

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

FORM 10-Q

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

For the quarterly period ended June 30, 2023

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: 001-37862

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

30-1205798

(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer  
Identification Number)

1002 West Avenue, Austin, Texas

78701

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **512-693-4199**

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

Title of each class:	Trading Symbol(s)	Name of each exchange on which registered:
<b>Common Stock, par value \$0.0001 per share</b>	<b>PHUN</b>	<b>The NASDAQ Capital Market</b>
<b>Warrants to purchase one share of Common Stock</b>	<b>PHUNW</b>	<b>The NASDAQ Capital Market</b>

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

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

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller reporting company

Emerging growth company

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, 120,355,584 shares of common stock, par value \$0.0001 per share, were outstanding.

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#### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report (the "Report") includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements are intended to be covered by the safe harbor for forward-looking statements provided by the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts contained in this Report, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "will," "would" and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this Report are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading "*Risk Factors*." Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described under "*Risk Factors*" may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this Report. In addition, even if our results of operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this Report, those results or developments may not be indicative of results or developments in subsequent periods.

**PART I—FINANCIAL INFORMATION**

**Item 1. Financial Statements**

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**Phunware, Inc.**  
**Condensed Consolidated Balance Sheets**  
*(In thousands, except share and per share information)*

	<u>June 30, 2023</u>	<u>December 31, 2022</u>		
	<i>(Unaudited)</i>			
<b>Assets</b>				
Current assets:				
Cash	\$ 1,105	\$ 1,955		
Accounts receivable, net of allowance for doubtful accounts of \$100 and \$198 at June 30, 2023 and December 31, 2022, respectively	863	958		
Inventory	2,168	2,780		
Digital assets	71	10,137		
Prepaid expenses and other current assets	624	1,033		
Total current assets	4,831	16,863		
Property and equipment, net	188	221		
Goodwill	29,956	31,113		
Intangible assets, net	2,190	2,524		
Right-of-use asset	3,258	3,712		
Other assets	367	402		
Total assets	<u>\$ 40,790</u>	<u>\$ 54,835</u>		
<b>Liabilities and stockholders' equity</b>				
Current liabilities:				
Accounts payable	\$ 8,350	\$ 7,699		
Accrued expenses	1,542	2,895		
Lease liability	968	954		
Deferred revenue	1,092	2,904		
PhunCoin deposits	1,202	1,202		
Current maturities of long-term debt, net	6,094	9,667		
Warrant liability	—	256		
Total current liabilities	19,248	25,577		
Deferred revenue	1,050	1,274		
Lease liability	2,584	3,103		
Total liabilities	<u>22,882</u>	<u>29,954</u>		
Commitments and contingencies (Note 8)				
<b>Stockholders' equity</b>				
Common stock, \$0.0001 par value; 1,000,000,000 shares authorized; 107,565,124 shares issued and 107,058,624 shares outstanding as of June 30, 2023 and 103,153,337 shares issued and outstanding as of December 31, 2022, respectively	11	10		
Treasury stock at cost; 506,500 and 0 shares at June 30, 2023 and December 31, 2022, respectively	(502)	—		
Additional paid-in capital	279,837	275,562		
Accumulated other comprehensive loss	(426)	(472)		
Accumulated deficit	(261,012)	(250,219)		
Total stockholders' equity	<u>17,908</u>	<u>24,881</u>		
Total liabilities and stockholders' equity	<u>\$ 40,790</u>	<u>\$ 54,835</u>		

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

**Phunware, Inc.**  
**Condensed Consolidated Statements of Operations and Comprehensive Loss**  
*(In thousands, except per share information)*  
*(Unaudited)*

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
Net revenues	\$ 3,487	\$ 5,485	\$ 8,234	\$ 12,263
Cost of revenues	3,031	3,965	7,417	8,972
Gross profit	<u>456</u>	<u>1,520</u>	<u>817</u>	<u>3,291</u>
Operating expenses:				
Sales and marketing	1,472	1,928	2,600	3,413
General and administrative	4,766	5,251	9,478	9,556
Research and development	1,212	1,876	2,984	2,879
Impairment of goodwill	1,203	—	1,203	—
Total operating expenses	<u>8,653</u>	<u>9,055</u>	<u>16,265</u>	<u>15,848</u>
Operating loss	<u>(8,197)</u>	<u>(7,535)</u>	<u>(15,448)</u>	<u>(12,557)</u>
Other income (expense):				
Interest expense	(553)	(273)	(1,090)	(654)
Impairment of digital assets	—	(12,158)	(50)	(21,511)
Gain on sale of digital assets	2,096	168	5,310	194
Fair value adjustment of warrant liability	3	2,682	256	2,469
Other income, net	<u>127</u>	<u>45</u>	<u>229</u>	<u>71</u>
Total other income (expense), net	<u>1,673</u>	<u>(9,536)</u>	<u>4,655</u>	<u>(19,431)</u>
Loss before taxes	<u>(6,524)</u>	<u>(17,071)</u>	<u>(10,793)</u>	<u>(31,988)</u>
Income tax expense	—	—	—	—
Net loss	<u>(6,524)</u>	<u>(17,071)</u>	<u>(10,793)</u>	<u>(31,988)</u>
Other comprehensive income (loss):				
Cumulative translation adjustment	23	(85)	46	(117)
Comprehensive loss	<u>\$ (6,501)</u>	<u>\$ (17,156)</u>	<u>\$ (10,747)</u>	<u>\$ (32,105)</u>
Loss per share, basic and diluted	<u>\$ (0.06)</u>	<u>\$ (0.17)</u>	<u>\$ (0.10)</u>	<u>\$ (0.33)</u>
Weighted-average common shares used to compute loss per share, basic and diluted	105,133	97,742	104,151	97,293

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

**Phunware, Inc.**  
**Condensed Consolidated Statements of Changes in Stockholders' Equity**  
*(In thousands)*  
*(Unaudited)*

	Common Stock		Treasury stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance - March 31, 2023	104,470	\$ 10	(462)	\$ (475)	\$ 277,303	\$ (254,488)	\$ (449)	\$ 21,901
Release of restricted stock	1,287	1	—	—	—	—	—	1
Issuance of common stock under the 2018 employee stock purchase plan	93	—	—	—	47	—	—	47
Sales of common stock, net of issuance cost	1,715	—	—	—	995	—	—	995
Stock-based compensation expense	—	—	—	—	1,492	—	—	1,492
Cumulative translation adjustment	—	—	—	—	—	—	23	23
Treasury stock repurchase	—	—	(45)	(27)	—	—	—	(27)
Net loss	—	—	—	—	—	(6,524)	—	(6,524)
Balance - June 30, 2023	<u>107,565</u>	<u>\$ 11</u>	<u>(507)</u>	<u>\$ (502)</u>	<u>\$ 279,837</u>	<u>\$ (261,012)</u>	<u>\$ (426)</u>	<u>\$ 17,908</u>
Balance - December 31, 2022	103,153	\$ 10	—	\$ —	\$ 275,562	\$ (250,219)	\$ (472)	\$ 24,881
Exercise of stock options	95	—	—	—	58	—	—	58
Release of restricted stock	2,136	1	—	—	—	—	—	1
Issuance of restricted stock for earned bonus	373	—	—	—	347	—	—	347
Issuance of common stock under the 2018 employee stock purchase plan	93	—	—	—	47	—	—	47
Sales of common stock, net of issuance costs	1,715	—	—	—	995	—	—	995
Stock-based compensation expense	—	—	—	—	2,828	—	—	2,828
Cumulative translation adjustment	—	—	—	—	—	—	46	46
Treasury stock repurchase	—	—	(507)	(502)	—	—	—	(502)
Net loss	—	—	—	—	—	(10,793)	—	(10,793)
Balance - June 30, 2023	<u>107,565</u>	<u>\$ 11</u>	<u>(507)</u>	<u>\$ (502)</u>	<u>\$ 279,837</u>	<u>\$ (261,012)</u>	<u>\$ (426)</u>	<u>\$ 17,908</u>

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance - March 31, 2022	97,251	\$ 10	\$ 266,606	\$ (214,242)	\$ (384)	\$ 51,990
Release of restricted stock	790	—	—	—	—	—
Issuance of common stock under the 2018 employee stock purchase plan	96	—	116	—	—	116
Stock-based compensation expense	—	—	743	—	—	743
Cumulative translation adjustment	—	—	—	—	(85)	(85)
Net income	—	—	—	(17,071)	—	(17,071)
Balance - June 30, 2022	<u>98,137</u>	<u>\$ 10</u>	<u>\$ 267,465</u>	<u>\$ (231,313)</u>	<u>\$ (469)</u>	<u>\$ 35,693</u>
Balance - December 31, 2021	96,752	\$ 10	\$ 264,944	\$ (199,325)	\$ (352)	\$ 65,277
Exercise of stock options, net of vesting of restricted shares	23	—	16	—	—	16
Release of restricted stock	882	—	—	—	—	—
Issuance of common stock under the 2018 employee stock purchase plan	96	—	116	—	—	116
Issuance of common stock in connection with acquisition of Lyte Technology, Inc.	384	—	1,125	—	—	1,125
Stock-based compensation expense	—	—	1,264	—	—	1,264
Cumulative translation adjustment	—	—	—	—	(117)	(117)
Net loss	—	—	—	(31,988)	—	(31,988)
Balance - June 30, 2022	<u>98,137</u>	<u>\$ 10</u>	<u>\$ 267,465</u>	<u>\$ (231,313)</u>	<u>\$ (469)</u>	<u>\$ 35,693</u>

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

**Phunware, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
*(In thousands)*  
*(Unaudited)*

	<b>Six Months Ended</b> <b>June 30,</b>	
	<b>2023</b>	<b>2022</b>
<b>Operating activities</b>		
Net loss	\$ (10,793)	\$ (31,988)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of debt discount and deferred financing costs	697	259
Gain on change in fair value of warrant liability	(256)	(2,469)
Gain on sale of digital assets	(5,310)	(194)
Impairment of digital assets	50	21,511
Impairment of goodwill	1,203	—
Stock-based compensation	2,824	1,270
Other adjustments	1,180	478
Changes in operating assets and liabilities:		
Accounts receivable	57	178
Inventory	417	(892)
Prepaid expenses and other assets	444	(631)
Accounts payable	651	920
Accrued expenses	(997)	(386)
Lease liability payments	(691)	(347)
Deferred revenue	(2,036)	(2,698)
Net cash used in operating activities	<u>(12,560)</u>	<u>(14,989)</u>
<b>Investing activities</b>		
Proceeds received from sale of digital assets	15,390	—
Purchase of digital assets	—	(923)
Acquisition payment	—	(1,125)
Capital expenditures	(9)	(158)
Net cash provided by (used in) investing activities	<u>15,381</u>	<u>(2,206)</u>
<b>Financing activities</b>		
Payments on borrowings	(4,270)	(3,132)
Proceeds from sales of common stock, net of issuance costs	995	—
Proceeds from exercise of options to purchase common stock	58	16
Payment for stock repurchase	(502)	—
Net cash used in financing activities	<u>(3,719)</u>	<u>(3,116)</u>
Effect of exchange rate on cash	48	(121)
Net decrease in cash	(850)	(20,432)
Cash at the beginning of the period	1,955	23,137
Cash at the end of the period	<u>\$ 1,105</u>	<u>\$ 2,705</u>

**Supplemental disclosure of cash flow information:**

Interest paid	\$ 438	\$ 408
Income taxes paid	\$ —	\$ —

**Supplemental disclosures of non-cash investing and financing activities:**

Right-of-use assets obtained in exchange for operating lease obligations	\$ —	\$ 1,508
Non-cash exchange of digital assets	\$ 557	\$ 923
Issuance of common stock in connection with acquisition of Lyte Technology, Inc.	\$ —	\$ 1,125
Issuance of common stock under the 2018 Employee Stock Purchase Plan previously accrued	\$ 47	\$ 116
Issuance of common stock for payment of bonuses previously accrued	\$ 347	\$ —

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

**Phunware, Inc.**  
**Notes to Unaudited Condensed Consolidated Financial Statements**  
(*In thousands, except share and per share information*)  
(*Unaudited*)

**1. The Company and Basis of Presentation**

***The Company***

Phunware, Inc. and its subsidiaries (the "Company", "we", "us", or "our") offers a fully integrated software platform that equips companies with the products, solutions and services necessary to engage, manage and monetize their anytime, anywhere users worldwide. Our location-based software-as-a-service platform provides the entire mobile lifecycle of applications and media in one login through one procurement relationship. Our technology is available in Software Development Kit ("SDK") form for organizations developing their own application, via customized development services and prepackaged solutions. Through our integrated mobile advertising platform of publishers and advertisers, we provide in-app application transactions for mobile audience building, user acquisition, application discovery, audience engagement and audience monetization. During 2021, we began to sell PhunToken to consumers, developers and brands. PhunToken is an innovative digital asset utilized within our token ecosystem to help drive engagement by unlocking features and capabilities of our platform. PhunToken is designed to reward consumers for their activity, such as watching branded videos, completing surveys and visiting points of interest. In October 2021, we acquired Lyte Technology, Inc. ("Lyte"), a provider of high-performance computer systems to individual consumers. Founded in 2009, we are a Delaware corporation headquartered in Austin, Texas.

***Basis of Presentation***

The condensed consolidated financial statements have been prepared in conformity with generally accepted accounting principles in the United States ("U.S. GAAP") and include the Company's accounts and those of its wholly owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

The balance sheet at December 31, 2022 was derived from our audited consolidated financial statements, but these interim condensed consolidated financial statements do not include all the annual disclosures required by U.S. GAAP. These interim condensed consolidated financial statements should be read in conjunction with our audited consolidated financial statements and the notes thereto for the year ended December 31, 2022, which are referenced herein. The accompanying interim condensed consolidated financial statements as of June 30, 2023 and for the three and six months ended June 30, 2023 and 2022, are unaudited. The unaudited interim condensed consolidated financial statements have been prepared on a basis consistent with the audited financial statements, pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for interim financial statements. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the financial statements reflect all adjustments (consisting of normal recurring adjustments) considered necessary to fairly state our financial position as of June 30, 2023 and the results of operations for the three and six months ended June 30, 2023 and 2022, and cash flows for the six months ended June 30, 2023 and 2022. The results for the three and six months ended June 30, 2023 are not necessarily indicative of the results to be expected for the year ending December 31, 2023 or for any future interim period.

Certain reclassifications have been made to the presentation for the six months ended June 30, 2022. Gain on sale of digital assets for the six months ended June 30, 2022, which was previously included in Other income, net in the condensed consolidated statement of operations and comprehensive loss and Other adjustments in the statement of cash flows has been reclassified to Gain on sale of digital assets in each respective financial statement.

***Going Concern***

Accounting Standards Codification ("ASC") Topic 205-40, *Presentation of Financial Statements - Going Concern* requires management to evaluate whether conditions and/or events raise substantial doubt about our ability to meet future financial obligations as they become due within one year after the date that the financial statements are issued. As required by this standard, management's initial evaluation shall not take into consideration the potential mitigating effects of management's plans that have not been fully implemented as of the date the financial statements are issued.

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We have a history of net losses since our inception. For the six months ended June 30, 2023, we incurred a net loss of \$ 10,793, used \$12,560 in cash for operations and have a working capital deficiency of \$14,417. The foregoing conditions raise substantial doubt about our ability to meet our financial obligations as they become due.

In performing the next step of our going concern assessment, we are required to evaluate whether our plans to mitigate the conditions above alleviate the substantial doubt. Our assessment included the preparation of a detailed cash forecast that included projected cash inflows and outflows. We continue to focus on growing our revenues, and accordingly, we expect operating expenditures to exceed future revenue for the foreseeable future. In July 2023, we implemented a plan to decrease our cash burn by reducing headcount and other operating expenditures. Subsequent to June 30, 2023, we also raised additional funds in our at-the-market equity offering and entered into an amendment to our 2022 Promissory Note. Refer to Note 12 for further discussion. Our future plans may include additional reductions to operating expenses, additional sales of our common stock in our at-the-market offering, and issuing additional shares of common stock, preferred stock, warrants or units pursuant to an effective shelf registration statement.

Despite a history of successfully implementing similar plans, these sources of working capital are not currently assured, and consequently do not sufficiently mitigate the risks and uncertainties disclosed above. There can be no assurance that we will be able to obtain additional funding on satisfactory terms or at all. In addition, no assurance can be given that any such financing, if obtained, will be adequate to meet our capital needs and support our growth. If additional funding cannot be obtained on a timely basis and on satisfactory terms, our operations would be materially negatively impacted. We have therefore concluded there is substantial doubt about our ability to continue as a going concern through one year from the issuance of these financial statements.

The accompanying condensed consolidated financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.

### ***Nasdaq listing***

On April 13, 2023, we received a notice from The Nasdaq Stock Market LLC ("Nasdaq") indicating that the Company was not in compliance with Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Requirement") because the bid price of the Company's common stock on the Nasdaq Capital Market had closed below \$1.00 per share for the previous 30 consecutive business days. The notice from Nasdaq states that, under Nasdaq Listing Rule 5810(c)(3)(A), we have been provided a period of 180 calendar days, or until October 10, 2023 (the "Compliance Date"), to regain compliance with the Bid Price Requirement. To regain compliance, the bid price of our common stock must close at \$1.00 per share or more for a minimum of ten consecutive business days.

If we fail to regain compliance with the Bid Price Requirement prior to the Compliance Date, the Company may be eligible for an additional 180 calendar day compliance period, provided (i) it meets the continued listing requirement for market value of publicly held shares and all other applicable requirements for initial listing on the Nasdaq Capital Market (except for the Bid Price Requirement), and (ii) it provides written notice to Nasdaq of its intention to cure this deficiency during the second compliance period by effecting a reverse stock split, if necessary. In the event the Company does not regain compliance with the Bid Price Requirement prior to the expiration of the initial period, and if it appears to Nasdaq that the Company will not be able to cure the deficiency, or if we are not otherwise eligible, Nasdaq will provide us with written notification that its securities are subject to delisting from the Nasdaq Capital Market. At that time, we may appeal the delisting determination to a hearings panel.

## **2. Summary of Significant Accounting Policies**

There have been no changes in significant accounting policies as described in our Annual Report on Form 10-K for the year ended December 31, 2022, except as set forth below.

### ***Recently Adopted Accounting Pronouncements***

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"). ASU 2016-13 introduces a model based on expected losses for most financial assets and certain other instruments. In addition, for available-for-sale debt securities with unrealized losses, the losses will be recognized as allowances rather than reductions in the amortized cost of the securities. We adopted this new standard effective January 1, 2023. The adoption of ASU 2016-13 did not have a material impact on our condensed consolidated financial statements and disclosures.

#### **Recent Accounting Pronouncements Not Yet Adopted**

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815 – 40)* ("ASU 2020-06"). ASU 2020-06 simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. ASU 2020-06 is effective for smaller reporting companies for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. As of June 30, 2023, we did not have any debt with conversion features outstanding. On August 14, 2023, we entered into an amendment to our 2022 Promissory Note granting the noteholder certain limited conversion rights. See Note 12 for further discussion. The Company is currently evaluating the effect of this ASU on the amendment to its 2022 Promissory Note.

