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of any shares of Common Stock in any Installment Conversion hereunder.

(c) **Mechanics of Installment Redemption.** If the Company elects or is required to effect an Installment Redemption, in whole or in part, in accordance with Section 9(a), then the Installment Redemption Amount, if any, shall be redeemed by the Company in legally available funds on the applicable Installment Date by wire transfer to each Holder of immediately available funds in an amount equal to 105% of the applicable Installment Redemption Amount (the “**Installment Redemption Price**”). If the Company fails to redeem such Installment Redemption Amount on such Installment Date by payment of the Installment Redemption Price for any reason (including, without limitation, to the extent such payment is prohibited pursuant to the DGCL), then, at the option of such Holder designated in writing to the Company (any such designation shall be a “**Conversion Notice**” for purposes of this Certificate of Designations), such Holder may require the Company to convert all or any part of the Installment Redemption Amount at the Installment Conversion Price (determined as of the date of such designation as if such date were an Installment Date) and, in the event of the Conversion Floor Price Condition, the Company shall deliver to the Holder the applicable Conversion Installment Floor Amount. Conversions required by this Section 9(c) shall be made in accordance with the provisions of Section 4(c). Notwithstanding anything to the contrary in this Section 9(c), but subject to Section 4(d), until the Installment Redemption Price (together with any Late Charges thereon) is paid in full, the Installment Redemption Amount (together with any Late Charges thereon) may be converted, in whole or in part, by a Holder into Common Stock pursuant to Section 4. In the event a Holder elects to convert all or any portion of the Installment Redemption Amount prior to the applicable Installment Date as set forth in the immediately preceding sentence, the Installment Redemption Amount so converted shall be deducted from the Installment Amounts relating to the applicable Installment Date(s) as set forth in the applicable Conversion Notice. Redemptions required by this Section 9(c) shall be made in accordance with the provisions of Section 12.

(d) **Deferred Installment Amount.** Notwithstanding any provision of this Section 9(d) to the contrary, each Holder may, at its option and in its sole discretion, deliver a written notice to the Company no later than the Trading Day immediately prior to the applicable Installment Date electing to have the payment of all or any portion of an Installment Amount of such Holder payable on such Installment Date deferred (such amount deferred, the “**Deferral Amount**”, and such deferral, each a “**Deferral**”) until any subsequent Installment Date selected by such Holder, in its sole discretion, in which case, the Deferral Amount shall be added to, and become part of, such subsequent Installment Amount. Any notice delivered by such Holder pursuant to this Section 9(d) shall set forth (i) the Deferral Amount and (ii) the date that such Deferral Amount shall now be payable.

(e) **Acceleration of Installment Amounts.** Notwithstanding any provision of this Section 9 to the contrary, but subject to Section 4(d), with respect to any given Installment Date (the “**Current Installment Date**”), if the Company delivers an Installment Notice and confirms, or is deemed to have delivered and confirmed, in whole or in part, an Installment Conversion in accordance with Section 9(a), during the period commencing on the Installment Notice Due Date immediately prior to such applicable Current Installment Date and ending on the Trading Day immediately prior to the next Installment Date (each, an “**Installment Period**”), the Holder may elect, at its option and in its sole discretion, at one or more times in such Installment Period, either (x) if such election is made prior to second (2nd) Trading Day immediately prior to such Current Installment Date (each, a “**Pre-Delivery Acceleration Expiration Date**”), to increase the Installment Conversion Amount (and related Installment Amount) with respect to such Current Installment Date in which case, such Acceleration Amount(s) (as defined below) shall be added to, and become part of, the Installment Amount as such Installment Amount may have been increased pursuant to the terms hereof, payable on such applicable Installment Date by including such Acceleration Amount(s) in the Installment Amount for the applicable Installment Date and shall be payable in shares of Common Stock by including such Acceleration Amount(s) in the Installment Conversion Amount for the applicable Installment Date and (y) if such election is made on or after the Pre-Delivery Acceleration Expiration Date and prior to the Pre-Delivery Acceleration Expiration Date for the next Installment Period, to convert other Installment Amounts as of such election date (each, an “**Acceleration**”, and each such amount of acceleration or conversion, as applicable, an “**Acceleration Amount**”, and each such election date, an “**Acceleration Date**”), in whole or in part, at the Installment Conversion Price of such Current Installment Date (with “Installment Conversion Price” replacing “Conversion Price” and the “Acceleration Date” replacing “Conversion Date” for all purposes hereunder with respect to such Acceleration) in accordance with the conversion procedures set forth in Section 4 hereunder, *mutatis mutandis*; provided, that if a Conversion Floor Price Condition exists with respect to such Acceleration Date, then in addition to the delivery of the required number of shares of Common Stock, the Company shall pay the applicable Acceleration Floor Amount to the Holder. Notwithstanding the foregoing, with respect to any given Installment Period, the applicable Holder may not elect to effect any Acceleration during such Installment Period if, in the aggregate, the aggregate number of Preferred Shares subject to Acceleration in such Installment Period exceeds 600% of the Installment Amount (without taking into account any increase in such Installment Amount pursuant to the provisions of this Section 9(e)) for such Current Installment Date. For clarity, any Acceleration Amount shall be applied to the Installment Redemptions in inverse order from the Maturity Date unless otherwise indicated by the Holder. Notwithstanding anything to the contrary contained herein, each Holder and the Company may also mutually agree to accelerate one or more Installment Amounts on such terms and conditions as they mutually agree, provided that in no event shall any such Acceleration Amount be payable in shares of Common Stock at an Installment Conversion Price of less than the then current Floor Price.

10. **Noncircumvention.** The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws (as defined in the Securities Purchase Agreement) or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders hereunder. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Preferred Shares above the Conversion Price then in effect, (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Preferred Shares and (c) shall, so long as any Preferred Shares are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Preferred Shares then outstanding (without regard to any limitations on conversion contained herein). Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Initial Issuance Date, each Holder is not permitted to convert such Holder's Preferred Shares in full for any reason (other than pursuant to restrictions set forth in Section 4(d)(i) hereof), the Company shall use its best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to effect such conversion into shares of Common Stock.

11. **Authorized Shares.**

(a) **Reservation.** So long as any Preferred Shares remain outstanding, the Company shall at all times reserve at least 150% of the aggregate number of shares of Common Stock as shall from time to time be necessary to effect the conversion, including without limitation, Installment Conversions, Alternate Conversion and Accelerations, of all of the Preferred Shares then outstanding at the Floor Price then in effect (without regard to any limitations on conversions and assuming the Preferred Shares remain outstanding until the Maturity Date) (the "**Required Reserve Amount**"). The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the Holders based on the number of the Preferred Shares held by each Holder on the Initial Issuance Date or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, each transferee shall be allocated a pro rata portion of such Holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Preferred Shares shall be allocated to the remaining Holders of Preferred Shares, pro rata based on the number of the Preferred Shares then held by the Holders.

(b) **Insufficient Authorized Shares.** If, notwithstanding Section 11(a) and not in limitation thereof, at any time while any of the Preferred Shares remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Preferred Shares at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Preferred Shares then outstanding (or deemed outstanding pursuant to Section 11(a) above). Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal (or, if a majority of the voting power then in effect of the capital stock of the Company consents to such increase, in lieu of such proxy statement, deliver to the stockholders of the Company an information statement that has been filed with (and either approved by or not subject to comments from) the SEC with respect thereto). In the event that the Company is prohibited from issuing shares of Common Stock to a Holder upon any conversion due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the "**Authorized Failure Shares**"), in lieu of delivering such Authorized Failure Shares to such Holder, the Company shall pay legally available funds in exchange for the redemption of such portion of the Conversion Amount of the Preferred Shares convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorized Failure Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date such Holder delivers the applicable Conversion Notice with respect to such Authorized Failure Shares to the Company and ending on the date of such issuance and payment under this Section 11(a); and (ii) to the extent such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of such Holder incurred in connection therewith. Nothing contained in Section 11(a) or this Section 11(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

12. Redemptions.

(a) General. If a Holder has submitted a Triggering Event Redemption Notice in accordance with Section 5(b), the Company shall deliver the applicable Triggering Event Redemption Price to such Holder in legally available funds within five (5) Business Days after the Company's receipt of such Holder's Triggering Event Redemption Notice. If a Holder has submitted a Change of Control Redemption Notice in accordance with Section 6(b), the Company shall deliver the applicable Change of Control Redemption Price to such Holder in legally available funds concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise. The Company shall deliver the applicable Installment Redemption Price to each Holder in legally available funds on the applicable Installment Date. If a Holder has submitted a Maturity Redemption Notice in accordance with Section 13 below, the Company shall deliver the applicable Maturity Redemption Price to such Holder in legally available funds on the applicable Maturity Redemption Date. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time a Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of such Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to such Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Preferred Shares, the Company shall promptly cause to be issued and delivered to such Holder a new Preferred Share Certificate (in accordance with Section 20) (or evidence of the creation of a new Book-Entry) representing the number of Preferred Shares which have not been redeemed. In the event that the Company does not pay the applicable Redemption Price to a Holder within the time period required for any reason (including, without limitation, to the extent such payment is prohibited pursuant to the DGCL), at any time thereafter and until the Company pays such unpaid Redemption Price in full, such Holder shall have the option, in lieu of redemption, to require the Company to promptly return to such Holder all or any of the Preferred Shares that were submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Preferred Shares, (y) the Company shall immediately return the applicable Preferred Share Certificate, or issue a new Preferred Share Certificate (in accordance with Section 20(d)), to such Holder (unless the Preferred Shares are held in Book-Entry form, in which case the Company shall deliver evidence to such Holder that a Book-Entry for such Preferred Shares then exists), and in each case the Additional Amount of such Preferred Shares shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 12, if applicable) minus (2) the Stated Value portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of such Preferred Shares shall be automatically adjusted with respect to each conversion effected thereafter by such Holder to the lowest of (A) the Conversion Price as in effect on the date on which the applicable Redemption Notice is voided, (B) the greater of (x) the Floor Price and (y) 75% of the lowest Closing Bid Price of the Common Stock during the period beginning on and including the date on which the applicable Redemption Notice is delivered to the Company and ending on and including the date on which the applicable Redemption Notice is voided and (C) the greater of (x) the Floor Price and (y) 75% of the quotient of (I) the sum of the five (5) lowest VWAPs of the Common Stock during the twenty (20) consecutive Trading Day period ending and including the Trading Day immediately preceding the applicable Conversion Date divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). A Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Preferred Shares subject to such notice.

(b) Redemption by Multiple Holders. Upon the Company's receipt of a Redemption Notice from any Holder for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 5(b) or Section 6(b), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to each other Holder by electronic mail a copy of such notice. If the Company receives one or more Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the initial Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the initial Redemption Notice and the Company is unable to redeem all of the Conversion Amount of such Preferred Shares designated in such initial Redemption Notice and such other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each Holder based on the Stated Value of the Preferred Shares submitted for redemption pursuant to such Redemption Notices received by the Company during such seven (7) Business Day period.