#### **Use of Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires us to make certain estimates and assumptions that affect the reported amounts in the condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates and such differences could be material.

### **3. Supplemental Information**

#### **Risks and Uncertainties**

Regulation governing blockchain technologies, cryptocurrencies, digital assets, digital asset exchanges, utility tokens, security tokens and offerings of digital assets is uncertain, and new regulations or policies may materially adversely affect the development and the value of our tokens and token ecosystem. Regulation of digital assets, like PhunCoin and PhunToken, cryptocurrencies, blockchain technologies and digital asset exchanges, is evolving and likely to continue to evolve. Regulation also varies significantly among international, federal, state and local jurisdictions and is subject to significant uncertainty. Various legislative and executive bodies in the United States and in other countries may in the future adopt laws, regulations, or guidance, or take other actions, which may severely impact the permissibility of tokens generally and the technology behind them or the means of transaction or in transferring them. Any such laws, regulations, guidance or other actions could adversely affect our ability to maintain PhunCoin and PhunToken, which could have a material adverse effect on our operations and financial condition. Failure by us to comply with any such laws and regulations, some of which may not exist yet or are subject to interpretation and may be subject to change, could also result in a material adverse effect on our operations and financial condition.

#### **Concentrations of Credit Risk**

Our financial instruments that are exposed to concentrations of credit risk consist primarily of cash, trade accounts receivable and our digital asset holdings.

Although we limit our exposure to credit loss by depositing our cash with established financial institutions that management believes have good credit ratings and represent minimal risk of loss of principal, our deposits, at times, may exceed federally insured limits.

There is currently no clearing house for our digital assets, including our bitcoin holdings, nor is there a central or major depository for the custody of our digital assets. There is a risk that some or all of our digital asset holdings could be lost or stolen. There can be no assurance that the custodians will maintain adequate insurance or that such coverage will cover losses with respect to our digital asset holdings. Further, transactions denominated in digital assets are irrevocable. Stolen or incorrectly transferred digital assets may be irretrievable. As a result, any incorrectly executed transactions could adversely affect our financial condition. The aggregate cost basis (prior to impairment) of our digital asset holdings was \$103 and \$37,737 at June 30, 2023 and December 31, 2022, respectively.

Collateral is not required for accounts receivable, and we believe the carrying value approximates fair value. The following table sets forth our concentration of accounts receivable, net of specific allowances for doubtful accounts.

	June 30, 2023	December 31, 2022
Customer A	16 %	— %
Customer B	10 %	— %
Customer C	— %	23 %

#### ***Inventory***

Our inventory balance on the dates presented consisted of the following:

	June 30, 2023	December 31, 2022
Raw materials	\$ 2,247	\$ 2,968
Finished goods	377	50
Other	7	30
Inventory reserve	(463)	(268)
<b>Total inventory</b>	<b>\$ 2,168</b>	<b>\$ 2,780</b>

#### ***Goodwill Impairment***

Goodwill arises from purchase business combinations and is measured as the excess of the cost of the business acquired over the sum of the acquisition-date fair values of tangible and identifiable intangible assets acquired, less any liabilities assumed. In accordance with ASC 350, *Intangibles — Goodwill and Other*, we do not amortize goodwill but rather assess its carrying value for indications of impairment annually, or more frequently if events or changes in circumstances indicate that the carrying amount may be impaired. We typically perform our annual goodwill impairment assessment as of October 1st of each year; however, as our stock has sustained a decline, we believe this, among other qualitative factors, including, but not limited to continued losses with our Lyte reporting unit, indicates the carrying amount of our goodwill may be impaired.

Our business is classified into two reporting units: Phunware and Lyte. We performed quantitative assessment on both our reporting units as of June 30, 2023, using a discounted cash flow model. Based on the analysis performed, we concluded that the carrying amount of our Lyte reporting unit exceeded its fair value resulting in a non-cash impairment charge of \$1,203, which is recorded in Impairment of goodwill in the condensed consolidated statement of operations and comprehensive loss for the three and six months ended June 30, 2023.

The goodwill impairment analysis referenced above used the discounted cash flow model (income approach) utilizing Level 3 unobservable inputs. Significant assumptions in this analysis included, but were not limited to, future cash flow projections, the weighted average cost of capital, the terminal growth rate and the tax rate. Estimates of future cash flows are based on current regulatory and economic climates, recent operating results, and planned business strategies. These estimates could be negatively affected by changes in federal, state, or local regulations or economic downturns. Future cash flow estimates are, by their nature, subjective and actual results may differ materially from estimates. If the Company's ongoing estimates of future cash flows are not met or if discount rates change, the Company may have to record additional impairment charges in future periods. We also used the Guideline Public Company Method (market approach). The significant assumptions used in this analysis include, but are not limited to, the derived multiples from comparable market transactions and other market data. The selection of comparable businesses is based on the markets in which the reporting unit operates giving consideration to risk profiles, size, geography, and diversity of products. We applied an overall probability-weighting to the income and market approaches to determine the concluded fair value of the reporting unit. We believe the current assumptions and estimates utilized in the income and market approaches are both reasonable and appropriate.

#### **Loss per Common Share**

Basic loss per common share is computed by dividing net loss applicable to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted loss per common share is computed by giving effect to all potential shares of common stock, including those related to our outstanding warrants and stock equity plans, to the extent dilutive. For all periods presented, these shares were excluded from the calculation of diluted loss per share of common stock because their inclusion would have been anti-dilutive. As a result, diluted loss per common share is the same as basic loss per common share for all periods presented.

The following table sets forth common stock equivalents that have been excluded from the computation of dilutive weighted average shares outstanding as their inclusion would have been anti-dilutive:

	June 30,	
	2023	2022
Warrants	6,255,159	5,636,801
Options	904,531	934,729
Restricted stock units	4,843,881	2,621,346
Total	<u>12,003,571</u>	<u>9,192,876</u>

#### **Fair Value Measurements**

We follow the guidance in ASC 820, *Fair Value Measurement*, to measure certain assets and liabilities on a recurring and nonrecurring basis. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. We use a fair value hierarchy, which distinguishes between assumptions based on market data (observable inputs) and an entity's own assumptions (unobservable inputs). The guidance requires fair value measurements be classified and disclosed in one of the following three categories:

- Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2: Quoted prices in markets that are not active or inputs which are observable, either directly or indirectly, for substantially the full of the asset or liability.
- Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

Determining which category an asset or liability falls within the hierarchy requires significant judgment. Our assets and liabilities measured at fair value on a recurring basis as of June 30, 2023 are set forth below:

	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Warrant liability	\$ —	\$ —	\$ —	\$ —
<b>Total</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

Our financial instruments measured at fair value on a recurring basis as of December 31, 2022 are set forth below:

	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Warrant liability	\$ —	\$ 256	\$ —	\$ 256
<b>Total</b>	<b>\$ —</b>	<b>\$ 256</b>	<b>\$ —</b>	<b>\$ 256</b>

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The following table sets forth the assumptions used to calculate the fair values of the liability classified warrant issued in connection with our 2020 Convertible Notes as of the dates presented:

	June 30, 2023	December 31, 2022
Strike price per share	\$ 1.42	\$ 1.42
Closing price per share	\$ 0.54	\$ 0.77
Term (years)	0.04	0.53
Volatility	47 %	102 %
Risk-free rate	5.24 %	4.70 %
Dividend Yield	—	—

The carrying value of accounts receivable, prepaid expenses, other current assets, accounts payable and accrued expenses are considered to be representative of their respective fair values because of the short-term nature of those instruments.

#### 4. Revenue

Our platform revenue consists of SDK license subscriptions and application development services, as well as application transactions, which are comprised of in-app advertising and sales of our digital asset, PhunToken. Hardware revenue relates to the sale of high-performance personal computers. Refer to our revenue recognition policy under the subheading, *Revenue Recognition*, in Note 2, "Summary of Significant Accounting Policies," in our Annual Report on Form 10-K filed with the SEC on March 31, 2023.

##### ***Disaggregation of Revenue***

The following table sets forth our net revenues by category:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Platform revenue	\$ 1,295	\$ 1,628	\$ 2,640	\$ 4,120
Hardware revenue	2,192	3,857	5,594	8,143
Net revenues	<u>\$ 3,487</u>	<u>\$ 5,485</u>	<u>\$ 8,234</u>	<u>\$ 12,263</u>

We generate revenue in domestic and foreign regions and attribute net revenue to individual countries based on the location of the contracting entity. We derived 100% of our net revenues from within the United States for the three and six months ended June 30, 2023. During the three and six months ended June 30, 2022, we derived 98% and 97% of our net revenues from the United States, respectively.

##### ***Deferred Revenue***

Our deferred revenue balance consisted of the following:

	June 30, 2023	December 31, 2022
Current deferred revenue		
Platform revenue	\$ 1,068	\$ 1,531
Hardware revenue	24	1,373
Total current deferred revenue	<u>\$ 1,092</u>	<u>\$ 2,904</u>
Non-current deferred revenue		
Platform revenue	\$ 1,050	\$ 1,274
Total non-current deferred revenue	<u>\$ 1,050</u>	<u>\$ 1,274</u>
Total deferred revenue	<u><u>\$ 2,142</u></u>	<u><u>\$ 4,178</u></u>

Deferred revenue consists of customer billings or payments received in advance of the recognition of revenue under the arrangements with customers. We recognize deferred revenue as revenue only when revenue recognition criteria are met. During the six months ended June 30, 2023, we recognized revenue of \$2,741 that was included in our deferred revenue balance as of December 31, 2022.

##### ***Remaining Performance Obligations***

Remaining performance obligations were \$5,238 as of June 30, 2023, of which we expect to recognize approximately 33% as revenue over the next 12 months and the remainder thereafter.

##### ***PhunToken***

In 2021, we announced the commencement of the selling of PhunToken. PhunToken is our innovative digital asset intended to be utilized within our token ecosystem, once developed, to help drive engagement by unlocking features and capabilities of our platform. We did not sell any PhunToken during the six months ended June 30, 2023. During the six months

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ended June 30, 2022, we sold 186.8 million PhunToken for an aggregate of \$1,533, for which we received both cash and digital assets from customers. Sales of PhunToken are recorded within platform revenue in the table above.

As of June 30, 2023 and December 31, 2022, total issued PhunToken were 377.2 million. Total supply of PhunToken is capped at 10 billion.

## 5. Digital Assets

Payments by customers in and purchases by us of digital assets were primarily of bitcoin and ethereum. We currently account for all digital assets held as a result of these transactions as indefinite-lived intangible assets in accordance with ASC 350, *Intangibles—Goodwill and Other*. We have ownership of and control over our digital assets and we may use third-party custodial services or self-custody solutions to secure them. The digital assets are initially recorded at cost and are subsequently remeasured, net of any impairment losses incurred since acquisition.

We determine the fair value of our digital assets on a nonrecurring basis in accordance with ASC 820, *Fair Value Measurement*, based on quoted prices on the active exchange(s) that we have determined is the principal market for bitcoin, ethereum and other digital asset holdings (Level 1 inputs). We perform an analysis each quarter to identify whether events or changes in circumstances, principally decreases in the quoted prices on active exchanges, indicate that it is more likely than not that our digital assets are impaired. In determining if an impairment has occurred, we consider the lowest intraday market price quoted on an active exchange since acquiring the respective digital asset. If the then current carrying value of a digital asset exceeds the fair value, an impairment loss has occurred with respect to those digital assets in the amount equal to the difference between their carrying values and the fair value. The fair value of our digital asset holdings at June 30, 2023 is \$84.

The impaired digital assets are written down to their fair value at the time of impairment and this new cost basis will not be adjusted upward for any subsequent increase in fair value. Gains are not recorded until realized upon sale, at which point they are presented net of any impairment losses for the same digital assets held. In determining the gain or loss to be recognized upon sale, we calculate the difference between the sales price and carrying value of the digital assets sold immediately prior to sale. Impairment losses and gains or losses on sales are recognized within other income (expense) in our condensed consolidated statements of operations and comprehensive loss. Impairment loss was \$0 and \$12,158 for the three months ended June 30, 2023 and 2022, respectively. We recognized \$50 and \$21,511 of impairment losses during the six months ended June 30, 2023 and 2022, respectively.

The following table sets forth our digital asset holdings as of June 30, 2023:

Asset	Gross Carrying Amount	Accumulated Digital Asset Impairment	Digital Asset Carrying Value
Bitcoin	\$ 16	\$ (3)	\$ 13
Ether	80	(28)	52
Other	7	(1)	6
Total	\$ 103	\$ (32)	\$ 71

The following table sets forth our digital asset holdings as of December 31, 2022:

Asset	Gross Carrying Amount	Accumulated Digital Asset Impairment	Digital Asset Carrying Value
Bitcoin	\$ 34,994	\$ (25,534)	\$ 9,460
Ether	1,506	(1,156)	350
Other	1,237	(910)	327
Total	\$ 37,737	\$ (27,600)	\$ 10,137

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Gross carrying amount and accumulated digital asset impairment noted above represent carrying amount and impairment, respectively, on the remaining cost lots as of the respective dates. Changes in our digital asset holdings for six months ended June 30, 2023 were as follows:

	<b>Bitcoin</b>	<b>Ethereum</b>	<b>Other</b>	<b>Total</b>
Net balance as of December 31, 2022	\$ 9,460	\$ 350	\$ 327	\$ 10,137
Received from customers, net of expenses	—	(1)	65	64
Exchanges of digital assets	—	557	(557)	—
Disposal proceeds	(14,154)	(1,236)	—	(15,390)
Gain on sale of digital assets	4,707	382	221	5,310
Impairment expense	—	—	(50)	(50)
Net balance as of June 30, 2023	<u>\$ 13</u>	<u>\$ 52</u>	<u>\$ 6</u>	<u>\$ 71</u>

## 6. Debt

### **2022 Promissory Note**

On July 6, 2022, we entered into a note purchase agreement and completed the sale of an unsecured promissory note (the "2022 Promissory Note") with an original principal amount of \$12,809 in a private placement. The 2022 Promissory Note was sold with an original issue discount of \$ 492 and we paid at closing issuance costs totaling \$522. After deducting all transaction fees paid by us at closing, net cash proceeds to the Company at closing were \$ 11,795. No interest was to accrue on the 2022 Promissory Note. Beginning on November 1, 2022, our monthly amortization payment was approximately \$1,566, until the original maturity date of July 1, 2023. We had the right to defer any monthly payment by one month up to twelve times so long as certain conditions, as defined in the 2022 Promissory Note, are satisfied. In the event we exercise the deferral right for any given month: (i) the outstanding balance will automatically increase by 1.85%; (ii) we will not be obligated to make the monthly payment for such month; and (iii) the maturity date will be extended for one month. We may prepay any or all outstanding balance of the 2022 Promissory Note earlier than it is due by paying the noteholder 110% of the portion of the outstanding balance we elect to prepay. The prepayment premium also applies to the monthly amortization payments.

On March 15, 2023, we elected to defer monthly payment obligations for April, May, June and July 2023, as permitted, at the time, by the 2022 Promissory Note. In connection therewith, we entered into a waiver agreement with the holder waiving the Payment Deferral Conditions, as defined in the 2022 Promissory Note. For agreeing to waive the Payment Deferral Conditions, we agreed to compensate the noteholder an amount equal to 5% of the outstanding balance immediately before entering into the waiver agreement. As a result of our election to defer the four (4) monthly payments, the outstanding balance of the 2022 Promissory Note was increased by 1.85% on the first day of each month beginning on April 1, 2023 and concluding on July 1, 2023. The waiver fee and the additional principal was to be paid in connection with our monthly installment payments once the deferral period concluded. Beginning on August 1, 2023 and on the same day of each month thereafter, we were required to pay to the noteholder the new monthly amortization payment in the amount of \$1,769. We evaluated the modification in accordance with the guidance as in ASC 470 - *Debt*, and we concluded that the modification was not an extinguishment of the original debt; therefore, no gain or loss was recognized upon modification. As a result of entering into the waiver agreement, the effective interest rate of the 2022 Promissory Note as of June 30, 2023 was approximately 34.98%. On August 14, 2023, we entered into an amendment to the 2022 Promissory Note with the noteholder. See Note 12 for further discussion.

The 2022 Promissory Note had a principal balance of \$6,432 and \$9,962 and debt discount of \$338 and \$295 at June 30, 2023 and December 31, 2022, respectively.

### ***Other Debt Obligations***

Other than the 2022 Promissory Note referenced above, there have been no material changes to the terms and conditions of our other debt obligations since the filing of our Annual Report on Form 10-K. See Note 8, "Debt", in our Annual Report on Form 10-K filed with the SEC on March 31, 2022.

### ***Interest Expense***

Interest expense amounted to \$553 and \$273 for the three months ended June 30, 2023 and 2022, respectively. Interest expense was \$ 1,090 and \$654 for the six months ended June 30, 2023 and 2022, respectively.

## 7. Leases

Further information regarding our other office leases and accounting thereof are located in Note 2, " *Summary of Significant Accounting Policies*," and Note 9, "Leases," in our Annual Report on Form 10-K filed with the SEC on March 31, 2023.

We recognize lease expense on a straight-line basis over the lease term with variable lease expense recognized in the period in which the costs are incurred. The components of lease expense are included in general and administrative expense in our condensed consolidated statement of operations and comprehensive loss. Lease expense for the three months ended June 30, 2023 and 2022 was \$324 and \$236, respectively. Lease expense for the six months ended June 30, 2023 and 2022 was \$649 and \$440, respectively. The weighted-average remaining lease term for operating leases as of June 30, 2023 was 3.6 years.

Future minimum lease obligations are set forth below:

Future minimum lease obligations years ending December 31,	Lease Obligations
2023 (Remainder)	\$ 605
2024	1,305
2025	929
2026	744
2027	508
Thereafter	—
	<hr/>
Less: Portion representing interest	(539)
	<hr/>
	\$ 3,552

## 8. Commitments and Contingencies

### *Litigation*

Except as set forth below, there have been no material changes to the disclosures related to our litigation matters since the filing of our Annual Report on Form 10-K. See Note 10, "Commitments and Contingencies," in our Annual Report on Form 10-K filed with the SEC on March 31, 2023 for further information.

On February 18, 2022, certain stockholders filed a lawsuit against Phunware and its individual officers and directors. The case, captioned Wild Basin Investments, LLC, et al. v. Phunware, Inc., et al., was filed in the Court of Chancery of the state of Delaware (Cause No. 2022-0168-LWW). Plaintiffs alleged that they invested in various early rounds of financing while the Company was private and that Phunware should not have subjected their shares to a 180-day "lock up" period. Plaintiffs also allege that Phunware's stock price dropped significantly during the lock up period and seek damages, costs and professional fees. We filed a motion to dismiss the complaint on May 27, 2022 and on July 15, 2022, Plaintiffs filed their answering brief in opposition to the motion to dismiss and a partial motion for summary judgement. All briefing and oral argument on the motion to dismiss and motion for partial summary judgement is complete. Both parties argued their positions before the Court of Chancery during a hearing on April 4, 2023. On June 16, 2023, the Court ruled on the motions without filing a written opinion. From the bench, Vice Chancellor Cook granted Phunware's motion to dismiss on the Texas law-based claims and denied both the motion to dismiss and partial motion for summary judgment on the Delaware law claims. The parties engaged in mediation in July 2023 and are scheduled for further mediation in late August 2023. We intend to vigorously defend against this lawsuit and any appeals. We have not recorded a liability related to this matter because any potential loss is not currently probable or reasonably estimable. Additionally, we cannot presently estimate the range of loss, if any, that may result from the matter. It is possible that the ultimate resolution of the foregoing matter, or other similar matters, if resolved in a manner unfavorable to us, may be materially adverse to our business, financial condition, results of operations or liquidity.