13. Reserved.

14. **Voting Rights.** Except as otherwise provided herein or as required by applicable law, Holders of Preferred Shares shall be entitled to vote with holders of the Common Stock on all matters that such holders of Common Stock are entitled to vote upon, in the same manner and with the same effect as the holders of Common Stock, voting together with the holders of Common Stock as a single class. Each Preferred Share shall entitle the Holder thereof to cast that number of votes per Preferred Share equal to the number of Conversion Shares underlying the Preferred Shares determined by dividing the Stated Value by the NASDAQ Minimum Price (as defined in Nasdaq Listing Rule 5635(d)) immediately preceding the execution and delivery of the Securities Purchase Agreement (or \$0.72 per share). For purposes of clarity, NASDAQ Minimum Price shall apply only for purposes of this Section 14 of the Certificate of Designations and not apply to any other section of the Certificate of Designations or any Transaction Document. Notwithstanding the foregoing, to the extent that under the DGCL the vote of the holders of the Preferred Shares, voting separately as a class or series, as applicable, is required to authorize a given action of the Company, the affirmative vote or consent of the Required Holders of the shares of the Preferred Shares, voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, shall constitute the approval of such action by both the class or the series, as applicable. Solely for purposes of determining the presence of a quorum at any meeting of the stockholders of the Company at which the Preferred Shares are entitled to vote, the number of Preferred Shares and votes represented by such shares shall be counted on an as converted to Common Stock basis, disregarding, for such purposes, any limitations on conversion set forth herein. Holders of the Preferred Shares shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled to vote, which notice would be provided pursuant to the Bylaws and the DGCL.

15. **Covenants.** For so long as any Preferred Shares are outstanding, without the prior written consent of the Required Holders:

(a) **Incurrence of Indebtedness.** The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than Permitted Indebtedness).

(b) **Existence of Liens.** The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "Liens") other than Permitted Liens.

(c) **Restricted Payments and Investments.** The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other pursuant to this Certificate of Designations) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness or make any Investment, as applicable, if at the time such payment with respect to such Indebtedness and/or Investment, as applicable, is due or is otherwise made or, after giving effect to such payment, (i) an event constituting a Triggering Event has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute a Triggering Event has occurred and is continuing.

(d) Restriction on Redemption and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its capital stock (other than as required by this Certificate of Designations).

(e) Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice, or (ii) sales of inventory and product in the ordinary course of business.

(f) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date.

(g) Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and/or its Subsidiaries on the Subscription Date or any business reasonably related or incidental thereto. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, modify its or their corporate structure or purpose in any material respect.

(h) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary; provided, however, that the Company shall have the right to merge or combine wholly-owned Subsidiaries hereunder, or eliminate or dissolve foreign Subsidiaries, in each case where such restructuring does not have a material impact on the Company's assets or ability to comply with the provisions hereof.

(i) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(j) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the Intellectual Property Rights of the Company and/or any of its Subsidiaries that are necessary or material to the conduct of its business in full force and effect.

(k) Maintenance of Insurance. The Company shall use reasonable best efforts to maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as are generally consistent with the coverage held by the Company on the Initial Issuance Date.

(l) **Transactions with Affiliates.** The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate, except transactions in the ordinary course of business in a manner and to an extent, if applicable, consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be reasonably expected to be obtained in a comparable arm's length transaction with a Person that is not an affiliate thereof.

(m) **Restricted Issuances.** The Company shall not, directly or indirectly, without the prior written consent of the Required Holders, (i) issue any Preferred Shares (other than as contemplated by the Securities Purchase Agreement and this Certificate of Designations) or (ii) issue any other securities that would cause a breach or default under this Certificate of Designations or the Warrants.

(n) **Stay, Extension and Usury Laws.** To the extent that it may lawfully do so, the Company (A) agrees that it will 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 (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Certificate of Designations; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holders by this Certificate of Designations, but will suffer and permit the execution of every such power as though no such law has been enacted.

(o) **Taxes.** The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date thereof all personal property tax returns (except where the failure to file would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(p) **Cash Minimum.** From the Closing Date until December 31, 2023, the Company shall, at all times, maintain unencumbered, unrestricted cash and cash equivalents on hand in amount equal to at least \$20,000,000 plus the net proceeds from the sale of the Preferred Shares pursuant to the Securities Purchase Agreement. From January 1, 2024 and until an aggregate of eighty percent (80%) of the Preferred Shares have been converted into shares of Common Stock, the Company shall, at all times, maintain unencumbered, unrestricted cash and cash equivalents on hand in amount equal to at least \$21,000,000. Such cash shall be maintained in one or more domestic deposit accounts, money market accounts or certificates of deposit (with a maturity of no more than three months) with one or more Eligible Banks. For purposes hereof, an "Eligible Bank" is a U.S. chartered commercial bank with total assets in excess of \$300 billion.

(q) **Segregated Account.** On the Closing Date, the Company shall deposit an amount equal to \$10,000,000 from the proceeds received by the Company from the sale of the Preferred Shares into a newly established segregated deposit account of the Company ("**Segregated Cash**"). The Company covenants and agrees that the Segregated Cash will only be used by the Company solely for the purpose of performing its monetary obligations to the Holders under this Certificate of Designations; provided, however, that the Company may use the Segregated Cash for any purpose, including general corporate purposes, with the prior written consent of Holders of at least 75% of the outstanding Preferred Shares.

(r) Independent Investigation. At the request of any Holder either (x) at any time when a Triggering Event has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute a Triggering Event or (z) at any time such Holder reasonably believes a Triggering Event may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by such Holder to investigate as to whether any breach of the Certificate of Designations has occurred (the "**Independent Investigator**"). If the Independent Investigator determines that such breach of the Certificate of Designations has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each Holder of such breach. In connection with such investigation, the Independent Investigator may, during normal business hours, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its legal advisors and accountants (including the accountants' work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company's officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

16. Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), before any amount shall be paid to the holders of any of shares of Junior Stock, but pari passu with any Parity Stock then outstanding, an amount per Preferred Share equal to the greater of (A) 125% of the Conversion Amount of such Preferred Share on the date of such payment and (B) the amount per share such Holder would receive if such Holder converted such Preferred Share into Common Stock immediately prior to the date of such payment, provided that if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of Parity Stock, then each Holder and each holder of Parity Stock shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder and such holder of Parity Stock as a liquidation preference, in accordance with their respective certificate of designations (or equivalent), as a percentage of the full amount of Liquidation Funds payable to all holders of Preferred Shares and all holders of shares of Parity Stock. To the extent necessary, the Company shall cause such actions to be taken by each of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section 16. All the preferential amounts to be paid to the Holders under this Section 16 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Company to the holders of shares of Junior Stock in connection with a Liquidation Event as to which this Section 16 applies.