From time to time, we are and may become involved in various legal proceedings in the ordinary course of business. The outcomes of our legal proceedings are inherently unpredictable, subject to significant uncertainties, and could be material to our operating results and cash flows for a particular reporting period. In addition, for the matters disclosed above that do not

include an estimate of the amount of loss or range of losses, such an estimate is not possible, and we may be unable to estimate the possible loss or range of losses that could potentially result from the application of non-monetary remedies.

## 9. Stockholders' Equity

### **Common Stock**

Total common stock authorized to be issued as of June 30, 2023 was 1,000,000,000 shares, with a par value of \$ 0.0001 per share. As of June 30, 2023 and December 31, 2022, there were 107,058,624 and 103,153,337 shares of our common stock outstanding, respectfully.

On January 31, 2022, we entered into an At Market Issuance Sales Agreement with H.C. Wainwright & Co., LLC ("Wainwright"), pursuant to which we may offer and sell, from time to time, shares of our common stock, par value \$0.0001 per share, for aggregate gross proceeds of up to \$ 100,000, through or to Wainwright, as agent or principal. We are not obligated to sell shares of our common stock under the sales agreement with Wainwright. Sales of shares of our common stock sold under the sales agreement are made pursuant to an effective shelf registration statement on Form S-3 in the amount of \$200,000 filed with the SEC on February 1, 2022. During the six months ended June 30, 2023, we sold 1,715,136 shares of our common stock for aggregate net cash proceeds of \$995. Transaction costs were \$32. As of June 30, 2023, \$94.4 million of shares of our common stock remains issuable pursuant to the sales agreement with Wainwright.

### **Stock Repurchase Plan**

On January 5, 2023, our board of directors authorized and approved a stock repurchase program for the repurchase of outstanding shares of our common stock with an aggregate value of up to \$5,000. The authorization permits us to repurchase shares of our common stock from time-to-time through open market repurchases at prevailing market prices, in accordance with federal securities laws. The stock repurchase plan is expected to be completed over the next twelve (12) months and may be amended or terminated at any time, in the sole discretion of the board. The exact means, number and timing of stock repurchases depend on market conditions, applicable legal requirements and other factors, and have been funded through the liquidation of our bitcoin holdings. During the six months ended June 30, 2023, we repurchased 506,500 shares of our common stock at an aggregate repurchase price of \$ 502.

### **Warrants**

We have various warrants outstanding. A summary of our outstanding warrants is set forth below:

Warrant Type	June 30, 2023		December 31, 2022	
	Cash Exercise Price per share	Number of warrants	Cash Exercise Price per share	Number of warrants
2020 Convertible Note warrant	\$ 1.42	2,811,315	\$ 1.42	2,811,315
Common stock warrants (Series F)	\$ 9.22	—	\$ 9.22	377,402
Public warrants (PHUNW)	\$ 11.50	1,761,291	\$ 11.50	1,761,291
Private placement warrants	\$ 11.50	1,658,381	\$ 11.50	1,658,381
Unit purchase option warrants	\$ 11.50	24,172	\$ 11.50	24,172
Total		6,255,159		6,632,561

Except as set forth below, there have been no material changes to the terms of our outstanding warrants. Additional information about our various warrants outstanding is included under the subheading, "*Warrants*", in Note 12, "*Stockholders' Equity*," in our Annual Report on Form 10-K filed with the SEC on March 31, 2023.

#### *2020 Convertible Note Warrant*

In connection with the issuance of the 2020 Convertible Notes, in 2020, we issued a warrant exercisable for three ( 3) years for the purchase, initially, of up to an aggregate of 2,160,000 shares of the Company's common stock at an initial exercise price of \$ 4.00 per share. The number of shares and exercise price are each subject to adjustment provided under the warrant. As a result of our underwritten public offering in February 2021, the exercise price of each share decreased to \$2.25 per share, and the number of shares for which the warrant is exercisable increased to 3,840,000 shares. Furthermore, in October 2021, we issued shares to the seller of Lyte as purchase consideration at a price of \$1.4246 per share, and as a result, the exercise price of

the warrant adjusted accordingly and the number of shares exercisable thereunder increased to 2,811,315. The holder also partially exercised the warrant in 2021.

If, at the time of exercise of the warrant, there is no effective registration statement registering, or no current prospectus available for, the issuance of the shares, then the warrant may also be exercised, in whole or in part, by means of a "cashless exercise." The registration statement registering 2,160,000 shares of our common stock issuable pursuant to the terms of the warrant was declared effective by the SEC on October 27, 2020. In April 2022, we filed a registration statement, as amended, registering 250% of the additional warrant shares as result of the adjustment noted above. The registration statement was declared effective by the SEC on May 2, 2022. The warrant may not be exercised if, after giving effect to the exercise, the investor would beneficially own amounts in excess of those permissible under the terms of the warrant. The warrant expired July 15, 2023.

## 10. Stock-Based Compensation

### ***Stock-Based Compensation***

Compensation costs that have been included in our condensed consolidated statements of operations and comprehensive loss for all stock-based compensation arrangements is set forth below:

Stock-based compensation	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Cost of revenues	\$ 111	\$ 49	\$ 364	\$ 95
Sales and marketing	35	27	132	45
General and administrative	1,260	595	2,119	1,067
Research and development	56	35	209	63
Total stock-based compensation	\$ 1,462	\$ 706	\$ 2,824	\$ 1,270

As of June 30, 2023, there was approximately \$324, \$1,068, \$3,098, \$167 and \$0.2 of total unrecognized compensation cost related to the 2023 Inducement Plan, the 2022 Inducement Plan, the 2018 Equity Incentive Plan (the "2018 Plan"), the 2018 Employee Stock Purchase Plan (the "2018 ESPP") and the 2009 Equity Incentive Plan (the "2009 Plan"), respectively. These unrecognized compensation costs are expected to be recognized over an estimated weighted-average period of approximately 2.9 years, 2.5 years, 1.7 years, 1.9 years and 0.4 years for the 2023 Inducement Plan, 2022 Inducement Plan, 2018 Plan, the 2018 ESPP and 2009 Plan, respectively.

Except as set forth below, there have been no material changes to the terms of the 2018 Plan, the 2018 ESPP and the 2009 Plan since the filing of our Annual Report on Form 10-K. Refer to Note 13, "Stock-Based Compensation," in our Annual Report on Form 10-K filed with the SEC on March 31, 2023 for more information on our various equity incentive plans.

### ***2023 Inducement Plan***

Our board of directors adopted the Phunware, Inc. 2023 Inducement Plan (the "2023 Inducement Plan") in June 2023. As permitted by Nasdaq Stock Market rules, our stockholders were not required to approve the 2023 Inducement Plan. The plan provides of up to 600,000 shares of our common stock under awards granted to newly hired employees. An "award" is any right to receive common stock of the Company consisting of nonstatutory stock options, stock appreciation rights, restricted stock awards or restricted stock units.

On June 30, 2023, we made an inducement grant to a newly hired officer of the Company of 600,000 restricted stock units under the 2023 Inducement Plan with a grant date fair value of \$0.54 per share. One-third of the restricted stock units will vest on June 3, 2024 and the remainder will vest in equal installments over two annual periods beginning on June 2, 2025 and concluding on June 1, 2026, subject to the employee's continued service on such vesting date. Shares will be delivered electronically to the holder shortly after vest date.

### ***2022 Inducement Plan***

Our board of directors adopted the Phunware, Inc. 2022 Inducement Plan (the "2022 Inducement Plan") in January 2023. As permitted by Nasdaq Stock Market rules, our stockholders were not required to approve the 2022 Inducement Plan.

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The plan provides of up to 1,470,588 shares of our common stock under awards granted to newly hired employees. An "award" is any right to receive common stock of the Company consisting of nonstatutory stock options, stock appreciation rights, restricted stock awards or restricted stock units.

In January 2023, we made an inducement grant to a newly hired officer of the Company of 1,470,588 restricted stock units under the 2022 Inducement Plan with a grant date fair value of \$0.87 per share. One-third, or 490,196, of the restricted stock units will vest on December 28, 2023 and the remainder will vest in equal installments over eight quarterly periods beginning on March 31, 2024 with the final vesting date occurring on December 28, 2025, subject to the employee's continued service on such vesting date. Shares will be delivered electronically to the holder shortly after vest date.

**2018 Equity Incentive Plan**

Shares of common stock reserved for issuance under the 2018 Plan also include any shares of common stock subject to stock options, restricted stock units or similar awards granted under the 2009 Plan, that, on or after the adoption of the 2018 Plan, expire or otherwise terminate without having been exercised in full and shares of common stock issued pursuant to awards granted under the 2009 Plan that are forfeited to or repurchased by us. As of June 30, 2023, the maximum number of shares of common stock that may be added to the 2018 Plan pursuant to the foregoing is 779,531. Not including the maximum number of shares from the 2009 Plan that may be added to the 2018 Plan, the 2018 Plan had 7,178,608 and 4,382,662 shares of common stock reserved for future issuances as of June 30, 2023 and December 31, 2022, respectively.

Restricted Stock Units

A summary of our restricted stock unit activity under the 2018 Plan for the six months ended June 30, 2023 is set forth below:

	Shares	Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2022	2,957,995	\$ 1.75
Granted	2,616,704	0.88
Released	(2,508,922)	1.20
Forfeited	(292,484)	1.51
Outstanding as of June 30, 2023	2,773,293	\$ 1.25

During the first quarter of 2023, we granted 1,921,000 restricted stock unit awards to team members with an average grant date fair value of \$ 0.92 per share. The vesting provisions were generally such that one-third of the awards vested immediately with the remaining vesting at various dates through November 2024. We also granted 372,704 restricted stock unit awards to members of our team in lieu of cash bonus earned during 2022 with a grant date fair value of \$0.93. These awards vested immediately.

During the second quarter of 2023, we granted 323,000 restricted stock unit awards to team members with an average grant date fair value of \$ 0.60 per share. The vesting of these awards occurs at various dates through May 2027.

Stock Options

A summary of our stock option activity under the 2018 Plan and related information is as follows:

	<u>Number of Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Term (years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding as of December 31, 2022	87,500	\$ 1.43	5.6	\$ —
Granted	75,000	0.76		
Exercised	—	—		
Forfeited	(37,500)	1.08		
Outstanding as of June 30, 2023	<u>125,000</u>	\$ 1.14	<u>5.4</u>	\$ —
Exercisable as of June 30, 2023	<u>106,250</u>	\$ 1.20	<u>5.4</u>	\$ —

**2018 Employee Stock Purchase Plan**

We use a Black-Scholes option pricing model to determine the fair value of shares to be purchased under the 2018 ESPP. Stock-based compensation expense related to our 2018 ESPP for the six months ended June 30, 2023 was not significant. There were 1,528,745 and 802,893 shares of common stock available for sale and reserved for issuance as of June 30, 2023 and December 31, 2022, respectively.

**2009 Equity Incentive Plan**

A summary of our option activity under the 2009 Plan and related information is as follows:

	<u>Number of Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Term (years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding as of December 31, 2022	874,279	\$ 0.80	4.2	\$ 130
Granted	—	—		
Exercised	(94,748)	0.61		
Forfeited	—	—		
Outstanding as of June 30, 2023	<u>779,531</u>	\$ 0.83	<u>4.1</u>	\$ 1
Exercisable as of June 30, 2023	<u>779,339</u>	\$ 0.83	<u>4.1</u>	\$ 1

For the three months ended June 30, 2023, the aggregate intrinsic value of options exercised was \$ 16 and the total fair value of options vested was not significant.

## 11. Segment and Geographic Information

Our chief operating decision maker is our Chief Executive Officer ("CEO"). Our CEO reviews operating segment information for the purposes of allocating resources and evaluating financial performance. We have determined that the Company operates in a two reporting segments: Phunware and Lyte.

Selected information for the Company's operating segments and a reconciliation to the condensed consolidated financial statement amounts are as follows:

	Three Months Ended June 30, 2023			Three Months Ended June 30, 2022		
	Phunware	Lyte	Consolidated	Phunware	Lyte	Consolidated
Net revenues	\$ 1,295	\$ 2,192	\$ 3,487	\$ 1,628	\$ 3,857	\$ 5,485
Loss before taxes	\$ (4,349)	\$ (2,175)	\$ (6,524)	\$ (16,708)	\$ (363)	\$ (17,071)
Six Months Ended June 30, 2023			Six Months Ended June 30, 2022			
	Phunware	Lyte	Consolidated	Phunware	Lyte	Consolidated
Net revenues	\$ 2,640	\$ 5,594	\$ 8,234	\$ 4,120	\$ 8,143	\$ 12,263
Loss before taxes	\$ (7,950)	\$ (2,843)	\$ (10,793)	\$ (31,067)	\$ (921)	\$ (31,988)
June 30, 2023			December 31, 2022			
	Phunware	Lyte	Consolidated	Phunware	Lyte	Consolidated
Goodwill	\$ 25,811	\$ 4,145	\$ 29,956	\$ 25,765	\$ 5,348	\$ 31,113
Total assets	\$ 29,633	\$ 11,157	\$ 40,790	\$ 42,349	\$ 12,486	\$ 54,835

Identifiable long-lived assets attributed to the United States and international geographies are based upon the country in which the asset is located or owned. As of June 30, 2023 and December 31, 2022, all of our identifiable long-lived assets were in the United States.

## 12. Subsequent Events

From July 1, 2023 through August 14, 2023, we sold an additional 13,086,060 shares of our common stock pursuant to the terms of our At Market Issuance Sales Agreement with Wainwright for aggregate net cash proceeds of \$5,489. Transaction costs were not significant.

From July 1, 2023 through August 14, 2023, vested restricted stock units covering 210,900 shares of our common stock were released to team members and service providers that related to grants previously awarded to those individuals.

On August 14, 2023, we entered into an amendment to the 2022 Promissory Note with the noteholder. The amendment extends the maturity date to June 1, 2024 and provides that effective August 1, 2023, we are required to make monthly amortization payments of at least \$800 commencing on August 31, 2023 until the 2022 Promissory Note is paid-in-full. Furthermore, the amendment removed the required payment of \$1,769 that was due on August 1, 2023. We also granted the holder certain limited conversion rights, subject to advance payment and volume conditions. Conversions into shares of our common stock made pursuant to the limited conversion rights will be calculated on a conversion price equal to 90% of the lower of (i) the closing trading price of our common stock on the trading day immediately preceding the date for such conversion or (ii) the average closing trading price of our common stock for the five trading days immediately preceding the date for such conversion. If the holder elects to convert pursuant to the limited conversion option, such conversions will reduce the current month's monthly amortization payment. Any conversions in any given month in excess of the \$800 monthly payment will be applied to reduce the following month's required monthly amortization payment. In connection with the amendment, we agreed to pay an extension fee equal to approximately \$708, which is 10% of the outstanding principal balance of the 2022 Promissory Note. The amendment also provides that the outstanding balance shall accrue interest at a rate of 8% beginning on August 1, 2023, and payment deferrals are no longer permitted under the 2022 Promissory Note.

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

References in this section to "we," "us," "our," or "the Company" refer to Phunware, Inc. References to "management" or "management team" refer to our officers and directors.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and the related notes thereto presented in "*Part I – Item 1. Financial Statements.*" As discussed in the section titled "*Special Note Regarding Forward-Looking Statements,*" the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of many factors, including, but not limited to, those discussed in the section titled "*Risk Factors*" and elsewhere in this Report.

Certain figures, such as interest rates and other percentages, included in this section have been rounded for ease of presentation. Percentage figures included in this section have not in all cases been calculated on the basis of such rounded figures but on the basis of such amounts prior to rounding. For this reason, percentage amounts in this section may vary slightly from those obtained by performing the same calculations using the figures in our condensed consolidated financial statements or in the associated text. Certain other amounts that appear in this section may similarly not sum due to rounding.

### **Overview**

Phunware, Inc. offers a fully integrated software platform that equips companies with the products, solutions and services necessary to engage, manage and monetize their mobile application portfolios globally at scale. Our location-based software-as-a-service platform provides the entire mobile lifecycle of applications, media and data in one login through one procurement relationship. Our offerings include:

- Enterprise mobile software development kits (SDKs) including content management, location-based services, marketing automation, business intelligence and analytics, alerts, notifications and messaging, audience engagement and audience monetization;
- Integration of our SDK licenses into existing applications maintained by our customers, as well as custom application development and support services;
- Cloud-based vertical solutions, which are off-the-shelf, iOS- and Android-based mobile application portfolios, solutions and services that address: the patient experience for healthcare, the shopper experience for retail, the fan experience for sports, the traveler experience for aviation, the luxury resident experience for real estate, the luxury guest experience for hospitality, the student experience for education and the generic user experience for all other verticals and applications; and
- Application transactions for mobile audience building, user acquisition, application discovery, audience engagement and monetization, including our engagement-driven digital asset PhunToken.

We also offer and sell pre-packaged and custom high-end personal computer systems for gaming, streaming and cryptocurrency mining enthusiasts.

We intend to continue investing for long-term growth. We have invested and expect to continue investing in the expansion of our ability to market, sell and provide our current and future products and services to customers globally. We also expect to continue investing in the development and improvement of new and existing products and services to address customers' needs. We currently do not expect to be profitable in the near future.

## Key Business Metrics

Our management regularly monitors certain financial measures to track the progress of our business against internal goals and targets. We believe that the most important of these measures include backlog and deferred revenue.

**Backlog and Deferred Revenue.** Backlog represents future amounts to be invoiced under our current agreements. At any point in the contract term, there can be amounts that we have not yet been contractually able to invoice. Until such time as these amounts are invoiced, they are not recorded in revenue, deferred revenue, accounts receivable or elsewhere in our condensed consolidated financial statements, and are considered by us to be backlog. We expect backlog to fluctuate up or down from period to period for several reasons, including the timing and duration of customer contracts, varying billing cycles and the timing and duration of customer renewals. We reasonably expect approximately 43% of our backlog as of June 30, 2023 will be invoiced during the subsequent 12-month period, primarily due to the fact that our contracts are typically one to three years in length.

In addition, our deferred revenue consists of amounts that have been invoiced but have not yet been recognized as revenues as of the end of the reporting period. Together, the sum of deferred revenue and backlog represents the total billed and unbilled contract value yet to be recognized in revenues and provides visibility into future revenue streams.