17. Distribution of Assets. In addition to any adjustments pursuant to Section 7(a) and Section 8, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, 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) (the "**Distributions**"), then each Holder, as holders of Preferred Shares, will be entitled to such Distributions as if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose that the Preferred Share was converted at the Alternate Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that such Holder's right to participate in any such Distribution would result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Distribution to such extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of such Holder until such time or times as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

18. Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, the Company shall not (in any case, whether by amendment, modification, recapitalization, merger, consolidation or otherwise): (a) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation or Bylaws, or file any certificate of designations or articles of amendment of any series of shares of preferred stock, if such action would adversely alter or change in any respect the preferences, rights, privileges or powers, or restrictions provided for the benefit of the Preferred Shares hereunder, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of Preferred Shares; (c) without limiting any provision of Section 2, create or authorize (by reclassification or otherwise) any new class or series of Senior Preferred Stock or Parity Stock; (d) purchase, repurchase or redeem any shares of Junior Stock (other than pursuant to the terms of the Company's equity incentive plans and options and other equity awards granted under such plans (that have in good faith been approved by the Board)); (e) without limiting any provision of Section 2, pay dividends or make any other distribution on any shares of any Junior Stock; (f) issue any Preferred Shares other than as contemplated hereby or pursuant to the Securities Purchase Agreement; or (g) without limiting any provision of Section 10, whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares hereunder.

19. Transfer of Preferred Shares. A Holder may transfer some or all of its Preferred Shares without the consent of the Company, but any such transfer shall be in compliance with all applicable securities laws.

20. Reissuance of Preferred Share Certificates and Book Entries.

(a) Transfer. If any Preferred Shares are to be transferred, the applicable Holder shall surrender the applicable Preferred Share Certificate to the Company (or, if the Preferred Shares are held in Book-Entry form, a written instruction letter to the Company), whereupon the Company will forthwith issue and deliver upon the order of such Holder a new Preferred Share Certificate (in accordance with Section 20(d)) (or evidence of the transfer of such Book-Entry), registered as such Holder may request, representing the outstanding number of Preferred Shares being transferred by such Holder and, if less than the entire outstanding number of Preferred Shares is being transferred, a new Preferred Share Certificate (in accordance with Section 20(d)) to such Holder representing the outstanding number of Preferred Shares not being transferred (or evidence of such remaining Preferred Shares in a Book-Entry for such Holder). Such Holder and any assignee, by acceptance of the Preferred Share Certificate or evidence of Book-Entry issuance, as applicable, acknowledge and agree that, by reason of the provisions of Section 4(c)(i) following conversion or redemption of any of the Preferred Shares, the outstanding number of Preferred Shares represented by the Preferred Shares may be less than the number of Preferred Shares stated on the face of the Preferred Shares.

(b) Lost, Stolen or Mutilated Preferred Share Certificate. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of a Preferred Share Certificate (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the applicable Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of such Preferred Share Certificate, the Company shall execute and deliver to such Holder a new Preferred Share Certificate (in accordance with Section 20(d)) representing the applicable outstanding number of Preferred Shares.

(c) Preferred Share Certificate and Book-Entries Exchangeable for Different Denominations and Forms. Each Preferred Share Certificate is exchangeable, upon the surrender hereof by the applicable Holder at the principal office of the Company, for a new Preferred Share Certificate or Preferred Share Certificate(s) or new Book-Entry (in accordance with Section 20(d)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Preferred Share Certificate, and each such new Preferred Share Certificate and/or new Book-Entry, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Preferred Share Certificate as is designated in writing by such Holder at the time of such surrender. Each Book-Entry may be exchanged into one or more new Preferred Share Certificates or split by the applicable Holder by delivery of a written notice to the Company into two or more new Book-Entries (in accordance with Section 20(d)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Book-Entry, and each such new Book-Entry and/or new Preferred Share Certificate, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Book-Entry as is designated in writing by such Holder at the time of such surrender.

(d) Issuance of New Preferred Share Certificate or Book-Entry. Whenever the Company is required to issue a new Preferred Share Certificate or a new Book-Entry pursuant to the terms of this Certificate of Designations, such new Preferred Share Certificate or new Book-Entry (i) shall represent, as indicated on the face of such Preferred Share Certificate or in such Book-Entry, as applicable, the number of Preferred Shares remaining outstanding (or in the case of a new Preferred Share Certificate or new Book-Entry being issued pursuant to Section 20(a) or Section 20(c), the number of Preferred Shares designated by such Holder) which, when added to the number of Preferred Shares represented by the other new Preferred Share Certificates or other new Book-Entry, as applicable, issued in connection with such issuance, does not exceed the number of Preferred Shares remaining outstanding under the original Preferred Share Certificate or original Book-Entry, as applicable, immediately prior to such issuance of new Preferred Share Certificate or new Book-Entry, as applicable, and (ii) shall have an issuance date, as indicated on the face of such new Preferred Share Certificate or in such new Book-Entry, as applicable, which is the same as the issuance date of the original Preferred Share Certificate or in such original Book-Entry, as applicable.

21. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations 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 any Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Certificate of Designations. No failure on the part of a Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of a Holder at law or equity or under this Certificate of Designations or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company covenants to each 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 a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). No failure on the part of a Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of any Holder at law or equity or under Preferred Shares or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders 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, each Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Company's compliance with the terms and conditions of this Certificate of Designations.

22. Payment of Collection, Enforcement and Other Costs. If (a) any Preferred Shares are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of Designations with respect to the Preferred Shares or to enforce the provisions of this Certificate of Designations or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Certificate of Designations, then the Company shall pay the costs incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Certificate of Designations with respect to any Preferred Shares shall be affected, or limited, by the fact that the purchase price paid for each Preferred Share was less than the original Stated Value thereof.

23. Construction; Headings. This Certificate of Designations shall be deemed to be jointly drafted by the Company and the Holders and shall not be construed against any such Person as the drafter hereof. The headings of this Certificate of Designations are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designations. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Certificate of Designations instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Certificate of Designations. Terms used in this Certificate of Designations and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Required Holders.

24. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all Holders and shall not be construed against any Person as the drafter hereof. Notwithstanding the foregoing, nothing contained in this Section 24 shall permit any waiver of any provision of Section 4(d).

25. Dispute Resolution.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Installment Conversion Price, an Alternate Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate, or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the applicable Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such Holder at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Company are unable to promptly resolve such dispute relating to such Closing Bid Price, such Closing Sale Price, such Conversion Price, such Installment Conversion Price, such Alternate Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2nd) Business Day following such initial notice by the Company or such Holder (as the case may be) of such dispute to the Company or such Holder (as the case may be), then such Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) Such Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 25 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such investment bank (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that if either such Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such investment bank, neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and such Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 25 constitutes an agreement to arbitrate between the Company and each Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("CPLR") and that any Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 25, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 8(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the terms of this Certificate of Designations and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Certificate of Designations and any other applicable Transaction Documents, (iv) the applicable Holder (and only such Holder with respect to disputes solely relating to such Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 25 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 25 and (v) nothing in this Section 25 shall limit such Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 25).

26. Notices; Currency; Payments.

(a) Notices. The Company shall provide each Holder of Preferred Shares with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Whenever notice is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice must be in writing and shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide each Holder with prompt written notice of all actions taken pursuant to this Certificate of Designations, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company shall give written notice to each Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(b) **Currency.** All dollar amounts referred to in this Certificate of Designations are in United States Dollars (“**U.S. Dollars**”), and all amounts owing under this Certificate of Designations shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. “**Exchange Rate**” means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Certificate of Designations, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) **Payments.** Whenever any payment of cash is to be made by the Company to any Person pursuant to this Certificate of Designations, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by wire transfer of immediately available funds pursuant to wire transfer instructions that Holder shall provide to the Company in writing from time to time. Whenever any amount expressed to be due by the terms of this Certificate of Designations is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Dividends at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of fifteen percent (15%) per annum from the date such amount was due until the same is paid in full (“**Late Charge**”).

27. **Waiver of Notice.** To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Certificate of Designations and the Securities Purchase Agreement.

28. **Governing Law.** This Certificate of Designations shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Except as otherwise required by Section 25 above, the Company 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 suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company’s obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 25 above. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS CERTIFICATE OF DESIGNATIONS OR ANY TRANSACTION CONTEMPLATED HEREBY.**

29. **Judgment Currency.**

(a) If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 29 referred to as the “**Judgment Currency**”) an amount due in U.S. dollars under this Certificate of Designations, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 29(a)(ii) being hereinafter referred to as the “**Judgment Conversion Date**”).

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 29(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(c) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Certificate of Designations.

30. Severability. If any provision of this Certificate of Designations is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Certificate of Designations so long as this Certificate of Designations as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

31. Maximum Payments. Without limiting Section 9(d) of the Securities Purchase Agreement, nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the applicable Holder and thus refunded to the Company.

32. Stockholder Matters; Amendment.

(a) Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the DGCL, the Certificate of Incorporation, this Certificate of Designations or otherwise with respect to the issuance of Preferred Shares may be effected by written consent of the Company's stockholders or at a duly called meeting of the Company's stockholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

(b) Amendment. Except for Section 4(d)(i), which may not be amended or waived hereunder, this Certificate of Designations or any provision hereof may be amended by obtaining the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the DGCL, of the Required Holders, voting separate as a single class, and with such other stockholder approval, if any, as may then be required pursuant to the DGCL and the Certificate of Incorporation.

33. **Certain Defined Terms.** For purposes of this Certificate of Designations, the following terms shall have the following meanings:

(a) **"1934 Act"** means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(b) **"Acceleration Floor Amount"** means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) applicable Acceleration Amount by (B) 25%.

(c) **"Additional Amount"** means, as of the applicable date of determination, with respect to each Preferred Share, all accrued and unpaid Dividends on such Preferred Share.

(d) **"Adjustment Right"** means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 8(a)) of shares of Common Stock (other than rights of the type described in Section 7(a) hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(e) **"Affiliate"** or **"Affiliated"** means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(f) **"Alternate Conversion Floor Amount"** means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) the applicable Conversion Amount by (B) 25%.

(g) **"Alternate Conversion Price"** means, with respect to any Alternate Conversion that price which shall be the lowest of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion, and (ii) the greater of (x) the Floor Price and (y) seventy-five percent (75%) of the lowest VWAP of the Common Stock of any Trading Day during the twenty (20) consecutive Trading Day period ending and including the Trading Day immediately preceding the delivery or deemed delivery of the applicable Conversion Notice (such period, the **"Alternate Conversion Measuring Period"**). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Alternate Conversion Measuring Period.

(h) **"Approved Stock Plan"** means any employee benefit plan or agreement which has been approved by the Board prior to or subsequent to the Subscription Date pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer, consultant or director for services provided to the Company in their capacity as such.

(i) **"Attribution Parties"** means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Initial Issuance Date, directly or indirectly managed or advised by a Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with such Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively such Holder and all other Attribution Parties to the Maximum Percentage.

(j) **"Bloomberg"** means Bloomberg, L.P.

(k) **"Book-Entry"** means each entry on the Register evidencing one or more Preferred Shares held by a Holder in lieu of a Preferred Share Certificate issuable hereunder.

(l) **"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 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 generally are open for use by customers on such day.

(m) **"Cash Installment Price"** means 105% of the applicable Installment Amount.