The following table sets forth our backlog and deferred revenue:

	June 30, 2023	December 31, 2022
<i>(in thousands)</i>		
Backlog	\$ 3,096	\$ 3,824
Deferred revenue	2,142	4,178
<b>Total backlog and deferred revenue</b>	<b>\$ 5,238</b>	<b>\$ 8,002</b>

## Non-GAAP Financial Measures

### **Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA**

We report our financial results in accordance with accounting principles generally accepted in the United States of America ("GAAP"). We also use certain non-GAAP financial measures that fall within the meaning of Securities and Exchange Commission Regulation G and Regulation S-K Item 10(e), which may provide users of the financial information with additional meaningful comparison to prior period results. Our non-GAAP financial measures include adjusted gross profit, adjusted gross margin and adjusted earnings before interest, taxes, depreciation and amortization ("EBITDA") (our "non-GAAP financial measures"). Management uses these measures (i) to compare operating performance on a consistent basis, (ii) to calculate incentive compensation for our employees, (iii) for planning purposes including the preparation of our internal annual operating budget and (iv) to evaluate the performance and effectiveness of operational strategies.

Our non-GAAP financial measures should be considered in addition to, not as a substitute for, or superior to, financial measures calculated in accordance with GAAP. They are not measurements of our financial performance under GAAP and should not be considered as alternatives to revenue or net loss, as applicable, or any other performance measures derived in accordance with GAAP and may not be comparable to other similarly titled measures of other businesses. Our non-GAAP financial measures have limitations as analytical tools and should not be considered in isolation or as a substitute for analysis of our operating results as reported under GAAP. Some of these limitations include:

- Non-cash compensation is and will remain a key element of our overall long-term incentive compensation package, although we exclude it as an expense when evaluating our ongoing operating performance for a particular period;
- Our non-GAAP financial measures do not reflect the impact of certain cash charges resulting from matters we consider not to be indicative of ongoing operations; and
- Other companies in our industry may calculate our non-GAAP financial measures differently than we do, limiting their usefulness as comparative measures.

We compensate for these limitations to our non-GAAP financial measures by relying primarily on our GAAP results and using our non-GAAP financial measures only for supplemental purposes. Our non-GAAP financial measures include adjustments for items that may not occur in future periods. However, we believe these adjustments are appropriate because the amounts recognized can vary significantly from period to period, do not directly relate to the ongoing operations of our business and complicate comparisons of our internal operating results and operating results of other peer companies over time. For example, it is useful to exclude non-cash, stock-based compensation expenses because the amount of such expenses in any specific period may not directly correlate to the underlying performance of our business operations and these expenses can vary significantly across periods due to timing of new stock-based awards. We may also exclude certain discrete, unusual, one-time, or non-cash costs in order to facilitate a more useful period-over-period comparison of our financial performance. Each of the normal recurring adjustments and other adjustments described in this paragraph help management with a measure of our operating performance over time by removing items that are not related to day-to-day operations or are non-cash expenses.

The following table sets forth the non-GAAP financial measures we monitor.

<i>(in thousands, except percentages)</i>	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Adjusted gross profit <sup>(1)</sup>	\$ 567	\$ 1,569	1,181	3,386
Adjusted gross margin <sup>(1)</sup>	16.3 %	28.6 %	14.3 %	27.6 %
Adjusted EBITDA <sup>(2)</sup>	\$ (5,217)	\$ (6,602)	\$ (10,816)	\$ (10,848)

(1) Adjusted gross profit and adjusted gross margin are non-GAAP financial measures. We believe that adjusted gross profit and adjusted gross margin provide supplemental information with respect to gross profit and gross margin regarding ongoing performance. We define adjusted gross profit as net revenues less cost of revenue, adjusted to exclude one-time revenue adjustments, stock-based compensation and amortization of intangible assets. We define adjusted gross margin as adjusted gross profit as a percentage of net revenues.

(2) Adjusted EBITDA is a non-GAAP financial measure. We believe adjusted EBITDA provides helpful information with respect to operating performance as viewed by management, including a view of our business that is not dependent on (i) the impact of our capitalization structure and (ii) items that are not part of day-to-day operations. We define adjusted EBITDA as net loss plus (i) interest expense, (ii) income tax expense, (iii) depreciation, (iv) amortization, and further adjusted for (v) non-cash impairment, (vi) valuation adjustments and (vii) stock-based compensation expense.

**Reconciliation of Non-GAAP Financial Measures**

The following tables set forth a reconciliation of the most directly comparable GAAP financial measure to each of the non-GAAP financial measures discussed above.

(in thousands, except percentages)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Gross profit	\$ 456	\$ 1,520	\$ 817	\$ 3,291
Add back: Stock-based compensation	111	49	364	95
Adjusted gross profit	<u><u>\$ 567</u></u>	<u><u>\$ 1,569</u></u>	<u><u>\$ 1,181</u></u>	<u><u>\$ 3,386</u></u>
Adjusted gross margin	16.3 %	28.6 %	14.3 %	27.6 %
(in thousands)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net loss	\$ (6,524)	\$ (17,071)	\$ (10,793)	\$ (31,988)
Add back: Depreciation and amortization	188	182	376	368
Add back: Interest expense	<u><u>553</u></u>	<u><u>273</u></u>	<u><u>1,090</u></u>	<u><u>654</u></u>
EBITDA	(5,783)	(16,616)	(9,327)	(30,966)
Add Back: Stock-based compensation	1,462	706	2,824	1,270
Add Back: Impairment of digital currencies	—	12,158	50	21,511
Add Back: Impairment of goodwill	1,203	—	1,203	—
Less: Fair value adjustment for warrant liabilities	(3)	(2,682)	(256)	(2,469)
Less: Gain on sale of digital assets	(2,096)	(168)	(5,310)	(194)
Adjusted EBITDA	<u><u>\$ (5,217)</u></u>	<u><u>\$ (6,602)</u></u>	<u><u>\$ (10,816)</u></u>	<u><u>\$ (10,848)</u></u>

## Components of Results of Operations

### **Revenue and Gross Profit**

There are a number of factors that impact the revenue and margin profile of the product, service and technology offerings we provide, including, but not limited to, solution and technology complexity, technical expertise requiring the combination of products and types of services provided, as well as other elements that may be specific to a particular client solution.

#### Platform Revenue and Gross Profit

Our platform revenue consists of software subscriptions, application development services and support and application transactions, which are comprised of in-app advertising and PhunToken sales.

Subscription revenue is derived from software license fees, which are comprised of subscription fees from customers licensing our Software Development Kits (SDKs), that include access to our platform. Subscription revenue from SDK licenses gives the customer the right to access our location-based software platform.

Application development revenue is derived from development services around designing and building new applications or enhancing existing applications. Support revenue is comprised of support and maintenance fees for customer applications, software updates and technical support for application development services for a support term. From time to time, we may also provide professional services by outsourcing employees' time and materials to customers.

We generate application transaction revenue by charging advertisers to deliver advertisements (ads) to users of mobile connected devices. Depending on the specific terms of each advertising contract, we generally recognize revenue based on the activity of mobile users viewing these ads. Fees from advertisers are commonly based on the number of ads delivered or views, clicks or actions by users on mobile advertisements delivered, and we recognize revenue at the time the user views, clicks or otherwise acts on the ad. We sell ads through several offerings: cost per thousand impressions and cost per click. In 2021, we commenced PhunToken sales. PhunToken is designed to reward consumers for their activity, such as watching branded videos, completing surveys and visiting points of interest. We recognize revenue related to PhunToken at time of delivery to a customer's ethereum-based wallet.

Platform gross profit is equal to subscriptions and services revenue less the cost of personnel and related costs for our support and professional services employees, external consultants, stock-based compensation and allocated overhead. Costs associated with our development and project management teams are generally recognized as incurred. Costs directly attributable to the development or support of applications relating to subscription customers are included in cost of sales, whereas costs related to the ongoing development and maintenance of our software platform are expensed in research and development. Furthermore, gross profit related to application transactions is equal to application transaction revenue less cost of revenue associated with application transactions, which is impacted by the cost of advertising traffic we pay to our suppliers, the amount of traffic which we can purchase from those suppliers and ethereum blockchain fees paid to deliver PhunToken.

As a result, platform gross profit may fluctuate from period to period.

#### Hardware Revenue and Gross Profit

We acquired Lyte in October 2021. Revenue from Lyte is primarily derived from the sale of high-performance personal computers. Lyte computers are sold with a variety of pre-packaged solutions, as well as customizable solutions selected by our customers. A majority of Lyte's customers pay us via credit card payments, which is managed through a third- party processor. We recognize revenue at the time a completed unit ships from our facility.

Hardware gross profit is equal to hardware revenue less the costs associated with the assembly of computers. Hardware gross profit is impacted by the costs that we pay for parts incorporated into a Lyte computer system, as well as labor costs of our employees directly attributable to building computer systems and shipping. Demand may exceed available supply at times, which may hamper our ability to deliver computer systems in a timely manner and may increase the costs at which we can obtain inventory needed for computer builds. Customizable solutions we offer our customers may also vary from time to time. As a result, computer hardware revenue and gross profit may fluctuate from period to period. Although we plan to invest in Lyte for future growth, we may experience revenue and gross profit fluctuations as a result of seasonality.

### **Gross Margin**

Gross margin measures gross profit as a percentage of revenue. Gross margin is generally impacted by the same factors that affect changes in the mix of platform and hardware revenue.

### **Operating Expenses**

Our operating expenses include sales and marketing expenses, general and administrative expenses, research and development expenses, depreciation and amortization of acquired intangible assets. Personnel costs are the most significant component of operating expenses and consist of salaries, benefits, bonuses, stock-based compensation and, in sales and marketing expense, commissions.

*Sales and Marketing Expense.* Sales and marketing expense is comprised of compensation, commission expense, variable incentive pay and benefits related to sales personnel, along with travel expenses, other employee related costs, including stock-based compensation and expenses related to marketing programs and promotional activities. Our sales and marketing expense may increase in absolute dollars as we increase our sales and marketing organizations as we plan to increase revenue but may fluctuate as a percentage of our total revenue from period to period.

*General and Administrative Expense.* General and administrative expense is comprised of compensation and benefits of administrative personnel, including variable incentive pay and stock-based compensation, bad debt expenses and other administrative costs such as facilities expenses, professional fees and travel expenses. We incur general and administrative expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC and listing standards of Nasdaq, additional insurance expenses, investor relations activities and other administrative and professional services, including, but not limited to legal and audit related expenses. We also expect to increase the size of our general and administrative function to support the growth of our business. As a result, our general and administrative expenses may increase in absolute dollars but may fluctuate as a percentage of our total revenue from period to period.

*Research and Development Expense.* Research and development expenses consist primarily of employee compensation costs and overhead allocation. We believe that continued investment in our platform is important for our growth. As a result, our research and development expenses may increase in absolute dollars as our business grows but may fluctuate as a percentage of revenue from period to period.

*Impairment of Goodwill.* Goodwill impairment consists of non-cash impairment charges related to goodwill. We review goodwill for impairment annually on October 1 and more frequently if events or changes in circumstances indicate an impairment may exist. If the carrying value of the reporting unit continues to exceed its fair value, the fair value of the Company's goodwill is calculated and an impairment charge equal to the excess is recorded.

### **Interest Expense**

Interest expense includes interest related to our outstanding debt, including amortization of discounts and deferred issuance costs.

Refer to Note 6 "Debt" in the notes to the condensed consolidated financial statements included Part I, Item 1 of this Quarterly Report on Form 10-Q for more information on our debt offerings.

We also may seek additional debt financing to fund the expansion of our business or to finance strategic acquisitions in the future, which may have an impact on our interest expense.

## Results of Operations

### Net Revenues

(in thousands, except percentages)	Three Months Ended June 30,		Change	
	2023	2022	Amount	%
<b>Net Revenues</b>				
Platform revenue	\$ 1,295	\$ 1,628	\$ (333)	(20.5)%
Hardware revenue	2,192	3,857	(1,665)	(43.2)%
Net revenues	\$ 3,487	\$ 5,485	\$ (1,998)	(36.4)%
Platform revenue as percentage of total revenue	37.1 %	29.7 %		
Hardware revenue as percentage of total revenue	62.9 %	70.3 %		
 <b>Six Months Ended June 30,</b>				
(in thousands, except percentages)	2023		Change	
	2022		Amount	%
<b>Net Revenues</b>				
Platform revenue	\$ 2,640	\$ 4,120	\$ (1,480)	(35.9)%
Hardware revenue	5,594	8,143	(2,549)	(31.3)%
Net revenues	\$ 8,234	\$ 12,263	\$ (4,029)	(32.9)%
Platform revenue as percentage of total revenue	32.1 %	33.6 %		
Hardware revenue as percentage of total revenue	67.9 %	66.4 %		

Net revenues decreased \$2.0 million, or 36.4%, for the three months ended June 30, 2023 compared to the corresponding period in 2022.

Platform revenue decreased \$0.3 million, or (20.5)%, for the three months ended June 30, 2023 compared to the corresponding period in 2022, primarily due to PhunToken sales in 2022. We did not sell any PhunToken during the three months ended June 30, 2023.

Hardware revenue decreased by \$1.7 million, or (43.2)%, for the three months ended June 30, 2023 compared to the corresponding period in 2022, as a result of lower orders and resulting shipments for Lyte computers.

Net revenues decreased \$4.0 million, or (32.9)%, for the six months ended June 30, 2023 compared to the corresponding period in 2022.

Platform revenue decreased \$1.5 million, or (35.9)%, for the six months ended June 30, 2023 compared to the corresponding period in 2022, primarily due to PhunToken sales of \$1.5 million in 2022. We did not sell any PhunToken during the six months ended June 30, 2023.

Hardware revenue decreased by \$2.5 million, or (31.3)%, for the six months ended June 30, 2023 compared to the corresponding period in 2022, as a result of lower order backlog as of December 31, 2022, as compared to December 31, 2021 and lower sales of Lyte computers in 2023, as compared to the prior year.

**Cost of Revenues, Gross Profit and Gross Margin**

<i>(in thousands, except percentages)</i>	Three Months Ended June 30,		Change	
	2023	2022	Amount	%
<b>Cost of Revenues</b>				
Platform revenue	\$ 759	\$ 572	\$ 187	32.7 %
Hardware revenue	2,272	3,393	(1,121)	(33.0)%
Total cost of revenues	\$ 3,031	\$ 3,965	\$ (934)	(23.6)%
<b>Gross Profit</b>				
Platform revenue	\$ 536	\$ 1,056	\$ (520)	(49.2)%
Hardware revenue	(80)	464	(544)	(117.2)%
Total gross profit	\$ 456	\$ 1,520	\$ (1,064)	(70.0)%
<b>Gross Margin</b>				
Platform revenue	41.4 %	64.9 %		
Hardware revenue	(3.6)%	12.0 %		
Total gross margin	13.1 %	27.7 %		
<b>Cost of Revenues</b>				
Platform revenue	\$ 2,030	\$ 1,639	\$ 391	23.9 %
Hardware revenue	5,387	7,333	(1,946)	(26.5)%
Total cost of revenues	\$ 7,417	\$ 8,972	\$ (1,555)	(17.3)%
<b>Gross Profit</b>				
Platform revenue	610	\$ 2,481	\$ (1,871)	(75.4)%
Hardware revenue	207	810	(603)	(74.4)%
Total gross profit	\$ 817	\$ 3,291	\$ (2,474)	(75.2)%
<b>Gross Margin</b>				
Platform revenue	23.1 %	60.2 %		
Hardware revenue	3.7 %	9.9 %		
Total gross margin	9.9 %	26.8 %		

Total gross profit decreased \$1.1 million, or 70.0%, three months ended June 30, 2023 compared to the corresponding period in 2022, as a result of the revenue items described above, as well as a \$0.3 million charge recorded for obsolete Lyte inventory components.

Total gross profit decreased \$2.5 million, or 75.2%, for the six months ended June 30, 2023 compared to the corresponding period of 2022, as a result of the revenue items and Lyte inventory charge described above. Further decreases in gross profit are attributable to a \$0.2 million increase in stock-based compensation expense and \$0.2 million in less gross margin as a result of a lower transactional revenue.

**Operating Expenses**

(in thousands, except percentages)	Three Months Ended June 30,		Change	
	2023	2022	Amount	%
<b>Operating expenses</b>				
Sales and marketing	\$ 1,472	\$ 1,928	\$ (456)	(23.7)%
General and administrative	4,766	5,251	(485)	(9.2)%
Research and development	1,212	1,876	(664)	(35.4)%
Impairment of goodwill	1,203	—	1,203	100.0 %
Total operating expenses	\$ 8,653	\$ 9,055	\$ (402)	(4.4)%

(in thousands, except percentages)	Six Months Ended June 30,		Change	
	2023	2022	Amount	%
<b>Operating expenses</b>				
Sales and marketing	\$ 2,600	\$ 3,413	\$ (813)	(23.8)%
General and administrative	9,478	9,556	(78)	(0.8)%
Research and development	2,984	2,879	105	3.6 %
Impairment of goodwill	1,203	—	1,203	100.0 %
Total operating expenses	\$ 16,265	\$ 15,848	\$ 417	2.6 %

*Sales and Marketing*

Sales and marketing expense decreased \$0.5 million, or (23.7)%, for the three months ended June 30, 2023 compared to the corresponding period of 2022, primarily due to a decrease in marketing related expenditures for Lyte.

Sales and marketing expense decreased \$0.8 million, or (23.8)%, for the six months ended June 30, 2023 compared to the corresponding period of 2022, primarily due to a decrease in marketing related expenditures for Lyte.

*General and Administrative*

General and administrative expense decreased \$0.5 million, or 9.2%, for the three months ended June 30, 2023 compared to the corresponding period of 2022, due to a \$0.8 decrease in compensation related expenses, mainly related to a decrease in bonus accrual and \$0.4 million decrease in legal fees. These decreases were partially offset by a \$0.7 million increase in stock-based compensation expense.

General and administrative expense decreased \$0.1 million, or (0.8)%, for the six months ended June 30, 2023 compared to the corresponding period of 2022, due to a \$0.7 million decrease in compensation related expenses, as described above and \$0.7 million decrease in professional fees for legal expenses and consultants. These decreases were mostly offset by a \$1.0 million increase in stock-based compensation expense and \$0.3 million in facility related expenses.

*Research and Development*

Research and development expense decreased \$0.7 million, or (35.4)%, for the three months ended June 30, 2023 compared to the corresponding period of 2022, as a result of a \$0.4 million decrease in compensation expenses, mainly related to an adjustment to the Company's bonus accrual and \$0.3 million for recruiting related expenses and contract labor.

Research and development expense increased \$0.1 million, or 3.6%, for the six months ended June 30, 2023 compared to the corresponding period of 2022. There was no individual expense category experienced a significant change.

*Impairment of Goodwill*

We recorded an impairment of goodwill of \$1.2 million related to the Lyte operating segment of our business for the three months ended June 30, 2023. Refer to Note 3 "Supplemental Information" of the notes to the condensed consolidated

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financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for further discussion on our goodwill impairment.

**Other expense**

(in thousands, except percentages)	Three Months Ended June 30,	
	2023	2022
<b>Other income (expense)</b>		
Interest expense	\$ (553)	\$ (273)
Impairment of digital assets	—	(12,158)
Gain on sale of digital assets	2,096	168
Fair value adjustment of warrant liability	3	2,682
Other income	127	45
<b>Total other income (expense)</b>	\$ 1,673	\$ (9,536)

(in thousands, except percentages)	Six Months Ended June 30,	
	2023	2022
<b>Other income (expense)</b>		
Interest expense	\$ (1,090)	\$ (654)
Impairment of digital assets	(50)	(21,511)
Gain on sale of digital assets	5,310	194
Fair value adjustment of warrant liability	256	2,469
Other income	229	71
<b>Total other income (expense)</b>	\$ 4,655	\$ (19,431)

During the three and six months ended June 30, 2023, we recorded other income of \$1.7 million and \$4.7 million, respectfully, primarily as a result of realized gains on the sales of our bitcoin holdings.