(n) **"Change of Control"** means (1) any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries or (iv) bona fide arm's length sales or acquisitions by the Company with one or more third parties as long as holders of the Company's voting power as of the Issuance Date continue after such sale or acquisition to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of at least 51% of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such sale or acquisition; or (2) a reconstitution of the board of directors of the Company whereby three or more members of such board of directors resign or are replaced.

(o) **"Change of Control Redemption Premium"** means 150%.

(p) **"Closing Bid Price"** and **"Closing Sale Price"** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holder. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 25. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(q) **"Closing Date"** shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued the Preferred Shares and the Warrants pursuant to the terms of the Securities Purchase Agreement.

(r) **"Common Stock"** means (i) the Company's shares of common stock, \$0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(s) **"Contingent Obligation"** means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) **"Conversion Floor Price Condition"** means that the relevant Alternate Conversion Price or Installment Conversion Price, as applicable, is being determined based on clause (x) of such definitions.

(u) **"Conversion Installment Floor Amount"** means an amount in cash, to be delivered by wire transfer of immediately available funds pursuant to wire instructions delivered to the Company by the Holder in writing, equal to the product obtained by multiplying (A) the applicable Installment Amount by (B) 25%.

(v) **"Convertible Securities"** means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(w) **"Dividend Date"** means the first Trading Day of each calendar month.

(x) **"Dividend Rate"** means eight percent (8.0%) per annum, as may be adjusted from time to time in accordance with Section 2.

(y) **"Eligible Market"** means The New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market or the Principal Market.

(z) **“Equity Conditions”** means, with respect to a given date of determination: (i) on each day during the period beginning thirty Trading Days prior to such applicable date of determination and ending on and including such applicable date of determination all shares of Common Stock issuable upon conversion of the Preferred Shares shall be eligible to be resold by the Holders without restriction or any legend under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Preferred Shares, other issuance of securities with respect to the Preferred Shares); (ii) on each day during the period beginning thirty Trading Days prior to the applicable date of determination and ending on and including the applicable date of determination (the **“Equity Conditions Measuring Period”**), the Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Preferred Shares and exercise of the Warrants) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation, as applicable; (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of the Preferred Shares on a timely basis as set forth in Section 4 hereof and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in the other Transaction Documents; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 4(d) hereof; (v) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated; (vii) none of the Holders shall be in possession of any material, non-public information provided to any of them by the Company, any of its Subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like; (viii) on each day during the Equity Conditions Measuring Period, the Company otherwise shall have been in compliance with each, and shall not have breached any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document in any material respect, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any Transaction Document; (ix) on each Trading Day during the Equity Conditions Measuring Period, there shall not have occurred any Volume Failure or Price Failure as of such applicable date of determination; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and the applicable Required Minimum Securities Amount of shares of Common Stock are available under the Certificate of Incorporation and reserved by the Company to be issued pursuant to this Certificate of Designations and the Warrants and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist a Triggering Event or an event that with the passage of time or giving of notice would constitute a Triggering Event; (xii) the Installment Conversion Price is not determined by the Conversion Floor Price Condition; or (xiii) the shares of Common Stock issuable pursuant to the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

(aa) **"Equity Conditions Failure"** means that (i) solely with respect to any Installment Conversion, on any day during the applicable Installment Conversion Price Measuring Period or (ii) with respect to any other date of determination, on any day during the thirty Trading Day period ending on, and including, such date of determination, the Equity Conditions have not been satisfied (or waived in writing by the applicable Holder).

(bb) **"Event Market Price"** means, with respect to any Stock Combination Event Date, the quotient determined by dividing (x) the sum of the VWAP of the Common Stock for each of the five (5) lowest Trading Days during the twenty (20) consecutive Trading Day period ending and including the Trading Day immediately preceding the sixteenth (16th) Trading Day after such Stock Combination Event Date, divided by (y) five (5).

(cc) **"Excluded Securities"** means (i) shares of Common Stock or standard options to purchase Common Stock issued or issuable to directors, officers, employees or other service providers of the Company for services rendered to the Company in their capacity as such pursuant to an Approved Stock Plan (as defined above), provided that (A) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the Subscription Date pursuant to this clause (i) do not, in the aggregate, exceed more than 10% of the Common Stock issued and outstanding immediately prior to the Subscription Date and (B) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Buyers (as defined in the Securities Purchase Agreement; (ii) shares of Common Stock issued or issuable upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued or issuable pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Subscription Date, provided that the conversion price of any such Convertible Securities (other than standard options to purchase shares of Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered (other than in accordance with the terms thereof in effect as of the Subscription Date) from the conversion price in effect as of the Subscription Date (whether pursuant to the terms of such Convertible Securities or otherwise), none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Buyers; (iii) the Conversion Shares issuable upon conversion of the Preferred Shares or otherwise pursuant to the terms of this Certificate of Designations; provided, that the terms of this Certificate of Designations are not amended, modified or changed on or after the Subscription Date (other than in accordance with the terms thereof, including antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date), (iv) the Warrant Shares; provided, that the terms of the Warrants are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date) and (v) securities issued as consideration for the acquisition of another entity by the Company by merger, purchase of substantially all of the assets or other reorganization or bona fide joint venture agreement, provided that such issuance is approved by the majority of the disinterested directors of the Company and 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 during the Restricted Period and such issuance does not, in the aggregate, exceed more than 5% of the shares of Common Stock issued and outstanding immediately prior to the date hereof.

(dd) **"Floor Price"** means the lower of (x) \$0.144 (subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events) and (y) 20% of the "Minimum Price" (as defined in Rule 5635 of the Rule of the Nasdaq Stock Market) on the Stockholder Approval Date (as defined in the Purchase Agreement) (subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events) or, in any case, such lower amount as permitted, from time to time, by the Principal Market.

(ee) **“Fundamental Transaction”** means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, in any transaction or series of related transactions, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Certificate of Designations calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(ff) **“GAAP”** means United States generally accepted accounting principles, consistently applied.

(gg) **“Group”** means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(hh) **“Holder Pro Rata Amount”** means, with respect to any Holder, a fraction (i) the numerator of which is the number of Preferred Shares issued to such Holder pursuant to the Securities Purchase Agreement on the Initial Issuance Date and (ii) the denominator of which is the number of Preferred Shares issued to all Holders pursuant to the Securities Purchase Agreement on the Initial Issuance Date.

(ii) **"Indebtedness"** means of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including, without limitation, "capital leases" in accordance with United States generally accepted accounting principles consistently applied for the periods covered thereby (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with United States generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance of any nature whatsoever in or upon any property or assets (including accounts and contract rights) with respect to any asset or property owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above.

(jj) **"Installment Amount"** means, as of the applicable date of determination, with respect to a particular Holder, (A) a number of Preferred Shares equal to (i) the product of (1) the Installment Schedule Amount multiplied by (2) such Holder's Pro Rata Amount (rounded to the nearest whole number) or (ii) all Preferred Shares then held by such Holder only if such number of Preferred Shares then held by such Holder is less than the amount determined under the immediately preceding clause (i), (B) any Deferral Amount deferred pursuant to Section 9(d) to such applicable Installment Date and included in such Installment Amount in accordance therewith, and (C) any Acceleration Amount accelerated pursuant to Section 9(e) for such Current Installment Date and included in such Installment Amount in accordance therewith. The Installment Amount expressed in dollars means such number of Preferred Shares multiplied by the Conversion Amount per Preferred Share.

(kk) **"Installment Conversion Price"** means, with respect to a particular date of determination, lower of (i) the Conversion Price then in effect, and (ii) the greater of (x) the Floor Price and (y) eighty percent (80%) of the average of the three lowest closing prices of the Common Stock on Trading Days during the prior thirty (30) consecutive Trading Day period (each, an **"Installment Conversion Price Measuring Period"**) ending and including the Trading Day immediately prior to the applicable Installment Date. All such determinations to be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction during any such measuring period.

(ll) **"Installment Schedule Amount"** means 1,833 Preferred Shares, unless another amount is mutually agreed by the Company and a Holder.

(mm) **"Installment Date"** means (i) with respect to the first Installment Date, February 7, 2024, which can be changed to one of the following dates if the Buyer provides at least 20 Trading Days prior notice to the Company and returns to the Company all Pre-Installment Conversion Shares previously received from the Company, or the Company and the Buyer mutually agree, that the first Installment Date shall not be February 7, 2024 and shall be one of the following dates instead: (a) August 7, 2024, (b) November 7, 2024, (c) February 7, 2025 or (d) August 7, 2025, as elected by a Buyer upon written notice delivered to the Company on or prior to the 30th Trading Day preceding such date or such other date as mutually agreed upon by the Company and the Buyer, (ii) thereafter, the first Trading Day of each calendar month immediately following the previous Installment Date for eleven (11) calendar months, which shall not be later than the Maturity Date, unless extended by mutual agreement of a Holder and the Company.

(nn) **"Intellectual Property Rights"** means, with respect to the Company and its Subsidiaries, all of their rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor.

(oo) **"Investment"** means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets.

(pp) **"Liquidation Event"** means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries, taken as a whole.

(qq) (rr) **"Make-Whole Amount"** means, as of any given date and as applicable, in connection with any conversion, redemption or other repayment hereunder, an amount equal to the amount of additional Dividends that would accrue under this Certificate of Designations at the Dividend Rate then in effect assuming for calculation purposes that the Stated Value of this Certificate of Designations as of the Closing Date remained outstanding through and including the twelve (12) month anniversary of the first Installment Date as elected by a Buyer.

(rr) **"Material Adverse Effect"** means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of the Company and its Subsidiaries, if any, individually or taken as a whole, or on the transactions contemplated hereby or on the other Transaction Documents (as defined below), or by the agreements and instruments to be entered into in connection therewith or on the authority or ability of the Company to perform its obligations under the Transaction Documents.

(ss) **"Maturity Date"** shall mean August 7, 2026; provided, however, the Maturity Date may be extended at the option of a Holder (i) in the event that, and for so long as, a Triggering Event shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in a Triggering Event or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of its Preferred Shares pursuant to Section 4 hereof, and the Conversion Amount would be limited pursuant to Section 4(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of such Preferred Shares.

(tt) **"Options"** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(uu) **"Parent Entity"** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(vv) **"Permitted Indebtedness"** means (i) Indebtedness existing on January 31, 2023, and reflected on the Company's balance sheet included in the Company's Quarterly Report on Form 10-Q filed with the SEC on May 9, 2023, (ii) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens and (iii) if (x) the Stockholder Approval Date has occurred, and (y) less than 4,400 Preferred Shares remain outstanding, the Permitted Senior Indebtedness.

(ww) **"Permitted Liens"** means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen's liens, mechanics' liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment, in either case, with respect to Indebtedness in an aggregate amount not to exceed \$150,000, (v) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting a Triggering Event under Section 5(a)(vii) and (viii) Liens with respect to the Permitted Senior Indebtedness.

(xx) **"Permitted Senior Indebtedness"** means non-convertible Indebtedness issued pursuant to a credit facility with a bank or similar financial institution with no principal payments required prior to the 91st calendar day after the Maturity Date and otherwise on terms and conditions acceptable to the Eligible Buyers (as defined in the Securities Purchase Agreement) in their sole and absolute discretion, provided, however, that the aggregate outstanding principal amount of such Indebtedness permitted hereunder does not at any time exceed \$10 million; provided, further, however, no Permitted Senior Indebtedness shall permit the lender to accelerate such Permitted Senior Indebtedness as a result of the occurrence of any Triggering Event hereunder or the Holder's delivery of a Triggering Event Redemption Notice.