During the three and six months ended June 30, 2022, we recorded other expenses of \$9.5 million and \$19.4 million, respectively, primarily as a result of impairment charges related to our digital asset holding and warrant fair value adjustments.

Refer to Note 5, "Digital Assets," of the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for further discussion regarding our digital asset holdings.

## Liquidity and Capital Resources

As of June 30, 2023, we held total cash of \$1.1 million, all of which was held in the United States. We have a history of operating losses and negative operating cash flows. As we continue to focus on growing our revenues, we expect these trends to continue into the foreseeable future.

On February 1, 2022, we filed a Form S-3, which was subsequently declared effective by the SEC on February 9, 2022, pursuant to which we may issue up to \$200 million in common stock, preferred stock, warrants and units. Contained therein, was a prospectus supplement pursuant to which we may sell up to \$100 million of our common stock in an "at the market offering" pursuant to an At Market Issuance Sales Agreement we entered into with H.C. Wainwright & Co., LLC on January 31, 2022. As of June 30, 2023, 4,338,596 shares of our common stock have been sold for aggregate gross cash proceeds of \$5.6 million.

On July 6, 2022, we entered into a note purchase agreement and completed the sale of an unsecured promissory note with an original principal amount of \$12.8 million in a private placement (the "2022 Promissory Note"). After deducting all transaction fees paid by us at closing, net cash proceeds to us at closing were \$11.8 million. No interest was to accrue on the 2022 Promissory Note. Beginning on November 1, 2022 and on the same day of each month thereafter until the 2022 Promissory Note is paid in full, we were required to make monthly amortization payments of approximately \$1.6 million until the original maturity date of July 1, 2023, which was subject to adjustment for any payment deferrals we elected. On March 15, 2023, we entered into a waiver agreement with the holder of our 2022 Promissory Note, waiving the Payment Deferral Conditions, as defined, at that time, in the 2022 Promissory Note. For agreeing to waive the Payment Deferral Conditions, we agreed to compensate the noteholder an amount equal to 5% of the outstanding balance immediately before entering into the waiver agreement. In connection therewith, we elected to defer the monthly payments under the 2022 Promissory Note for the months of April, May, June and July 2023. As a result of our election to defer the monthly payments, the outstanding balance of the 2022 Promissory Note was increased by 1.85% on the first day of each month beginning on April 1, 2023 and concluding on July 1, 2023. The waiver fee and the additional principal was to be paid in connection with our monthly installment payments once the deferral period concluded. Beginning on August 1, 2023 and on the same day of each month thereafter, we were required to pay to the noteholder the new monthly amortization payment in the amount of approximately \$1.8 million. On August 14, 2023, we entered into an amendment to the 2022 Promissory Note with the noteholder. The amendment extends the maturity date to June 1, 2024 and provides that effective August 1, 2023, we are required to make monthly amortization payments of at least \$800 thousand commencing on August 31, 2023 until the 2022 Promissory Note is paid-in-full. We also granted the noteholder certain limited conversion rights, which if elected by the noteholder, would reduce the required monthly payment. The limited conversion rights are subject to advance payment and volume conditions. The amendment also provides that the outstanding balance shall accrue interest at a rate of 8% and payment deferrals are no longer permitted under the 2022 Promissory Note. Furthermore, the amendment removed the required payment of approximately \$1.8 million that was due on August 1, 2023.

In July 2023, we implemented a plan to decrease our cash burn by reducing headcount and other operating expenditures. Subsequent to June 30, 2023, we also raised approximately \$5.5 million in our at-the-market equity offering. Our future plans may include additional reductions to operating expenses, additional sales of our common stock in our at-the-market offering, and issuing additional shares of common stock, preferred stock, warrants or units pursuant to an effective shelf registration statement. Plans to generate cash sufficient to meet our capital requirements may include selling shares of our common stock in our "at the market" offering, and as of the date of this Report, shares of our common stock with a maximum aggregate offering price of up to \$88.9 million may be sold pursuant to the sales agreement. We may also issue shares of our common stock, preferred stock, warrants and units in other offerings pursuant to our effective registration statement.

Our expectation that we will generate operating losses and negative operating cash flows in the future and the need for additional funding to support our planned operations raise substantial doubt regarding our ability to continue as a going concern. Management believes that our existing cash would not be sufficient to satisfy our operating cash needs for the year after the filing of this Quarterly Report on Form 10-Q, and substantial doubt exists about our ability to continue as a going concern for one year following the filing date of this Quarterly Report on Form 10-Q.

Our future capital requirements will depend on many factors, including our pace of growth, subscription renewal activity, the timing and extent of spend to support development efforts, the pace at which we can scale Lyte, the expansion of sales and marketing activities and the market acceptance of our products and services. We believe that it is likely we will in the future enter into arrangements to acquire or invest in complementary businesses, technologies and intellectual property rights. We may be required to seek additional equity or debt financing, or issue securities under our effective registration statement described above.

In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us, or at all. Furthermore, we are currently not in compliance with the Bid Price Requirement of the Nasdaq.

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Although the Company is attempting to regain compliance, there can be no assurance that we will regain compliance with the Bid Price Requirement or maintain compliance with other Nasdaq continued listing requirements. This may also affect our ability to raise additional funds and the liquidity of our common stock. If we are unable to raise additional capital when desired and/or on acceptable terms, our business, operating results and financial condition could be adversely affected.

The accompanying consolidated financial statements have been prepared assuming we will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the ordinary course of business.

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

<i>(in thousands, except percentages)</i>	<b>Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>
<b>Consolidated cash flows</b>		
Net cash used in operating activities	\$ (12,560)	\$ (14,989)
Net cash provided by (used in) investing activities	\$ 15,381	\$ (2,206)
Net cash used in financing activities	\$ (3,719)	\$ (3,116)

### ***Operating Activities***

The primary source of cash from operating activities is receipts from sales of our various product and service offerings to customers. The primary uses of cash from operating activities are payments to employees for compensation and related expenses, publishers and other vendors for the purchase of digital media inventory and related costs, payments to vendors for the costs of inventory related to the assembly and shipping of Lyte computers, sales and marketing expenses and general operating expenses.

We utilized \$12.6 million of cash from operating activities during the six months ended June 30, 2023, resulting in a net loss of \$10.8 million. The net loss included a gain on the sale of digital assets of \$5.3 million and non-cash charges of \$5.7 million, primarily consisting of stock-based compensation and impairment of goodwill. In addition, certain changes in our operating assets and liabilities resulted in a cash decrease of \$2.2 million, primarily relating to a decrease in deferred revenue.

We utilized \$15.0 million of cash from operating activities during the six months ended June 30, 2022, primarily resulting from a net loss of \$32.0 million. The net loss included non-cash charges of \$20.9 million, primarily consisting of impairment of digital assets, fair value adjustment of our outstanding warrant and stock-based compensation. In addition, certain changes in our operating assets and liabilities resulted in significant cash (decreases) as follows: \$0.5 million from an increase in accounts payable and accrued expenses, as well as \$(4.4) million from other working capital changes, primarily an increase in inventory purchases and decrease in deferred revenue.

### ***Investing Activities***

Investing activities for the six months ended June 30, 2023 and 2022 primarily consisted of the purchases and sales of digital assets and payments relating to the acquisition of Lyte Technology, Inc.

### ***Financing Activities***

Our financing activities during the six months ended June 30, 2023 consisted of payments on our 2022 Promissory Note of \$4.3 million and \$0.5 million for repurchases of shares of our common stock. We received \$1.0 million in proceeds from the sale of our common stock. Refer to the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on the Company's financing activities.

Our financing activities during the six months ended June 30, 2022 primarily consisted of payments on debt. We had payments on debt of \$3.1 million, of which all were payments on the 2021 Promissory Note.

### ***Contractual Obligations***

Information set forth in Note 7, "Leases," in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q is incorporated herein by reference.

## **Off-Balance Sheet Arrangements**

Through June 30, 2023, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

## **Indemnification Agreements**

In the ordinary course of business, we provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, solutions to be provided by the Company or from intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with directors and certain current and former officers and employees that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of, or are related to, their status or service as directors, officers or employees.

## **Recent Accounting Pronouncements**

Refer to Note 2, "*Summary of Significant Accounting Policies*," in the notes to the condensed consolidated financial statements included in Item I, Part I of this Quarterly Report on Form 10-Q for analysis of recent accounting pronouncements applicable to our business.

## **Summary of Significant Accounting Policies**

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Except for the changes described in Note 2, "*Summary of Significant Accounting Policies*," in the notes to the condensed consolidated financial statements included in Item I, Part I of this Quarterly Report on Form 10-Q, there have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 31, 2023.

## **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Not applicable.

#### **Item 4. Controls and Procedures**

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

Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted 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 in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers (as defined below), or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer (together, the "Certifying Officers"), we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on the foregoing, our Certifying Officers concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Report.

##### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting identified in conjunction with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended June 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

##### **Limitations on Effectiveness of Controls**

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

## PART II - OTHER INFORMATION

### Item 1. Legal Proceedings

The information set forth under the "Litigation" subheading in Note 8, "Commitments and Contingencies," in the notes to the condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q is incorporated herein by reference.

### Item 1A. Risk Factors

Important risk factors that could affect our operations and financial performance, or that could cause results or events to differ from current expectations, are described in Part I, Item 1A, "Risk Factors" of our Annual Report on Form 10-K filed with the SEC on March 31, 2023 for the year ended December 31, 2022 and the information set forth below or contained elsewhere in this Report. The risks and uncertainties described within our Form 10-K for the year ended December 31, 2022 and as set forth below are not the only risks we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business or results of operations.

***If we cannot meet the continued listing requirements of Nasdaq, the Nasdaq may delist our common stock, which would have an adverse impact on the trading volume, liquidity and market price of our common stock and would trigger a default under our 2022 Promissory Note.***

Our common stock is currently listed on the Nasdaq Capital Market. On April 13, 2023, we were notified by the Nasdaq Stock Market LLC (the "Nasdaq") that the closing bid price for our common stock had been below \$1.00 for the last 30 consecutive business days and that the Company therefore is not in compliance with the minimum bid price requirement for continued inclusion on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Requirement"). Under the Nasdaq Listing Rules, the Company has a period of 180 calendar days from the date of the notice, or October 10, 2023 (the "Compliance Date"), to regain compliance with the Bid Price Requirement. To regain compliance, the closing bid price of the Company's common stock must be at least \$1.00 for a minimum of ten consecutive business days prior to the Compliance Date.

We intend to monitor the closing bid price of our common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Requirement. To regain compliance with Nasdaq listing standards we may have to implement a reverse stock split, subject to approval of our board of directors and stockholders. However, there can be no assurance that we will be able to regain compliance with the Bid Price Requirement or will otherwise be in compliance with other Nasdaq Listing Rules.

If our common stock ultimately were to be delisted for any reason, it could negatively impact us as it would likely reduce the liquidity and market price of our common stock; reduce the number of investors willing to hold or acquire our common stock; and negatively impact our ability to access equity markets and obtain financing. If our common stock were to be removed from listing on the Nasdaq (and our common stock were not to become listed on other specified stock exchanges), it would trigger a default under our 2022 Promissory Note, and the outstanding balance would be immediately due and payable in cash at the Mandatory Default Amount (as defined in the 2022 Promissory Note).

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

The following table summarizes the Company's stock repurchase activity for the three months ended June 30, 2023:

<b>Issuer Purchases of Common Stock</b>						<b>Maximum Dollar Value of Shares That May Yet Be Purchased Under the Programs (in thousands) <sup>(1)</sup></b>
	<b>Total Number of Shares Purchased</b>	<b>Average Price Paid per Common Share</b>	<b>Total Number of Shares Purchased as Part of Publicly Announced Programs <sup>(1)</sup></b>			
April 2023	45,000	\$ 0.60	45,000			\$ 4,498
May 2023	—	—	—			\$ 4,498
June 2023	—	—	—			\$ 4,498
<b>Total quarter ended June 30, 2023</b>	<b>45,000</b>	<b>\$ 0.60</b>	<b>45,000</b>			<b>\$ 4,498</b>

<sup>(1)</sup>

On January 5, 2023, our board of directors authorized and approved a stock repurchase program for the repurchase of outstanding shares of our common stock with an aggregate value of up to \$5 million. The authorization permits us to repurchase shares of our common stock from time-to-time through open market repurchases at prevailing market prices, in accordance with federal securities laws. The stock repurchase plan is expected to be completed over the next twelve (12) months and may be amended or terminated at any time, in the sole discretion of our board of directors. The exact means, number and timing of stock repurchases will depend on market conditions, applicable legal requirements and other factors.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

Unless otherwise noted, the exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference (as stated therein) as part of this Quarterly Report on Form 10-Q.

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#">Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
3.2	<a href="#">Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).</a>
10.1+	<a href="#">Phunware, Inc. 2022 Inducement Plan (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 6, 2023).</a>
10.2+	<a href="#">Amended and Restated Employment Agreement by and between Phunware, Inc. and Matt Lull (Incorporated by reference to Exhibit 10.44 of the Registrant's Form 10-K (File No. 001-37862), filed with the SEC on March 31, 2023).</a>
10.3+	<a href="#">Amended and Restated Employment Agreement by and between Phunware, Inc. and Chris Olive (Incorporated by reference to Exhibit 10.43 of the Registrant's Form 10-K (File No. 001-37862), filed with the SEC on March 31, 2023).</a>
10.4+	<a href="#">Confidential Executive Employment Agreement by and between Phunware, Inc. and Troy Reisner (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on June 2, 2023).</a>
10.5+	<a href="#">Confidential Separation, Transition and General Release Agreement by and between Phunware, Inc. and Matt Aune (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on June 8, 2023).</a>
10.6*+	<a href="#">Phunware, Inc. 2023 Inducement Plan.</a>
10.7*	<a href="#">Amendment to Promissory Note by and between Phunware, Inc. and Streeterville Capital, LLC.</a>
31.1*	<a href="#">Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a)*</a>
31.2*	<a href="#">Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a)*</a>
32.1**	<a href="#">Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350*</a>
101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema*
101.CAL	XBRL Taxonomy Calculation Linkbase*
101.LAB	XBRL Taxonomy Label Linkbase*
101.PRE	XBRL Definition Linkbase Document*
101.DEF	XBRL Definition Linkbase Document*
104	Cover Page Interactive Data File*

\* Filed herewith

\*\* Furnished herewith

+ Indicates a management contract 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.

August 14, 2023

**Phunware, Inc.**

By: /s/ Russell Buyse

Name: Russell Buyse  
Title: Chief Executive Officer  
(Principal Executive Officer)

August 14, 2023

By: /s/ Troy Reisner

Name: Troy Reisner  
Title: Chief Financial Officer  
(Principal Accounting and Financial Officer)

**PHUNWARE, INC.  
2023 INDUCEMENT PLAN**

**1. Purpose**

The purpose of this Phunware, Inc. 2023 Inducement Plan (the "Plan") is to advance the interests of Phunware, Inc., a Delaware corporation, and its Subsidiaries (hereinafter collectively "Phunware" or the "Corporation"), by allowing the Corporation to secure and retain the services of eligible award recipients, provide a material inducement for such individuals to enter into employment with the Corporation within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules, align the long-term interests of such individuals with those of stockholders, heighten the desire of participants to continue in working toward and contributing to the success of Phunware, assist Phunware in competing effectively with other enterprises for the services of new employees necessary for the continued improvement of operations, and to attract, motivate and retain the best available individuals for service to the Corporation. This Plan permits the grant of stock options, stock appreciation rights, restricted stock and restricted stock units, each of which shall be subject to such conditions based upon continued employment, passage of time or satisfaction of performance criteria as shall be specified pursuant to the Plan.

**2. Definitions**

- (a) "Award" means a stock option, stock appreciation right, restricted stock or restricted stock unit granted to a Participant pursuant to the Plan.
- (b) "Award Agreement" means either: (i) a written agreement entered into by the Corporation and a Participant setting forth the terms and provisions applicable to an Award, or (ii) a written or electronic statement issued by the Corporation to a Participant describing the terms and provisions of such Award, including any amendment or modification thereof. The Committee may provide for the use of electronic, internet or other non-paper Award Agreements, and the use of electronic, internet, or other non-paper means for the acceptance thereof and actions thereunder by a Participant.
- (c) "Board of Directors" means the Board of Directors of the Corporation.
- (d) "Code" shall mean the Internal Revenue Code of 1986, as such is amended from time to time, and any reference to a section of the Code shall include any successor provision of the Code.
- (e) "Committee" shall mean the committee appointed by the Board of Directors from among its members to administer the Plan pursuant to Section 3, which Committee may be the Compensation Committee.
- (f) "Compensation Committee" shall mean the compensation committee of the Board of Directors.
- (g) "Effective Date" means June 30, 2023.
- (h) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time, and any reference to a section of the Exchange Act shall include any successor provision of the Exchange Act.
- (i) "Outside Director" shall mean a member of the Board of Directors who is not otherwise an employee of the Corporation.
- (j) "Participants" shall mean those employees to whom Awards have been granted from time to time and any authorized transferee of such employees.
- (k) "Performance Award" means an Award the grant, issuance, retention, vesting and/or settlement of which is subject to satisfaction of one or more of the Qualifying Performance Criteria specified in Section 9(b).

(l) "Plan" means this Phunware, Inc. 2023 Inducement Plan.

(m) "Share" shall mean a share of common stock, \$.0001 par value, of the Corporation or the number and kind of shares of stock or other securities which shall be substituted or adjusted for such shares as provided in Section 10.

(n) "Subsidiary" means any corporation or entity in which Phunware owns or controls, directly or indirectly, fifty percent (50%) or more of the voting power or economic interests of such corporation or entity.

### **3. Administration**

(a) *Composition of Committee.* This Plan shall be administered by the Committee. The Committee shall consist of two or more Outside Directors who shall be appointed by the Board of Directors. The Board of Directors shall fill vacancies on the Committee and may from time to time remove or add members of the Committee. The Board of Directors, in its sole discretion, may exercise any authority of the Committee under this Plan in lieu of the Committee's exercise thereof, and in such instances references herein to the Committee shall refer to the Board of Directors. Notwithstanding the foregoing or anything in the Plan to the contrary, the grant of Awards shall be approved by the Corporation's independent Compensation Committee or a majority of the Corporation's independent directors (as defined in Rule 5605(a)(2) of the Nasdaq Listing Rules) in order to comply with the exemption from the stockholder approval requirement for "inducement grants" provided under Rule 5635(c)(4) of the Nasdaq Listing Rules.