(yy) **"Person"** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(zz) **"Price Failure"** means, with respect to a particular date of determination, the VWAP of the Common Stock on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination fails to exceed the Floor Price (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription Date). All such determinations to be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during any such measuring period.

(aaa) **"Principal Market"** means the Nasdaq Capital Market.

(bbb) **"Redemption Notices"** means, collectively, the Triggering Events Redemption Notices, the Maturity Redemption Notice, the Installment Notices with respect to any Installment Redemption and the Change of Control Redemption Notices, and each of the foregoing, individually, a **"Redemption Notice."**

(ccc) **"Redemption Premium"** means 130%.

(ddd) **"Redemption Prices"** means, collectively, any Triggering Event Redemption Price, Change of Control Redemption Price, Maturity Redemption Price, and Installment Redemption Price (including in each case, any interest, damages and Make Whole Amount thereon), and each of the foregoing, individually, a **"Redemption Price."**

(eee) **"SEC"** means the United States Securities and Exchange Commission or the successor thereto.

(fff) **"Securities Purchase Agreement"** means that certain securities purchase agreement by and among the Company and the initial holders of Preferred Shares, dated as of the Subscription Date, as may be amended from time in accordance with the terms thereof.

(ggg) **"Stated Value"** shall mean \$1,000 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Initial Issuance Date with respect to the Preferred Shares.

(hhh) **"Subscription Date"** means August 7, 2023.

(iii) **"Subject Entity"** means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(jjj) **"Subsidiaries"** shall have the meaning as set forth in the Securities Purchase Agreement.

(kkk) **"Successor Entity"** means the Person (or, if so elected by the Required Holders, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(lll) **"Trading Day"** means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the applicable Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(mmm) "**Transaction Documents**" means the Securities Purchase Agreement, this Certificate of Designations, the Warrants and each of the other agreements and instruments entered into or delivered by the Company or any of the Holders in connection with the transactions contemplated by the Securities Purchase Agreement, all as may be amended from time to time in accordance with the terms thereof.

(nnn) "**Volume Failure**" means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination (such period, the "**Volume Failure Measuring Period**"), is less than \$100,000 (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription Date).

(ooo) "**VWAP**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its "VAP" function (set to 09:30 start time and 16:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holders. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 25. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

(ppp) "**Warrants**" has the meaning ascribed to such term in the Securities Purchase Agreement, and shall include all warrants issued in exchange therefor or replacement thereof.

(qqq) "**Warrant Shares**" means, collectively, the shares of Common Stock issuable upon exercise of the Warrants.

34. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designations, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from such Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from such Holder), such Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 34 shall limit any obligations of the Company, or any rights of any Holder, under Section 4(l) of the Securities Purchase Agreement.

35. Absence of Trading and Disclosure Restrictions. The Company acknowledges and agrees that no Holder is a fiduciary or agent of the Company and that each Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of such Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that each Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations of Series H-7 Convertible Preferred Stock of AYRO, Inc. to be signed by its Chief Executive Officer on this 7th day of August, 2023.

AYRO, INC.

By: /s/ Thomas M. Wittenschlaeger

Name: Thomas M. Wittenschlaeger

Title: Chief Executive Officer

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AYRO, INC.
CONVERSION NOTICE

Reference is made to the Certificate of Designations, Preferences and Rights of the Series H-7 Convertible Preferred Stock of AYRO, Inc. (the "Certificate of Designations"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series H-7 Convertible Preferred Stock, \$0.0001 par value per share (the "Preferred Shares"), of AYRO, Inc., a Delaware corporation (the "Company"), indicated below into shares of common stock, \$0.0001 value per share (the "Common Stock"), of the Company, as of the date specified below.

Date of Conversion: _____
Aggregate number of Preferred Shares to be converted _____
Aggregate Stated Value of such Preferred Shares to be converted: _____
Aggregate accrued and unpaid Dividends, Make-Whole Amount and accrued and unpaid Late Charges with respect to such Preferred Shares, such Aggregate Make-Whole Amount and such Aggregate Dividends to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____
Number of shares of Common Stock to be issued: _____

Installment Amount(s) to be reduced (and corresponding Installment Date(s)) and amount of reduction: _____

If this Conversion Notice is being delivered with respect to an Alternate Conversion, check here if Holder is electing to use the following Alternate Conversion Price: _____

If this Conversion Notice is being delivered with respect to an Acceleration, check here if Holder is electing to use the following Installment Conversion Price: _____

Please issue the Common Stock into which the applicable Preferred Shares are being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____, _____, _____

Name of Registered Holder _____

By: _____

Name: _____

Title: _____

Tax _____

ID: _____

E-mail _____

Address: _____

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock are eligible to be resold by the Holder without restriction or any legend and (c) hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated [] __, 2023 from the Company and acknowledged and agreed to by _____.

AYRO, INC.

By: _____

Name: _____

Title: _____

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Exhibit 31.1

CERTIFICATIONS UNDER SECTION 302

I, Thomas M. Wittenschlaeger, certify that:

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

Dated: August 14, 2023 November 20, 2023

/s/ Thomas M. Wittenschlaeger

Thomas M. Wittenschlaeger
 President and Chief Executive Officer
 (Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS UNDER SECTION 302

I, David E Hollingsworth, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of AYRO, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 14, 2023 November 20, 2023

/s/ David E. Hollingsworth

David E. Hollingsworth
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

CERTIFICATIONS UNDER SECTION 906

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of AYRO, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge and in the capacity of an officer, that:

The Quarterly Report for the quarter ended June 30, 2023 September 30, 2023 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company as of, and for, the periods presented in the Form 10-Q.

Dated: August 14, 2023 November 20, 2023

By: /s/ Thomas M. Wittenschlaeger

Thomas M. Wittenschlaeger
President and Chief Executive Officer
(Principal Executive Officer)

Dated: August 14, 2023 November 20, 2023

By: /s/ David E. Hollingsworth

David E. Hollingsworth
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

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