(b) *Delegation and Administration.* The Committee may delegate the day to day administration of the Plan to an officer or officers of the Corporation or one or more agents, and such administrator(s) may have the authority to execute and distribute agreements or other documents evidencing or relating to Awards granted by the Committee under this Plan, to maintain records relating to the grant, vesting, exercise, forfeiture or expiration of Awards, to process or oversee the issuance of Shares upon the exercise, vesting and/or settlement of an Award, to interpret the terms of Awards and to take such other actions as the Committee may specify. Any action by any such administrator within the scope of its delegation shall be deemed for all purposes to have been taken by the Committee and references in this Plan to the Committee shall include any such administrator, provided that the actions and interpretations of any such administrator shall be subject to review and approval, disapproval or modification by the Committee.

(c) *Powers of the Committee.* Subject to the express provisions and limitations set forth in this Plan, the Committee shall be authorized and empowered to do all things necessary or desirable, in its sole discretion, in connection with the administration of this Plan, including, without limitation, the following:

(i) to prescribe, amend, and rescind rules and regulations relating to the Plan, including the forms of Award Agreement and manner of acceptance of an Award, and to take or approve such further actions as it determines necessary or appropriate to the administration of the Plan and Awards, such as correcting a defect or supplying any omission, or reconciling any inconsistency so that the Plan or any Award Agreement complies with applicable law, regulations and listing requirements and so as to avoid unanticipated consequences or address unanticipated events (including any temporary closure of Nasdaq, disruption of communications or natural catastrophe) deemed by the Committee to be inconsistent with the purposes of the Plan or any Award Agreement, provided that no such action shall be taken absent stockholder approval to the extent required under Section 12;

(ii) to determine which persons are eligible to be Participants, to which of such persons, if any, Awards shall be granted hereunder and the timing of any such Awards, and to grant Awards;

(iii) subject to the last sentence of Section 3(a), to grant Awards to Participants and determine the terms and conditions thereof, including the number of Shares subject to Awards and the exercise or purchase price of such Shares and the circumstances under which Awards

become exercisable or vested or are forfeited or expire, which terms may but need not be conditioned upon the passage of time, continued employment, the satisfaction of performance criteria, the occurrence of certain events, or other factors;

(iv) to establish or verify the extent of satisfaction of any performance goals or other conditions applicable to the grant, issuance, exercisability, vesting and/or ability to retain any Award (provided that all such actions shall be made in a good faith and reasonable manner);

(v) to prescribe and amend the terms of the agreements or other documents evidencing Awards made under this Plan (which need not be identical);

(vi) to determine whether, and the extent to which, adjustments are required pursuant to Section 10 (provided that all such determinations and adjustments shall be made in a good faith and reasonable manner);

(vii) to interpret and construe this Plan, any rules and regulations under this Plan and the terms and conditions of any Award granted hereunder; and

(viii) to make all other determinations deemed necessary or advisable for the administration of this Plan.

(d) *Effect of Change in Status.* The Committee shall have the discretion to determine the effect upon an Award and upon an individual's status as an employee under the Plan (including whether a Participant shall be deemed to have experienced a termination of employment or other change in status) and upon the vesting, expiration or forfeiture of an Award in the case of (i) any individual who is employed by an entity that ceases to be a Subsidiary of the Corporation, (ii) any leave of absence approved by the Corporation or a Subsidiary, (iii) any transfer between locations of employment with the Corporation or a Subsidiary or between the Corporation and any Subsidiary or between any Subsidiaries, (iv) any change in the Participant's status from an employee to a consultant or member of the Board of Directors and (v) at the request of the Corporation or a Subsidiary, any employee who becomes employed by any partnership, joint venture, corporation or other entity not meeting the requirements of a Subsidiary.

(e) *Determinations of the Committee.* All decisions, determinations and interpretations by the Committee regarding this Plan shall be final and binding on all persons. The Committee may consider such factors as it deems relevant to making such decisions, determinations and interpretations including, without limitation, the recommendations or advice of any director, officer or employee of the Corporation and such attorneys, consultants and accountants as it may select.

#### **4. Participants**

Awards under the Plan may be granted only to employees who satisfy the standards for inducement grants under Rule 5635(c)(4) of the Nasdaq Listing Rules, and only when the Award is an inducement material to the individual's entering into employment with the Corporation within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules. A person who previously served as an employee or Outside Director shall not be eligible to receive Awards under the Plan, other than following a bona fide period of non-employment with the Corporation. All Awards must be granted either by a majority of the Corporation's independent directors or by the Compensation Committee comprised of independent directors within the meaning of Rule 5605(a)(2) of the Nasdaq Listing Rules.

#### **5. Effective Date and Expiration of Plan**

(a) *Effective Date.* This Plan was approved by the Board of Directors on June 30, 2023 and became effective on such date.

(b) *Expiration Date.* The Plan shall expire on December 29, 2033 or such earlier date as the Board of Directors may determine. The expiration of the Plan will not affect the operation of the terms of the Plan or the Corporation's and Participants' rights and obligations with respect to Awards granted on or prior to the expiration date of the Plan.

## 6. Shares Subject to the Plan

(a) *Aggregate Limits.* Subject to adjustment as provided in Section 10, the aggregate number of Shares authorized for issuance pursuant to Awards under the Plan from and after the Effective Date is 600,000. The Shares subject to the Plan may be either Shares reacquired by the Corporation, including Shares purchased in the open market, or authorized but unissued Shares. Any Shares subject to an Award which for any reason expires or terminates unexercised or is not earned in full will be returned to the Plan but will not again be made subject to an Award under the Plan, including that the following Shares may not again be made available for issuance as Awards under the Plan: (i) Shares not issued or delivered as a result of the net settlement of an outstanding Stock Appreciation Right, (ii) Shares used to pay the exercise price or withholding taxes related to an outstanding Award, or (iii) Shares repurchased on the open market with the proceeds of the option exercise price.

## 7. Plan Awards

(a) *Award Types.* The Committee, on behalf of the Corporation, is authorized under this Plan to grant, award and enter into the following arrangements or benefits under the Plan provided that their terms and conditions are not inconsistent with the provisions of the Plan: stock options, stock appreciation rights, restricted stock and restricted stock units. Such arrangements and benefits are sometimes referred to herein as "Awards." The Committee, in its discretion, may determine that any Award granted hereunder shall be a Performance Award. For purposes of the Plan, "market value" shall mean the average of the high and low sales prices of the Corporation's common stock.

(i) *Stock Options.* A "Stock Option" is a right to purchase a number of Shares at such exercise price, at such times, and on such other terms and conditions as are specified in or determined pursuant to the document(s) evidencing the Award (the "Option Agreement"). The Committee may grant Stock Options that are not intended to qualify as incentive stock options pursuant to Section 422 of the Code ("Non-qualified Stock Options").

(ii) *Stock Appreciation Rights.* A "Stock Appreciation Right" or "SAR" is a right to receive, in cash or stock (as determined by the Committee), value with respect to a specific number of Shares equal to or otherwise based on the excess of (i) the market value of a Share at the time of exercise over (ii) the exercise price of the right, subject to such terms and conditions as are expressed in the document(s) evidencing the Award (the "SAR Agreement").

(iii) *Restricted Stock.* A "Restricted Stock" Award is an award of Shares, the grant, issuance, retention and/or vesting of which is subject to such conditions as are expressed in the document(s) evidencing the Award (the "Restricted Stock Agreement").

(iv) *Restricted Stock Unit.* A "Restricted Stock Unit" Award is an award of a right to receive, in cash or stock (as determined by the Committee) the market value of one Share, the grant, issuance, retention and/or vesting of which is subject to such conditions as are expressed in the document(s) evidencing the Award (the "Restricted Stock Unit Agreement").

(b) *Grants of Awards.* An Award may consist of one of the foregoing arrangements or benefits or two or more of them in tandem or in the alternative.

## 8. Employee Participant Awards

(a) *Grant, Terms and Conditions of Stock Options and SARs.* The Committee may grant Stock Options or SARs at any time and from time to time prior to the expiration of the Plan to eligible employee Participants selected by the Committee. No Participant shall have any rights as a stockholder with respect to any Shares subject to Stock Options or SARs hereunder until said Shares have been issued. Each Stock Option or SAR shall be evidenced only by such agreements, notices and/or terms or conditions documented in such form (including by electronic communications) as may be approved by the Committee. Stock Options or SARs granted pursuant to the Plan need not be identical but each must contain or be subject to the following terms and conditions:

(i) *Price.* The purchase price (also referred to as the exercise price) under each Stock Option or SAR granted hereunder shall be established by the Committee. The purchase price per Share shall not be less than 100% of the closing sale price of the Corporation's common stock on the date of grant. The exercise price of a Stock Option shall be paid in cash or in such other form if and to the extent permitted by the Committee, including without limitation by delivery of already owned Shares, withholding (either actually or by attestation) of Shares otherwise issuable under such Stock Option and/or by payment under a broker-assisted sale and remittance program acceptable to the Committee.

(ii) *No Repricing.* Other than in connection with a change in the Corporation's capitalization or other transaction as described in Section 10(a) through (d) of the Plan, the Corporation shall not, without stockholder approval, reduce the purchase price of a Stock Option or SAR and, at any time when the purchase price of a Stock Option or SAR is above the market value of a Share, the Corporation shall not, without stockholder approval (except in the case of a transaction described in Section 10(a) through (d) of the Plan), cancel and re-grant or exchange such Stock Option or SAR for a new Award with a lower (or no) purchase price or for cash.

(iii) *No Reload Grants.* Stock Options shall not be granted under the Plan in consideration for and shall not be conditioned upon the delivery of Shares to the Corporation in payment of the exercise price and/or tax withholding obligation under any other employee stock option.

(iv) *Duration, Exercise and Termination of Stock Options and SARs.* Each Stock Option or SAR shall be exercisable at such time and in such installments during the period prior to the expiration of the Stock Option or SAR as determined by the Committee. The Committee shall have the right to make the timing of the ability to exercise any Stock Option or SAR subject to continued employment, the passage of time and/or such performance requirements as deemed appropriate by the Committee. At any time after the grant of a Stock Option, the Committee may reduce or eliminate any restrictions on the Participant's right to exercise all or part of the Stock Option, except that no Stock Option shall first become exercisable within one (1) year from its date of grant, other than upon the death, disability or retirement of the person to whom the Stock Option was granted, in each case as specified in the Option Agreement. Each Stock Option or SAR that vests in full in less than five (5) years (standard grants) must expire within a period of not more than seven (7) years from the grant date and each Stock Option or SAR that vests in full in five (5) or more years (long-term retention grants) must expire within a period of not more than ten (10) years from the grant date. In each case, the Option Agreement or SAR Agreement may provide for expiration prior to the end of the stated term of the Award in the event of the termination of employment or service of the Participant to whom it was granted.

(v) *Suspension or Termination of Stock Options and SARs.* If at any time (including after a notice of exercise has been delivered) the Committee, including any administrator authorized pursuant to Section 3(b) (any such person, an "Authorized Officer"), reasonably and in good faith believes that a Participant has committed an act constituting "Cause" (as such term may be defined in such Participant's employment agreement with the Corporation), or (B) a Participant committed an act of misconduct as described in this Section, the Authorized Officer may suspend the Participant's right to exercise any Stock Option or SAR pending a determination of whether an act of misconduct has been committed. If the Committee or an Authorized Officer reasonably and in good faith determines a Participant has committed an act constituting Cause or an act of embezzlement, fraud, dishonesty, nonpayment of any obligation owed to Phunware, breach of fiduciary duty or deliberate disregard of Corporation rules resulting in loss, damage or injury to the Corporation, or if a Participant makes an unauthorized disclosure of any Corporation trade secret or confidential information, engages in any conduct constituting unfair competition, induces any customer to breach a contract with the Corporation or induces any principal for whom Phunware acts as agent to terminate such agency relationship, neither the Participant nor his or her estate shall be entitled to exercise any Stock Option or SAR whatsoever. In addition, for any Participant who is designated as an "executive officer" by the Board of Directors, if the Committee determines that the Participant engaged in an act of embezzlement, fraud or breach of fiduciary duty during the Participant's employment that contributed to an obligation to restate the

Corporation's financial statements ("Contributing Misconduct"), the Participant shall be required to repay to the Corporation, in cash and upon demand, the Option Proceeds (as defined below) resulting from any sale or other disposition (including to the Corporation) of Shares issued or issuable upon exercise of a Stock Option or SAR if the sale or disposition was effected during the twelve-month period following the first public issuance or filing with the SEC of the financial statements required to be restated. The term "Option Proceeds" means, with respect to any sale or other disposition (including to the Corporation) of Shares issuable or issued upon exercise of a Stock Option or SAR, an amount determined appropriate by the Committee to reflect the effect of the restatement, up to the amount equal to the number of Shares sold or disposed of multiplied by the difference between the market value per Share at the time of such sale or disposition and the exercise price. The return of Option Proceeds is in addition to and separate from any other relief available to the Corporation due to the executive officer's Contributing Misconduct. Any determination by the Committee or an Authorized Officer taken reasonably and in good faith with respect to the foregoing shall be final, conclusive and binding on all interested parties. For any Participant who is an executive officer, the determination of the Committee or of the Authorized Officer shall be subject to the approval of the Board of Directors.

(vi) *Conditions and Restrictions Upon Securities Subject to Stock Options or SARs.* Subject to the express provisions of the Plan, the Committee may provide that the Shares issued upon exercise of a Stock Option or SAR shall be subject to such further conditions or agreements as the Committee in its discretion may specify prior to the exercise of such Stock Option or SAR, including, without limitation, conditions on vesting or transferability, forfeiture or repurchase provisions, subject in all cases to the following. Each action under this subsection (vi) shall be taken in good faith and in the reasonable belief that the action will not deprive the Participant of any of the benefits of the Award or the Shares covered thereby, including, but not limited to, the value of the Award or Shares, and the exercisability, timing and payment of the Award or Shares. The obligation to make payments with respect to SARs may be satisfied through cash payments or the delivery of Shares, or a combination thereof as the Committee shall determine. The Committee may establish rules for the deferred delivery of Common Stock upon exercise of a Stock Option or SAR with the deferral evidenced by use of Restricted Stock Units equal in number to the number of Shares whose delivery is so deferred, subject in all cases to the Participant's written consent.

(vii) *Other Terms and Conditions.* Stock Options and SARs may also contain such other provisions, which shall not be inconsistent with any of the foregoing terms, as the Committee shall deem appropriate, subject in all cases to the Committee's good faith and reasonable belief that any such provisions will not deprive the Participant of any of the benefits of the Award or the Shares covered thereby, including, but not limited to, the value of the Award or Shares, and the exercisability, timing and payment of the Award or Shares.

(b) *Grant, Terms and Conditions of Restricted Stock and Restricted Stock Units.* The Committee may grant Restricted Stock or Restricted Stock Units at any time and from time to time prior to the expiration of the Plan to eligible employee Participants selected by the Committee. A Participant shall have rights as a stockholder with respect to any Shares subject to a Restricted Stock Award hereunder only to the extent specified in this Plan or the Restricted Stock Agreement evidencing such Award. Awards of Restricted Stock or Restricted Stock Units shall be evidenced only by such agreements, notices and/or terms or conditions documented in such form (including by electronic communications) as may be approved by the Committee. Awards of Restricted Stock or Restricted Stock Units granted pursuant to the Plan need not be identical but each must contain or be subject to the following terms and conditions:

(i) *Terms and Conditions.* Each Restricted Stock Agreement and each Restricted Stock Unit Agreement shall contain provisions regarding (a) the number of Shares subject to such Award or a formula for determining such, (b) the purchase price of the Shares, if any, and the means of payment for the Shares, (c) the performance criteria, if any, and level of achievement versus these criteria that shall determine the number of Shares granted, issued, retainable and/or vested, (d) such terms and conditions on the grant, issuance, vesting and/or forfeiture of the Shares as may be determined from time to time by the Committee, (e) restrictions on the transferability of the Shares

and (f) such further terms and conditions as may be determined from time to time by the Committee, in each case not inconsistent with this Plan.

(ii) *Sale Price.* Subject to the requirements of applicable law, the Committee shall determine the price, if any, at which Shares of Restricted Stock or Restricted Stock Units shall be sold or awarded to a Participant, which may vary from time to time and among Participants and which may be below the market value of such Shares at the date of grant or issuance.

(iii) *Share Vesting.* The grant, issuance, retention and/or vesting of Shares under Restricted Stock or Restricted Stock Unit Awards shall be at such time and in such installments as determined by the Committee or under criteria established by the Committee. The Committee shall have the right to make the timing of the grant and/or the issuance, ability to retain and/or vesting of Shares under Restricted Stock or Restricted Stock Unit Awards subject to continued employment, passage of time and/or such performance criteria and level of achievement versus these criteria as deemed appropriate by the Committee, which criteria may be based on financial performance and/or personal performance evaluations. No condition that is based on performance criteria and level of achievement versus such criteria shall be based on performance over a period of less than one year.

(iv) *Termination of Employment.* The Restricted Stock or Restricted Stock Unit Agreement may provide for the forfeiture or cancellation of the Restricted Stock or Restricted Stock Unit Award, in whole or in part, in the event of the termination of employment or service of the Participant to whom it was granted.

(v) *Restricted Stock Units.* Except to the extent this Plan or the Committee specifies otherwise, Restricted Stock Units represent an unfunded and unsecured obligation of the Corporation and do not confer any of the rights of a stockholder until Shares are issued thereunder. Settlement of Restricted Stock Units upon expiration of the deferral or vesting period shall be made in Shares or otherwise as determined by the Committee. Dividends or dividend equivalent rights shall be payable in cash or in additional shares with respect to Restricted Stock Units only to the extent specifically provided for by the Committee and subject to the limitations of Section 9(c). Until a Restricted Stock Unit is settled, the number of Shares represented by a Restricted Stock Unit shall be subject to adjustment pursuant to Section 10. Any Restricted Stock Units that are settled after the Participant's death shall be distributed to the Participant's designated beneficiary(ies) or, if none was designated, the Participant's estate.

(vi) *Suspension or Termination of Restricted Stock and Restricted Stock Units.* If at any time the Committee, including any Authorized Officer, reasonably and in good faith believes that a Participant (A) has committed an act constituting "Cause" (as such term may be defined in such Participant's employment agreement with the Corporation) or (B) a Participant committed an act of misconduct as described in this Section, the Authorized Officer may suspend the vesting of Shares under the Participant's Restricted Stock or Restricted Stock Unit Awards pending a determination of whether an act constituting Cause or an act of misconduct (as applicable) has been committed, which determination the Corporation will use commercially reasonable best efforts to make within 60 days of the initial suspension. If the Committee or an Authorized Officer reasonably and in good faith determines a Participant has committed an act constituting Cause or an act of embezzlement, fraud, dishonesty, nonpayment of any obligation owed to Phunware, breach of fiduciary duty or deliberate disregard of Corporation rules resulting in loss, damage or injury to the Corporation, or if a Participant makes an unauthorized disclosure of any Corporation trade secret or confidential information, engages in any conduct constituting unfair competition, induces any customer to breach a contract with the Corporation or induces any principal for whom Phunware acts as agent to terminate such agency relationship, the Participant's Restricted Stock or Restricted Stock Unit Agreement shall be forfeited and cancelled. In addition, for any Participant who is designated as an "executive officer" by the Board of Directors, if the Committee determines that the Participant engaged in an act of embezzlement, fraud or breach of fiduciary duty during the Participant's employment that contributed to an obligation to restate the Corporation's financial statements ("Contributing Misconduct"), the Participant shall be required to repay to the Corporation, in cash and upon demand, the Restricted Stock Proceeds (as defined below) resulting from any sale or other disposition (including to the Corporation) of Shares issued or issuable upon the vesting of Restricted Stock or a Restricted Stock Unit if the sale or disposition was effected during the twelve-month

period following the first public issuance or filing with the SEC of the financial statements required to be restated. The term "Restricted Stock Proceeds" means, with respect to any sale or other disposition (including to the Corporation) of Shares issued or issuable upon vesting of Restricted Stock or a Restricted Stock Unit, an amount determined appropriate by the Committee to reflect the effect of the restatement, up to the amount equal to the market value per Share at the time of such sale or other disposition multiplied by the number of Shares or units sold or disposed of. The return of Restricted Stock Proceeds is in addition to and separate from any other relief available to the Corporation due to the executive officer's Contributing Misconduct. Any determination by the Committee or an Authorized Officer taken reasonably and in good faith with respect to the foregoing shall be final, conclusive and binding on all interested parties. For any Participant who is an executive officer, the determination of the Committee or of the Authorized Officer shall be subject to the approval of the Board of Directors.

## **9. Other Provisions Applicable to Awards**

(a) *Transferability.* Unless the agreement or other document evidencing an Award (or an amendment thereto authorized by the Committee) expressly states that the Award is transferable as provided hereunder, no Award granted under this Plan, nor any interest in such Award, may be sold, assigned, conveyed, gifted, pledged, hypothecated or otherwise transferred in any manner, other than by will or the laws of descent and distribution. The Committee may grant an Award or amend an outstanding Award to provide that the Award is transferable or assignable (a) in the case of a transfer without the payment of any consideration, to any "family member" as such term is defined in Section 1(a)(5) of the General Instructions to Form S-8 under the Securities Act of 1933, as such may be amended from time to time, and (b) in any transfer described in clause (ii) of Section 1(a)(5) of the General Instructions to Form S-8 under the 1933 Act as amended from time to time, *provided* that following any such transfer or assignment the Award will remain subject to substantially the same terms applicable to the Award while held by the Participant to whom it was granted, as modified as the Committee shall determine appropriate, and as a condition to such transfer the transferee shall execute an agreement agreeing to be bound by such terms. Any purported assignment, transfer or encumbrance that does not qualify under this Section 9(a) shall be void and unenforceable against the Corporation.

(b) *Qualifying Performance Criteria.* For purposes of this Plan, the term "Qualifying Performance Criteria" shall mean any one or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Corporation as a whole or to a business unit or Subsidiary, either individually, alternatively or in any combination, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years' results or to a designated comparison group, on a U.S. generally accepted accounting principles ("GAAP") or non-GAAP basis, in each case as specified by the Committee in the Award: (a) cash flow, (b) earnings per share, (c) earnings before one or more of interest, taxes, depreciation and amortization, (d) return on equity, (e) total stockholder return, (f) share price performance, (g) return on capital, (h) return on assets or net assets, (i) revenue, (j) income or net income, (k) operating income or net operating income, (l) operating profit or net operating profit, (m) gross margin, operating margin or profit margin, (n) return on operating revenue, (o) return on invested capital, (p) market segment share, (q) product release schedules, (r) new product innovation, (s) product cost reduction through advanced technology, (t) brand recognition/acceptance, (u) product ship targets, or (v) customer satisfaction. The Committee may appropriately adjust any evaluation of performance under a Qualifying Performance Criteria to exclude any of the following events that occurs during a performance period: (i) asset write-downs, (ii) litigation or claim judgments or settlements, (iii) the effect of changes in or provisions under tax law, accounting principles or other such laws or provisions affecting reported results, (iv) accruals for reorganization and restructuring programs, (v) any infrequently occurring or other unusual items, either under applicable accounting provisions or described in management's discussion and analysis of financial condition and results of operations appearing in the Corporation's annual report to stockholders for the applicable year, and (vi) any other events as the Committee shall deem appropriate, if such adjustment is timely approved in connection with the establishment of Qualifying Performance Criteria. Notwithstanding satisfaction of any completion of any Qualifying Performance Criteria, to the extent specified at the time of grant of an Award, the number of Shares, Stock Options, SARs, Restricted Stock Units or other benefits granted, issued, retainable and/or vested under an Award on account of satisfaction of such Qualifying Performance Criteria may be reduced by

the Committee on the basis of such further considerations as the Committee in its sole discretion shall determine.

(c) *Dividends.* Unless otherwise provided by the Committee, no adjustment shall be made in Shares issuable under Awards on account of cash dividends that may be paid or other rights that may be issued to the holders of Shares prior to their issuance under any Award. The Committee shall specify whether dividends or dividend equivalent amounts shall be credited and/or payable to any Participant with respect to the Shares subject to any Award; provided, however, that in no event will dividends or dividend equivalents be credited or payable in respect of Stock Options or SARs. Notwithstanding the foregoing, dividends or dividend equivalents credited/payable in connection with an Award that is not yet vested shall be subject to the same restrictions and risk of forfeiture as the underlying Award and shall not be paid until the underlying Award vests.

(d) *Documents Evidencing Awards.* The Committee shall, subject to applicable law, determine the date an Award is deemed to be granted. The Committee or, except to the extent prohibited under applicable law, its delegate(s) may establish the terms of agreements, including Award Agreements, or other documents evidencing Awards under this Plan and may, but need not, require as a condition to any such agreement's or document's effectiveness that such agreement or document be executed by the Participant, including by electronic signature or other electronic indication of acceptance, and that such Participant agree to such further terms and conditions as specified in such agreement or document. The grant of an Award under this Plan shall not confer any rights upon the Participant holding such Award other than such terms, and subject to such conditions, as are specified in this Plan as being applicable to such type of Award (or to all Awards) or as are expressly set forth in the agreement or other document evidencing such Award.

(e) *Additional Restrictions on Awards.* Either at the time an Award is granted or by subsequent action, the Committee may, but need not, impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by a Participant or other subsequent transfers by a Participant of any Shares issued under an Award with respect to (a) restrictions under an insider trading policy that generally applies to all executive officers, and (b) restrictions as to the use of a specified brokerage firm for receipt, resales or other transfers of such Shares, subject in all cases to the following. Each action under this Section 9(e) shall be taken in good faith.

(f) *Subsidiary Awards.* In the case of a grant of an Award to any Participant employed by a Subsidiary, such grant may, if the Committee so directs, be implemented by Phunware issuing any subject Shares to the Subsidiary, for such lawful consideration as the Committee may determine, upon the condition or understanding that the Subsidiary will transfer the Shares to the Participant in accordance with the terms of the Award specified by the Committee pursuant to the provisions of the Plan. Notwithstanding any other provision hereof, such Award may be issued by and in the name of the Subsidiary and shall be deemed granted on such date as the Committee shall determine.

(g) *Compensation Recovery.* This provision applies to any policy adopted by any exchange on which the securities of the Corporation are listed pursuant to Section 10D of the Exchange Act. To the extent any such policy requires the repayment of incentive-based compensation received by a Participant, whether paid pursuant to an Award granted under this Plan or any other plan of incentive-based compensation maintained in the past or adopted in the future by the Corporation, by accepting an Award under this Plan, the Participant agrees to the repayment of such amounts to the extent required by such policy and applicable law.

## **10. Adjustment of and Changes in the Common Stock**

(a) The existence of outstanding Awards shall not affect in any way the right or power of the Corporation or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations, exchanges, or other changes in the Corporation's capital structure or its business, or any merger or consolidation of the Corporation or any issuance of Shares or other securities or subscription rights thereto, or any issuance of bonds, debentures, preferred or prior preference stock ahead of or affecting the Shares or other securities of the Corporation or the rights thereof, or the dissolution or liquidation of the Corporation, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise. Further, except as

expressly provided herein or by the Committee, (i) the issuance by the Corporation of shares of stock or any class of securities convertible into shares of stock of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor, or upon conversion of shares or obligations of the Corporation convertible into such shares or other securities, (ii) the payment of a dividend in property other than Shares, or (iii) the occurrence of any similar transaction, and in any case whether or not for fair value, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number of Shares subject to Stock Options or other Awards theretofore granted or the purchase price per Share, unless the Committee shall determine, in its sole discretion, that an adjustment is necessary or appropriate.

(b) If the outstanding Shares or other securities of the Corporation, or both, for which the Award is then exercisable or as to which the Award is to be settled shall at any time be changed or exchanged by declaration of a stock dividend, stock split, combination of shares, extraordinary dividend of cash and/or assets, recapitalization, reorganization or any similar equity restructuring transaction (as that term is used in Accounting Standards Codification 718) affecting the Shares or other securities of the Corporation, the Committee shall equitably adjust the number and kind of Shares or other securities that are subject to this Plan and to the limits under Section 6 and that are subject to any Awards theretofore granted, and the exercise or settlement prices of such Awards, so as to maintain the proportionate number of Shares or other securities subject to such Awards without changing the aggregate exercise or settlement price, if any.

(c) No right to purchase fractional Shares shall result from any adjustment in Stock Options or SARs pursuant to this Section 10. In case of any such adjustment, the Shares subject to the Stock Option or SAR shall be rounded down to the nearest whole share.

(d) Any other provision hereof to the contrary notwithstanding (except Section 10(a)), in the event Phunware is a party to a merger or other reorganization, outstanding Awards shall be subject to the agreement of merger or reorganization. Such agreement may provide, without limitation, for the assumption of outstanding Awards by the surviving corporation or its parent, for their continuation by Phunware (if Phunware is a surviving corporation), for accelerated vesting and accelerated expiration (but with expiration occurring only after a reasonable opportunity to exercise or receive the benefits of the vested Award), or for settlement in cash.

(e) Notwithstanding any contrary provision of the Plan or of any Award Agreement, in the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, divestiture, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Corporation, or other change in the corporate structure of the Corporation affecting the Shares occurs, the Committee, in order to prevent diminution of the benefits or potential benefits intended to be made available under the Plan and the Awards, will adjust the number, class, type and exercise price (if any) of the shares covered by the Plan and each Award, including (without limitation) the vesting conditions (for example, without limitation, the performance goals, metrics and hurdles), all in a manner that the Committee reasonably and in good faith believes will preserve for the Participant the benefits and potential benefits that, as of immediately prior to such event, were intended to be conferred by the Plan and each Award (including, without limitation, value, potential value, and time of vesting and payment).

## **11. Listing or Qualification of Common Stock**

In the event that the Committee determines in its discretion that the listing or qualification of the Shares available for issuance under the Plan on any securities exchange or quotation or trading system or under any applicable law or governmental regulation is necessary as a condition to the issuance of such Shares, a Stock Option or SAR may not be exercised in whole or in part and a Restricted Stock or Restricted Stock Unit Award shall not vest or be settled unless such listing, qualification, consent or approval has been unconditionally obtained.

## **12. Termination or Amendment of the Plan**

The Board of Directors may amend, alter or discontinue the Plan and the Board or the Committee may to the extent permitted by the Plan amend any agreement or other document evidencing an Award

made under this Plan, provided, however, that the Corporation shall submit for stockholder approval any amendment (other than an amendment pursuant to the adjustment provisions of Section 10) required to be submitted for stockholder approval by Nasdaq or that otherwise would:

- (a) Increase the maximum number of Shares for which Awards may be granted under this Plan;
- (b) Reduce the price at which Stock Options may be granted below the price provided for in Section 8(a);
- (c) Reduce the option price of outstanding Stock Options;
- (d) Extend the term of this Plan;
- (e) Change the class of persons eligible to be Participants; or
- (f) Increase the limits in Section 6.

In addition, without the Participant's consent, no such amendment or alteration shall be made which would impair the rights of any Participant, result in any diminishment in the material economic value of an Award, delay vesting or settlement of an Award, or prevent a Participant from timely receiving the economic benefits of the Award or underlying Shares under any Award theretofore granted, provided that no such consent shall be required with respect to any amendment or alteration if the Committee determines reasonably and in good faith that such amendment or alteration either (i) is required or advisable in order for the Corporation, the Plan or the Award to satisfy or conform to any law or regulation or to meet the requirements of any accounting standard, or (ii) is not reasonably likely to impair the rights of any Participant, result in any diminishment in the material economic value of an Award, delay vesting or settlement of an Award, or prevent a Participant from timely receiving the economic benefits of the Award or underlying Shares.

### **13. Withholding**

To the extent required by applicable federal, state, local or foreign law, the Committee may and/or a Participant shall make arrangements satisfactory to the Corporation for the satisfaction of any withholding tax obligations that arise with respect to any Stock Option, SAR, Restricted Stock or Restricted Stock Unit Award, or any sale of Shares. The Corporation shall not be required to issue Shares or to recognize the disposition of such Shares until such obligations are satisfied. To the extent permitted or required by the Committee, these obligations may or shall be satisfied by having the Corporation withhold a portion of the Shares of stock that otherwise would be issued to a Participant under such Award or by tendering Shares previously acquired by the Participant.

### **14. General Provisions**

(a) *Employment At Will.* Neither the Plan nor the grant of any Award nor any action by the Corporation, any Subsidiary or the Committee shall be held or construed to confer upon any person any right to be continued in the employ of the Corporation or a Subsidiary. The Corporation and each Subsidiary expressly reserve the right to discharge, without liability but subject to his or her rights under this Plan, any Participant whenever in the sole discretion of the Corporation or a Subsidiary, as the case may be, it may determine to do so.

(b) *Governing Law.* This Plan and any agreements or other documents hereunder shall be interpreted and construed in accordance with the laws of the State of Texas and applicable federal law. The Committee may provide that any dispute as to any Award shall be presented and determined in such forum as the Committee may specify, including through binding arbitration. Any reference in this Plan or in the agreement or other document evidencing any Award to a provision of law or to a rule or regulation shall be deemed to include any successor law, rule or regulation of similar effect or applicability.

(c) *Unfunded Plan.* Insofar as it provides for Awards, the Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Participants who are granted Awards under this

Plan, any such accounts will be used merely as a bookkeeping convenience. The Corporation shall not be required to segregate any assets which may at any time be represented by Awards, nor shall this Plan be construed as providing for such segregation, nor shall the Corporation or the Committee be deemed to be a trustee of stock or cash to be awarded under the Plan.

(d) *Third Party Administrator.* In connection with a Participant's participation in the Plan, the Corporation may use the services of a third party administrator, including a brokerage firm administrator, and the Corporation may provide this administrator with personal information about a Participant, including a Participant's name, social security number and address, as well as the details of each Award, and this administrator may provide information to the Corporation concerning the exercise of a Participant's rights and account data as it relates to Awards under the Plan.

## **15. Non-Exclusivity of Plan**

The adoption of this Plan by the Board of Directors shall not be construed as creating any limitations on the power of the Board of Directors or the Committee to adopt such other incentive arrangements as either may deem desirable, including, without limitation, the granting of stock options, stock appreciation rights, restricted stock or restricted stock units otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

## **16. Compliance with Other Laws and Regulations**

This Plan, the grant and exercise of Awards thereunder, and the obligation of the Corporation to sell, issue or deliver Shares under such Awards, shall be subject to all applicable federal, state and local laws, rules and regulations and to such approvals by any governmental or regulatory agency as may be required. The Corporation shall file with the Securities and Exchange Commission a registration statement on Form S-8 or other available form, registering that number of Shares equal to the number of shares covering Awards granted under this Plan, in each case no later than the grant date of such Awards. The Corporation shall not be required to register in a Participant's name or deliver any Shares prior to the completion of any registration or qualification of such Shares under any federal, state or local law or any ruling or regulation of any government body which the Committee shall determine to be necessary or advisable. To the extent the Corporation is unable to or the Committee deems it infeasible to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Corporation's counsel to be necessary or advisable for the lawful issuance and sale of any Shares hereunder, the Corporation shall be relieved of any liability with respect to the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained. No Stock Option shall be exercisable and no Shares shall be issued and/or transferable under any other Award unless a registration statement with respect to the Shares underlying such Stock Option is effective and current or the Corporation has determined that such registration is unnecessary.

## **17. Liability of Corporation**

The Corporation shall not be liable to a Participant or other persons as to: (a) the non-issuance or sale of Shares as to which the Corporation has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Corporation's counsel to be necessary to the lawful issuance and sale of any Shares hereunder; and (b) any tax consequence expected, but not realized, by any Participant or other person due to the receipt, exercise or settlement of any Stock Option or other Award granted hereunder.

## AMENDMENT TO PROMISSORY NOTE

This Amendment to Promissory Note (this "Amendment") is entered into effective as of August 1, 2023, (the "Amendment Date"), by and between Streeterville Capital, LLC, a Utah limited liability company (Lender"), and Phunware, Inc., a Delaware corporation ("Borrower"). Capitalized terms used in this Amendment without definition shall have the meanings given to them in the Note (as defined below).

A. Borrower previously issued to Lender that certain Promissory Note dated July 6, 2022 in the principal amount of \$12,808,672.00 (as amended and supplemented prior to the date hereof, the "Note").

B. Lender and Borrower have agreed to amend and supplement the Note as provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** Each of the parties hereto acknowledges and agrees that the recitals set forth above in this Amendment are true and accurate and are hereby incorporated into and made a part of this Amendment.

2. **Definitions.** The following defined terms will be added to Attachment 1 of the Note:

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

(b) **"Conversion Date"** means, for any conversion, the date on which the Conversion Notice for a Conversion Amount is delivered by Lender to Borrower.

(c) **"Conversion Notice"** means a notice of conversion of an amount of the Outstanding Balance substantially in the form of Exhibit A attached hereto or such other form agreed upon between Lender and Borrower.

(d) **"Conversion Price"** means, with respect to any conversion hereunder, 90% of the Nasdaq Minimum Price calculated on Conversion Date for such conversion.

(e) **"Conversion Shares"** means, with respect to any conversion and related Conversion Notice, the number of shares of Common Stock issuable in exchange for the Conversion Amount specified in such Conversion Notice, determined by dividing the Conversion Amount for such conversion by the Conversion Price for such conversion.

(f) **"Minimum Outstanding Balance Reduction Amount"** means (a) \$800,000.00 per calendar month and (b) for May 2024, the remaining Outstanding Balance on the Note and any accrued and unpaid interest thereon.

(g) **"Monthly Conversion Amount"** means, on any date during any given calendar month, the total amount of the Outstanding Balance converted into Common Stock pursuant to all conversions during such calendar month for which the applicable Conversion Shares have been delivered to Lender. Conversion Shares delivered in a month different than the month the Conversion Notice was delivered will be counted toward the month the Conversion Notice was delivered.

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(h) “**Monthly Deficit Amount**” means, on any date during any given calendar month, the amount that the Minimum Outstanding Balance Reduction Amount exceeds the Monthly Conversion Amount on such date for such month.

(i) “**Monthly Surplus Amount**” means, on any date during any given calendar month, the amount that the Monthly Conversion Amount on such date for such month exceeds the Minimum Outstanding Balance Reduction Amount on such date for such month.

(j) “**Nasdaq Minimum Price**” means, for any conversion hereunder, the lower of: (i) the closing trade price of the Common Stock on the Trading Day immediately preceding the Conversion Date for such conversion; or (ii) the average closing trade price of the Common Stock for the five (5) Trading Days immediately preceding the Conversion Date for such conversion.

(k) “**Trading Day**” means any day on which Borrower’s principal market is open for trading.

3. Interest. The Outstanding Balance of the Note will accrue interest at the rate of eight percent (8%) per annum from August 1, 2023 until the Note is paid in full. All interest calculations hereunder shall be computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months and shall be payable as part of the Minimum Outstanding Balance Reduction Amount.

4. Maturity Date. The Maturity Date of the Note is hereby extended to June 1, 2024 (the “**Extension**”).

5. Payments. Section 1.2 and Section 3 of the Note are hereby deleted in their entirities.

6. Limited Conversion Rights.

(a) Beginning on the date both parties execute and deliver this Amendment and ending on the date the Note is paid in full, Lender will have the right to convert all or any portion of the Outstanding Balance (any such amount of Outstanding Balance to be converted or so converted, the “**Conversion Amount**”) into shares of Common Stock at the applicable Conversion Price by delivering a Conversion Notice for such conversion to Borrower in accordance with Section 6(b) below (the “**Conversion Right**”).

(b) Lender may, to effectuate any conversion hereunder, deliver an executed Conversion Notice for such conversion to Borrower via facsimile or electronic mail on or prior to 5:00 p.m., Central time on any Trading Day.

(c) Borrower agrees to deliver the Conversion Shares for any conversion hereunder to Lender’s brokerage account within three (3) Trading Days after the date of its receipt of the Conversion Notice for such conversion (the “**Delivery Date**”). Failure to timely deliver Conversion Shares for any conversion will be a Major Trigger Event under the Note. On up to two (2) separate occasions, Borrower will have two (2) additional Trading Days to deliver Conversion Shares without such failure to deliver by the Delivery Date becoming a Trigger Event.

(d) Notwithstanding any term or provision of this Amendment, the Note or any other Transaction Document:

(i) If prior to the first Trading Day of any given calendar month the Minimum Outstanding Balance Reduction Amount for such month is paid in full by one or more payments in cash to Lender via wire transfer of immediately available funds, then Lender's Conversion Rights will not be available for such month;

(ii) If on any date during any given calendar month Borrower desires for Lender to no longer be able to exercise its Conversion Rights during the remaining portion of such month, Borrower will provide written notice of such determination to Lender and, from and after the date which is three (3) Trading Days following the date of delivery of such written notice to Lender (any such date, the "**Conversion Rights Discontinuance Date**"), Lender shall not exercise Conversion Rights from and after the Conversion Rights Discontinuance Date through and including the last Trading Day of such month, provided that on or prior to the Conversion Rights Discontinuance Date for such month, Borrower shall have made a payment in cash to Lender via wire transfer of immediately available funds to pay and be applied to reduce the Outstanding Balance in an amount equal to the greater of (A) \$400,000 or (B) the portion of the Minimum Outstanding Balance Reduction Amount for such month which has not yet been paid or satisfied by payments in cash, conversions, or combinations thereof;

(iii) Any conversion or series of conversions on any Trading Day which involve(s) one or more Conversion Amount(s) which exceed(s), individually or in the aggregate, \$750,000 for such Trading Day shall be subject to and conditioned upon the prior written consent of Borrower;

(iv) Any Conversion Notice delivered to Borrower will be effective only on the date delivered to Borrower (not prior to such date or after such date);

(v) Lender shall have no voting rights as the holder of the Note under the Note, this Amendment or any other Transaction Document, except as required by applicable law; and

(vi) If Lender delivers a Conversion Notice to Borrower on any day during any calendar month and (A) the aggregate amount previously converted under the Note during such month together with the Conversion Amount reflected in such Conversion Notice is greater than \$1,700,000; and (B) the Conversion Price applicable to such Conversion Notice is less than fifty (50%) of the highest intra-day trading price of the Common Stock (as reported by Bloomberg, L.P.) on the Conversion Date relating to such Conversion Notice, then Borrower may accept or reject such Conversion Notice in its sole discretion by 1:00 p.m. Central time on the next Trading Day.

(e) Borrower covenants and agrees that Borrower will, within ten (10) Trading Days following the date of execution by the parties of this Amendment, complete and provide to Lender a transfer agent instructions letter executed by Borrower, Lender and Borrower's transfer agent relating to the conversion transactions contemplated by this Amendment, which letter will be in form reasonably acceptable to Borrower and Lender.

7. Monthly Balance Reductions.

(a) Beginning August 31, 2023 and thereafter on the last Trading Day of each subsequent calendar month until the Note is paid in full, Borrower agrees to reduce the Outstanding Balance of the Note in an aggregate amount equal to the Minimum Outstanding Balance Reduction Amount through payments in cash, deliveries of Conversion Shares or any combination thereof.

(b) If the Monthly Conversion Amount for any given calendar month is less than the Minimum Outstanding Balance Reduction Amount as of the last Trading Day of such month and any portion of the Minimum Outstanding Balance Reduction Amount for such month remains outstanding, then Borrower will pay the Monthly Deficit Amount for such month in cash to Lender via wire transfer of immediately available funds within one (1) Trading Day of such last Trading Day.

(c) If the Monthly Conversion Amount in any given calendar month exceeds the Minimum Outstanding Balance Reduction Amount as of the last Trading Day of such month, the Monthly Surplus Amount will be credited toward meeting the Minimum Outstanding Balance Reduction Amount in the immediately succeeding month or months, as applicable.

(d) Without limiting the foregoing, Borrower may at any time and from time to time make payments in cash to pay accrued and unpaid interest on the Note and/or to reduce the Outstanding Balance of the Note during any calendar month, and any such payment will be immediately applied to pay and reduce the Outstanding Balance of the Note; and any portion of any such payment so made which results in a Monthly Surplus Amount will be credited toward meeting the Minimum Outstanding Balance Reduction Amount in the immediately succeeding month or months, as applicable. Provided, however, Borrower may not pay any Conversion Amount in cash for which a Conversion Notice has been delivered to Borrower and the applicable Conversion Shares have not yet been delivered.

8. Ownership Limitation. Notwithstanding anything to the contrary contained in the Note or any other Transaction Document, Lender shall not deliver a Conversion Notice, and Borrower shall not without the prior written consent of Lender effect any conversion under the Note, to the extent that after giving effect to such conversion would cause Lender (together with its affiliates) to then beneficially own a number of shares of Common Stock exceeding 4.99% of the number of shares of Common Stock issued and outstanding on such date (including for such purpose the Common Stock issuable upon such issuance) (the "**Maximum Percentage**"). For purposes of this section, beneficial ownership of Common Stock will be determined pursuant to Section 13(d) of the 1934 Act. Notwithstanding the forgoing, the term "4.99%" above shall be replaced with "9.99%" at such time as the market capitalization of Borrower is less than \$25,000,000.00. Notwithstanding any other provision contained herein, if the term "4.99%" is replaced with "9.99%" pursuant to the preceding sentence, such increase to "9.99%" shall remain at 9.99% until increased, decreased or waived by Lender as set forth below. By delivery of written notice to Borrower, Lender may increase, decrease or waive the Maximum Percentage as to itself but any such increase, decrease or waiver will not be effective until the 61st day after delivery thereof. The foregoing 61-day notice requirement is enforceable, unconditional and non-waivable and shall apply to all affiliates and assigns of Lender.

9. Issuance Cap. Notwithstanding anything to the contrary contained in the Note or any other Transaction Document, Borrower and Lender agree that the total cumulative number of shares of Common Stock issued to Lender through conversions under the Note will not exceed the requirements of Nasdaq Listing Rule 5635(d) applicable to Borrower (the "**Issuance Cap**"), except that such limitation will not apply following Approval (defined below). If the number of shares of Common Stock issued to Lender through conversions under the Note is within thirty

percent (30%) of the Issuance Cap (the "**Threshold**"), Borrower, within thirty (30) days of reaching the Threshold, will use commercially reasonable efforts to obtain any requisite stockholder approval of the issuance of additional Conversion Shares under the Note, if necessary, in accordance with the requirements of Nasdaq Listing Rule 5635(d) (the "**Approval**"). If Borrower is unable to obtain such Approval, any remaining Outstanding Balance of the Note must be repaid in cash in accordance with the Minimum Outstanding Balance Reduction Amount requirements under the Note, as amended and supplemented by this Amendment. Failure to obtain the Approval shall not be a Trigger Event under the Note.

10. Reservation of Shares. On the date hereof, Borrower will reserve 27,000,000 shares of Common Stock from its authorized and unissued Common Stock to provide for all potential issuances of Common Stock pursuant to Conversion Notices deliverable upon conversions under the Note, as amended and supplemented by this Amendment (the "**Share Reserve**"), and beginning on the date Borrower obtains the Approval and from time to time thereafter until the Note is paid in full Borrower covenants and agrees to add additional shares of Common Stock to the Share Reserve in increments of 1,000,000 shares as and when requested by Lender if the number of shares of Common Stock then held in the Share Reserve is less than three (3) times the number of shares of Common Stock which Lender would be entitled to receive upon full conversion of the then Outstanding Balance of the Note. Borrower shall further require its transfer agent (the "**Transfer Agent**") to hold the shares of Common Stock reserved pursuant to the Share Reserve exclusively for the benefit of Lender and to issue such shares to Lender promptly upon Lender's delivery of a Conversion Notice to Borrower. Borrower shall require the Transfer Agent to issue shares of Common Stock pursuant to any conversion of the Note to Lender out of Borrower's authorized and unissued shares of Common Stock, and not the Share Reserve, to the extent shares of Common Stock have been authorized, but not issued, and are not included in the Share Reserve. The Transfer Agent shall only issue shares of Common Stock out of the Share Reserve to the extent there are no other authorized shares available for issuance and then only with Lender's written consent.

11. Sales Limitation. Lender agrees that so long as no Event of Default has occurred, Lender will limit its sales of Conversion Shares received pursuant to the exercise of Conversion Rights in any given week to fifteen percent (15%) of the weekly trading volume of the Common Stock on Borrower's principal trading market for such week, unless Borrower otherwise provides prior written consent to Lender for additional sales. Borrower's sole and exclusive remedy in the event of a breach by Lender of the foregoing sales limitation shall be to reduce the Outstanding Balance by an amount equal to the number of shares of Common Stock sold by Lender in excess of the sales limitation multiplied by the volume weighted average price (as reported by Bloomberg, L.P.) of the Common Stock for the applicable week.

12. No Shorting. During the period beginning on the Amendment Date and ending on the date the Note has been repaid in full or sold by Lender to a third party that is not an affiliate of Lender, neither Lender nor any of its subsidiaries, directors, officers, employees or other affiliates will directly or indirectly engage in any Short Sales (as defined below) of the Common Stock; provided; however, that unless and until Borrower has affirmatively demonstrated by the use of specific evidence that Lender or any such other persons or entities affiliated with Lender has engaged or is engaging in Short Sales, Borrower shall remain fully obligated to fulfill all of its obligations under and as provided in the Transaction Documents; and provided, further, that (i) Borrower shall under no circumstances be entitled to request or demand that Lender either (A) provide trading or other records of Lender or of any party or (B) affirmatively demonstrate that Lender or any other party has not engaged in any such Short Sales in breach of these provisions as a condition to Borrower's fulfillment of its obligations under any of the Transaction Documents, (ii) Borrower shall not assert Lender's or any other party's failure to demonstrate such absence of such Short Sales or provide any trading or other records of Lender or any other party as all or part of a defense to any breach of Borrower's payment obligations under any of

the Transaction Documents, and (iii) Borrower shall have no setoff right against the Outstanding Balance with respect to any such Short Sales. As used herein, “**Short Sale**” has the meaning provided in Rule 200 promulgated under Regulation SHO under the 1934 Act, and all short positions directly or indirectly effected through any stock pledges (other than pledges in the ordinary course of business as part of prime brokerage arrangements), stock borrows, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return swap or other basis), or sales or other short transactions through non-U.S. broker-dealers or foreign regulated brokers.

13. Extension Fee. In consideration of Lender’s grant of the Extension, attorneys’ fees and costs incurred in preparing, negotiating and finalizing this Amendment and the related instruments and documents and other accommodations set forth herein, Borrower agrees to pay to Lender an extension fee equal to ten percent (10%) of the Outstanding Balance (the “**Extension Fee**”). The Extension Fee is hereby added to the Outstanding Balance as of August 1, 2023. Lender and Borrower further agree that the Extension Fee is deemed to be fully earned as August 1, 2023, is nonrefundable under any circumstance, and that the Extension Fee tacks back to the date of the Note for Rule 144 purposes. Borrower represents and warrants that as of August 1, 2023 the Outstanding Balance of the Note, following the application of the Extension Fee, was \$7,075,346.33.

14. Representations and Warranties. In order to induce Lender to enter into this Amendment, Borrower hereby represents and warrants to Lender as follows:

(a) Borrower has full power and authority to enter into this Amendment and to incur and perform all obligations and covenants contained herein, all of which have been duly authorized by all necessary corporate action on the part of Borrower. No consent, approval, filing or registration with or notice to any governmental authority by Borrower is required as a condition to the execution and delivery by Borrower of this Amendment or the performance of any of the obligations of Borrower hereunder, other than any filings as may be required by Borrower’s principal trading market or the SEC.

(b) No Event of Default has occurred and is continuing on the date hereof.

15. Waivers. Borrower has no defenses, affirmative or otherwise, rights of setoff, rights of recoupment, claims, counterclaims, actions or causes of action of any kind or nature whatsoever against Lender, directly or indirectly, arising out of, based upon, or in any manner connected with, the transactions contemplated hereby, whether known or unknown, which occurred, existed, was taken, permitted, or begun prior to the date of execution of this Amendment in accordance with, pursuant to, or by virtue of any of the terms or conditions of the Transaction Documents. To the extent any such defenses, affirmative or otherwise, rights of setoff, rights of recoupment, claims, counterclaims, actions or causes of action exist or existed, such defenses, rights, claims, counterclaims, actions and causes of action are hereby waived, discharged and released. Borrower hereby acknowledges and agrees that the execution of this Amendment by Lender shall not constitute an acknowledgment of or admission by Lender of the existence of any claims or of liability for any matter or precedent upon which any claim or liability may be asserted.

16. Certain Acknowledgments. Except as expressly set forth in this Amendment:

(a) Each of the parties acknowledges and agrees that no property or cash consideration of any kind whatsoever has been or shall be given by Lender to Borrower in connection with this Amendment.

(b) Borrower acknowledges and agrees that neither the execution and delivery of this Amendment nor any of the terms, provisions, covenants, or agreements contained in this Amendment shall in any manner release, impair, lessen, modify, waive, or otherwise affect the liability and obligations of Borrower under the Note or any other Transaction Document.

17. Other Terms Unchanged. The Note, as amended and supplemented by this Amendment, remains and continues in full force and effect, constitutes legal, valid, and binding obligations of each of the parties, and is in all respects agreed to, ratified, and confirmed. Any reference to the Note after the date of this Amendment is deemed to be a reference to the Note, as amended and supplemented by this Amendment. If there is a conflict between the terms of this Amendment and the Note, the terms of this Amendment shall control. No forbearance or waiver may be implied by this Amendment. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment to, any right, power, or remedy of Lender under the Note, as in effect prior to the date hereof. This Amendment shall be subject to the governing law, venue, and Arbitration Provisions set forth in the Note.

18. No Reliance. Borrower acknowledges and agrees that neither Lender nor any of its officers, directors, members, managers, equity holders, representatives or agents has made any representations or warranties to Borrower or any of its agents, representatives, officers, directors, or employees except as expressly set forth in this Amendment and the Transaction Documents and, in making its decision to enter into the transactions contemplated by this Amendment, Borrower is not relying on any representation, warranty, covenant or promise of Lender or its officers, directors, members, managers, equity holders, agents or representatives other than as set forth in this Amendment.

19. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. The parties hereto confirm that any electronic copy of another party's executed counterpart of this Amendment (or such party's signature page thereof) will be deemed to be an executed original thereof.

20. Further Assurances. Each party shall do and perform or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment and the consummation of the transactions contemplated hereby.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the undersigned have executed this Amendment as of the date set forth above.

**LENDER:**

**STREETVILLE CAPITAL, LLC**

By: \_\_\_\_\_  
John M. Fife, President

**BORROWER:**

**PHUNWARE, INC.**

By: \_\_\_\_\_  
Troy Reisner, Chief Financial Officer

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*[Signature Page to Amendment to Promissory Note]*

**EXHIBIT A**

Streeterville Capital, LLC  
303 East Wacker Drive, Suite 1040  
Chicago, Illinois 60601

Phunware, Inc. Date: \_\_\_\_\_  
Attention: Troy Reisner  
Chief Financial Officer  
1002 West Avenue  
Austin, Texas 78701  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**CONVERSION NOTICE**

Streeterville Capital, LLC, a Utah limited liability company (the "Lender") hereby gives notice to Phunware, Inc., a Delaware corporation (the "Borrower"), pursuant to that certain Promissory Note made by Borrower in favor of Lender on July 6, 2022, as amended and supplemented by the Amendment to Promissory Note dated as of August 1, 2023 (collectively, the "Note"), that Lender hereby irrevocably elects to convert the portion of the Outstanding Balance (as defined in the Note) of the Note specified below as the Conversion Amount into fully paid and non-assessable shares of Common Stock of Borrower as of the Conversion Date specified below and based on the Conversion Price set forth below, determined in accordance with the Note. In the event of a conflict between this Conversion Notice and the Note, the Note shall govern. Capitalized terms used in this Conversion Notice without definition shall have the meanings given to them in the Note.

- A. Conversion Date: [Date of delivery of this Conversion Notice to Borrower]
- B. Conversion Notice #: \_\_\_\_\_
- C. Conversion Amount: \_\_\_\_\_
- D. Conversion Price: \_\_\_\_\_
- E. Conversion Shares: \_\_\_\_\_ (C divided by D)
- F. Remaining Outstanding Balance of Note: \_\_\_\_\_

***Please issue and transfer the Conversion Shares to Lender electronically (via DWAC) to the following account of Lender***

Broker: \_\_\_\_\_ Address: \_\_\_\_\_  
DTC#: \_\_\_\_\_  
Account #: \_\_\_\_\_  
Account Name: \_\_\_\_\_

**LENDER:**

**STREETERVILLE CAPITAL, LLC**

By: \_\_\_\_\_  
John M. Fife, President

**CERTIFICATION**

I, Russell Buyse, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Phunware 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 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2023

/s/ Russell Buyse

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Russell Buyse  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION**

I, Troy Reisner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Phunware 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 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2023

*/s/* Troy Reisner

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Troy Reisner  
 Chief Financial Officer  
 (Principal Financial and Accounting Officer)

**CERTIFICATION**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Russell Buyse, Chief Executive Officer (Principal Executive Officer) of Phunware, Inc. (the "Company"), and Troy Reisner, Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended June 30, 2023, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 14, 2023

**Phunware, Inc.**

By: /s/ Russell Buyse

Name: Russell Buyse  
Title: Chief Executive Officer  
(Principal Executive Officer)

By: /s/ Troy Reisner

Name: Troy Reisner  
Title: Chief Financial Officer  
(Principal Accounting and Financial Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Phunware, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.